Issues Confronting the 2006 Kentucky General Assembly

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Foreword

As public servants, legislators confront many issues potentially affecting citizens across the Commonwealth. These issues are varied and far-reaching. The staff of the Legislative Research Commission each year attempt to compile and to explain those issues that may be addressed during the upcoming legislative session.

This publication is a compilation of major issues confronting the 2006 General Assembly. It is by no means an exhaustive list; new issues will arise with the needs of Kentucky's citizens.

Effort has been made to present these issues objectively and concisely, given the complex nature of the subjects. The discussion of each issue is not necessarily exhaustive, but provides a balanced look at some of the possible alternatives.

The issues are grouped according to the jurisdictions of the interim joint committees of the Legislative Research Commission; no particular meaning should be placed on the order in which they appear.

LRC staff members who prepared these issue briefs were selected on the basis of their knowledge of the subject.

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Legislative Research Commission
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Agriculture and Natural Resources

Should the General Assembly permit tobacco settlement funds to be used to assist in tobacco production?

Background

Because of the federal buyout that ended the decades-old tobacco quota and price support system, tobacco has entered a free-market system of lower prices and no federal controls. Anyone can grow tobacco and market it either directly to tobacco companies or at a few remaining tobacco warehouses. However, the profit margin may not be as large because of the loss of the price-support safety net that kept prebuyout prices higher than current postbuyout levels.

The 2000 General Assembly created what is now known as the Agricultural Development Fund within the State Treasury as a depository for moneys due the Commonwealth as a result of the tobacco settlement agreement. Farmers producing agricultural commodities have sought financial assistance from the Agricultural Development Fund to buy equipment, build infrastructure, or find markets. A question has arisen whether tobacco producers should receive similar assistance.

Discussion

Kentucky has been receiving approximately $110 million annually as its share of the Master Settlement Agreement (MSA) signed in 1998 by 46 state attorneys general and tobacco companies. The MSA settled most states' lawsuits that had been filed against tobacco companies to seek reimbursement for alleged smoking-related expenses incurred in public health programs.

According to the United States Government Accountability Office, states can use their tobacco settlement funds however they choose. Under 2000 House Bill 611, half of Kentucky's MSA funds are directed toward agriculture uses. Sixty-five percent of the money available for agriculture use is earmarked for state projects and 35 percent for local projects.

At the local level, county councils grant money under various established model programs for diversification projects, such as vegetable production, livestock, water improvements, and hay and straw production. At the state level, the Agricultural Development Board grants funds for projects that have state or regional impacts, but the board also has final approval for county fund usage.

While diversification from tobacco has been a common theme since the program began, after the tobacco buyout, some tobacco growers in the state have urged creation of a tobacco production modernization program. This program would use tobacco settlement funds to build or renovate facilities, purchase equipment, or make other improvements to assist tobacco production.

In recent months, the state Agricultural Development Board has denied an attempt by a group of Christian County farmers to establish a new program to encourage and assist tobacco production. The Tobacco Settlement Agreement Fund Oversight Committee also has discussed the issue. The General Assembly may wish to clarify whether the tobacco settlement funds can be used to produce tobacco.

Proponents argue that the funds will improve tobacco farmers' competitiveness in a world market. Supporting these farmers will ensure the continuation of Kentucky's identity as a producer of quality tobacco. Tobacco continues to be a major cash crop in Kentucky, and its support will assure manufacturers that growers intend to retain their leadership position. Finally, they argue that assistance from the Agricultural Development Board will improve financial opportunities for producers and young farmers.

Opponents argue that House Bill 611 intended to help farmers diversify operations and move away from tobacco production. They have argued that now is not a good time to invest in tobacco production because of the lack of price guarantees. They have noted the funding involved will have no significant impact on production. Also, the creation of a tobacco production assistance program would represent an investment in support of smoking, which would contradict the antismoking policy inherent in the MSA.

The Master Settlement Agreement, codified as KRS 248.701 to 248.727, does not address financial assistance for tobacco production. However, the criteria for expending state and county funds places a high priority on assisting tobacco farmers and communities affected by the loss of tobacco income.

Should the General Assembly alter or remove restrictions that regulate cervid farming?

Background

Chronic Wasting Disease (CWD) is a fatal condition that affects members of the cervid family (deer, elk, and moose). Confirmed cases of CWD have been found in 14 states and 2 Canadian provinces. It is spread through direct and indirect contact with infected animals or carcasses. The disease is density dependent, meaning that the likelihood of disease transmission increases with the density of the herd.

Chronic wasting disease garners national attention for two main reasons: it kills cervids and cannot be eradicated. There are serious concerns about the perceived threat of CWD to public health and livestock because the origins of the disease are similar to Mad Cow Disease. CWD garners attention in Kentucky because it pits cervid ranchers against state agencies charged with preventing the spread of the disease.

The Kentucky Department of Fish and Wildlife Resources (KDFWR) has issued permits to 83 individuals and entities to hold captive cervids (301 KAR 2:083). Some keep the animals as pets, while others operate venison and hide-processing operations. Some permit holders, such as the Louisville Zoo, have cervids for educational or agri-tourism purposes. Still others keep captive cervids for hunting purposes on private hunting preserves (KRS 150.240 and 301 KAR 2:041).

To prevent the introduction of CWD into Kentucky, Governor Paul Patton issued, and Governor Ernie Fletcher continues to uphold, Executive Order 2002-1256.[1] This order prohibits the importation of cervids into the Commonwealth and directs KDFWR to suspend issuing new permits for both captive cervid operations and non-bird private hunting preserves. Current permit holders must comply with a number of imposed record-keeping and fencing requirements (301 KAR 2:083). Permit holders also must participate in the CWD Surveillance Identification Program administered by the Kentucky Department of Agriculture (KDA) under 302 KAR 20:066.[2]

Discussion

Among the states that have adopted legislation and regulations in response to CWD, two general strategies may be discerned: prevention and containment. Some states, such as Kentucky with Executive Order 2002-1256, have adopted a prevention approach. These states have prohibited importing cervids and permitting new captive cervid facilities. Other states, such as South Dakota, have

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[1] Those who were authorized to operate private hunting preserves and/or possess captive cervids at the time of the order were allowed to retain their permits, subject to compliance with KDFWR regulations.

[2] Under the program, captive cervid permit holders must tag each of their animals and submit an annual herd census to the department. Upon the death of animals aged 16 months or older, the permit holder must submit tissue samples to a KDA-approved laboratory for testing. Additionally, KDA conducts routine inspections of captive cervid herds to monitor permit holders’ compliance.

adopted a containment approach. These states monitor importation of captive cervids and regulate captive cervid facilities but do not ban them altogether. Some argue that Kentucky should adopt aspects of the containment approach and modify its statutes and regulations to allow cervid importation and permitting of new captive cervid facilities.

Those in favor of removing or altering the bans on importing cervids and permitting new captive cervid facilities and private hunting preserves argue that the economic impact derived from captive cervids would be a benefit for the state. Those individuals point out the strong markets some states have for cervid-related products (venison, pelts, bones), agri-tourism, and shooting preserves. According to the assistant state veterinarian for South Dakota, some states including South Dakota, did not experience an appreciable change in these markets following the discovery of CWD (Cline).

Many of the individuals who advocate for change in Kentucky's cervid laws argue that regulation should be predominantly for animal health and left to KDA. They note that no CWD-positive state has experienced decimation of its cervid populations, and they argue that Kentucky should adopt a containment approach in which cervid importation is monitored and captive facilities are regulated, yet neither is completely banned.

Those in favor of the current regulations argue that this regime has served the state well, as no confirmed case of CWD has been reported in Kentucky. Proponents of current restrictions on cervid ranching and shooting preserves state that scientists do not fully understand the causes and effects of CWD; therefore, reopening Kentucky's borders to cervid importation is risky. Many of those in favor of current restrictions claim that the economic benefit of cervid-related industries would be offset by the cost of eradicating CWD if it were discovered in Kentucky. These individuals point to states such as Wisconsin, which spent $12 million on eradication efforts and experienced a 10 percent decline in hunting license sales following the discovery of CWD there in 2002.

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Appropriations and Revenue

Should the General Assembly provide a means to reduce motor fuels taxes when the General Assembly is not in session?

Background

Motor fuels taxes are added primarily on gasoline and diesel fuel purchased in motor vehicles. These taxes are expected to generate approximately $525 million during fiscal year 2006 for Kentucky's Road Fund (Cowgill). Under KRS 138.210 and 138.220, the tax rate increases as wholesale prices increase. Beginning in 2005, the minimum tax on gasoline was 16 cents per gallon. The tax can increase by up to 10 percent per year of the base tax amount, which currently translates to a potential increase of 1.1 cents per year. Current gasoline tax rates are 17.1 cents per gallon, plus 1.4 cents per gallon for the Petroleum Storage Tank Environmental Assurance Fee, for a total state-level gasoline tax of 18.5 cents per gallon (Cowgill).

In the wake of large fuel price increases experienced in the late summer of 2005, many have asked whether Kentucky's motor fuels tax should be reduced or temporarily suspended. A review of available resources indicates that practically every state and the federal government have been called upon by the media or elected officials to examine the means by which a motor fuels tax rollback or suspension could be accomplished. As of September 2005, only Georgia had suspended some portion of its state fuels tax. (Georgia assesses both a fuels tax and a sales tax; only the sales tax was suspended.) Many other states were considering a similar step, but most indicated it may be difficult to accomplish any kind of reduction or suspension (Johnson).

Discussion

The change in pump prices of gasoline and diesel fuel occurs on a daily basis. Price increases of more than 50 cents per gallon within a month occurred during the summer of 2005 (American). While the governor could call the General Assembly into special session to address these issues, pump prices could easily reflect significant increases before any action was taken. Statutory authorization could allow a specified means to lower motor fuels taxes if the prices were to increase. This authorization could permit reduction by a preapproved formula or by gubernatorial action.

Those in favor of a general suspension or reduction of motor fuels taxes note the impact of increased gas prices upon the economy and upon taxpayers' pocketbooks as obvious reasons to take some action to reduce the overall cost of motor fuels. Those opposed to a tax reduction or suspension note that the tax is only a small part of the overall price and that the high price of crude oil is the driving factor in increasing pump prices. (An example: If the pump price of gasoline is $2.50 and the state motor fuels taxes of 18.5 cents are removed, the price would drop to $2.315.) Concern has been expressed that if the taxes are removed, pump prices would not fall by a similar amount and that some portion of the tax decrease would instead be used to increase oil companies' profits. In addition, motor fuels taxes are the primary funding source for the state road fund, which provides almost all highway repair and construction in Kentucky. Reducing or suspending the tax would result in less money in the road fund.

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Banking and Insurance

Should the General Assembly authorize credit report security freezes?

Background

The crime of identity theft occurs when someone wrongfully obtains and uses another person's personal data in a way that involves fraud or deception. In 2003, victims of identity theft paid on average between $500 and $1,200 each in out-of-pocket costs, and all victims spent a total of nearly 300 million hours to restore their credit histories. According to the Federal Trade Commission, identity theft in 2003 cost United States businesses nearly $48 billion and cost consumers nearly $5 billion (Identity). From 2000 to 2004, identity theft topped the list of consumer complaints received by the Federal Trade Commission (United. Federal. National). The most common identity theft complaint was related to credit card fraud, followed by phone or utility fraud, bank fraud, employment-related fraud, government fraud, and loan fraud (United. Federal. National). California was the first state to enact legislation allowing consumers to place a security freeze on their credit reports as a tool to help prevent identity theft. By the beginning of 2005, four states had such a law. At the time of printing, there were such laws in 12 states.

Discussion

The federal Fair Credit Reporting Act allows persons in any state to place a fraud alert on their credit reports. Fraud alerts require creditors to take additional steps to verify a credit applicant's identity before extending credit. The fraud alert does not prevent a potential creditor from seeing the report. A security freeze on credit reports, however, grants a consumer the right to prevent the credit reporting agency from issuing the consumer's credit report. The request must be in writing, and the credit reporting agency must place the freeze on the report no later than 10 business days after receiving the request. When a security freeze is in place, the consumer's credit report cannot be released to a third party without prior express authorization from the consumer. Of the 12 states that have enacted credit report security freeze legislation, 3 (Illinois, Texas, and Vermont) permit only victims of identity theft to request a security freeze on their credit reports. Of the states that border Kentucky, only Illinois has enacted a law allowing security freezes on credit reports.

Opponents of a security freeze argue it will not prevent someone from using a stolen credit card number to make purchases. Opponents contend that a security freeze will create problems for the consumer who will need to lift the freeze before buying a car, obtaining a new credit card, or refinancing a mortgage. They contend that it will restrict the ability of retailers to provide discounts to persons who apply for a credit card in the store if the person has a security freeze in effect. Proponents concede the inconvenience created by a security freeze, but they point out that seatbelts, air bags, and fire alarms may also create perceived inconveniences to consumers. They argue that a consumer should have the ability to choose to incur the inconvenience in order to gain an additional measure of security (Block).

Should the General Assembly require security breach notification of persons whose personal information has been stolen?

Background

A 2003 Federal Trade Commission survey found that almost 10 million persons were victims of identity theft in a one-year period (Patton). A growing number of sophisticated identity thieves are stealing large batches of unencrypted personal information by hacking into computer systems (National). Last year, the personal records of at least 145,000 consumers were stolen from a data warehousing company. The victims who initially discovered the theft were 35,000 persons in California, which had the only security breach notification law at the time. In one incident in 2005, a backup tape with account information for 3.9 million customers of a lending institution was lost when shipped to a credit bureau. Also in 2005, data was stolen from one of the largest credit card companies, potentially affecting 40 million card users (Patton).

Legislators in some states have acted to increase criminal penalties for identity theft. In 2002, California enacted the first security breach notification law in the United States, and approximately 20 other states have followed with similar laws (National).

Discussion

The California law requires that, after a security breach has been detected by a person or business that maintains computerized data that includes personal information, the person or business must notify the state resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Of the seven states that border Kentucky, Indiana, Illinois, and Tennessee have enacted such legislation. Although states have based their legislation on the California law, there are variations. For example, California's law applies to persons and businesses, while other states have chosen not to include state agencies. Indiana's law is limited to only state and local governmental agencies (National).

Data and technology companies contend that these laws are too broad to be effective and that they fail to distinguish between important data breaches and inconsequential information losses. There are also variations among the state laws on the definitions of personal information, notice triggers, notice exemptions, and penalties. Congress has debated the benefits of a uniform federal law that would preempt state laws so that multistate companies would not have to comply with laws that vary in each state. National consumer groups fear that a national law would weaken standards. Proponents of security breach notification want the state, at a minimum, to require rather than permit a company to promptly notify an individual whose records have been stolen (Patton). At least one state attorney general has suggested that any federal law that is enacted should establish minimum, rather than maximum, standards (McCullagh).

Should the General Assembly require insurers to file medical malpractice rates with the state?

Background

Many physicians believe that Kentucky is one of the states that is experiencing significant increases in medical malpractice insurance premiums. Among the proposals to limit these increases is the requirement that all medical malpractice insurance rates be filed with the Kentucky Office of Insurance.

Unlike some other states, Kentucky does not mandate that medical malpractice insurance rates be filed with its state insurance oversight office. The executive director of the Kentucky Office of Insurance has discretion to determine whether medical malpractice insurers must file their rates. In January 2003, after complaints about the rising costs of medical malpractice insurance and the tightening market in Kentucky, the executive director issued an order requiring medical malpractice insurance rates to be filed.

Discussion

If the General Assembly decides to require medical malpractice insurance rates to be filed with the Office of Insurance, it will be faced with other considerations. Medical malpractice insurers could be required to file rates prior to use or they could be required to file not later than 15 days after first use as currently required for personal risks under KRS 304.13-051(1). If the latter is adopted, new writers of medical malpractice insurance could be required to file their initial rates prior to first use to give the Office of Insurance adequate time to review the rates of the new insurer. Insurers could be required to notify current policyholders of a rate filing and the potential increase in premiums. Another consideration is whether to prohibit medical malpractice insurers from including in a rate filing any component related to capital losses; diminished cash flow from dividends; interest; other investment returns; any other financial loss that is materially outside the claims experience of the industry; and losses that are the result of criminal or fraudulent activities of a director, officer, or employee of the insurer.

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Economic Development and Tourism

Should the General Assembly increase the financial incentives currently available to film production companies?

Background

In the past three years, Kentucky has hosted Hollywood film production crews that were filming scenes for three major movies: *Seabiscuit* (2002), *Elizabethtown* (2005), and *Dreamer* (2005). While California is still the major U.S. site for cinematic production, the conjunction of increasing production costs in California and incentive packages offered by other states is serving to lure film production companies out of California. Louisiana's incentive system, passed in 2002 to establish the state in the forefront of film production management, is often cited for its ability to entice film production. According to state officials, the results have exceeded their expectations—direct spending on film production increased from $3.9 million in 2002 to $125 million in 2004 (Horn). Other states took notice, with many passing new incentive programs designed to meet the needs of the film industry or revisiting existing programs in light of increasing interstate competition.

Currently, 41 states offer some form of financial incentives aimed at this industry. Kentucky's incentive program for film production allows eligible production companies to obtain a refund of the sales and use tax on expenditures made in connection with the production (KRS 139.5383). The legislation creating this program was passed in 1986 and has not been amended.

The authors of a study of the Texas film industry found that film production is attractive to local governments because it is considered a "clean industry." In addition to the infusion of revenue, the film production process "generally creates little congestion or pollution, and its impact on land use and the environment is usually limited or temporary. It doesn't displace other types of economic activity, and in fact, usually increases revenues for hotels, restaurants, shops, and other local businesses" (Weinstein). There is often a discernable impact on tourism that stems from a popular movie or television production. The study provided several examples of increased tourism to an area solely because it was the location of particular movie.

Discussion

How a company chooses filming location is largely shaped by four variables: 1) how a specific location meets the creative requirements of a film; 2) business concerns directly relating to production costs; 3) the availability of skilled labor; and 4) "convenience" factors such as the number and proximity of direct airline connections, the quality of accommodations, and other cultural amenities.

Of these four factors, states may be best suited to address production costs. Developing educational programs to train workers for jobs in the film industry is a long-term venture. At a meeting of the 2004 Interim Joint Committee on Economic Development and Tourism, the chairman of the Department of Communications Arts at Asbury College spoke on the institution's efforts on training students for careers in the film industry. Asbury College has worked for years to develop its program, and it would be something not easily or quickly emulated by others (Owens).

Convenience factors are other elements that are not readily influenced by state action. While a state may help to create an environment conducive to developing cultural opportunities, fine dining establishments, and recreational opportunities, these tend to be private-sector developments that accrue over time.

Finally, because of the artistic abilities of directors and cinematographers, the first factor—how a specific location meets the creative requirements of a film—is of lesser importance than many typically assume. For example, the film *Cold Mountain*, whose story line is situated in western North Carolina, was filmed in Romania because of production cost considerations. For many producers, production costs override creative considerations when other locales offer a similar physical backdrop.

As with all financial incentives, state and local incentives for film companies are aimed at reducing the production costs so that a site will be more financially attractive than others. However, incentives to attract film production are often fundamentally different from those used to attract manufacturing or distribution industries. Standard tax incentives offer credits against fixed assets—land, machinery, utilities, and access roads, for example. Instead, the financial burdens faced by production companies center upon lodging, food, transportation, equipment rental, and labor costs. State financial incentives designed to target this industry are usually designed to offset these and other related costs.

A review of the literature shows that some of the more common state financial incentives for the film industry fall into three main groups of credits: sales and use tax, transient room tax, and income tax.

Sales and use tax. This is the most common financial incentive offered to film production companies. Some states provide point-of-sale exemptions or full or partial rebates on sales taxes paid. Others limit sales tax exemptions to certain goods and services or require that an established minimum be spent before sales tax credits are available. Florida is an example of a state that combines a sales tax exemption in conjunction with a 15 percent expenditure rebate. The money for the reimbursement comes from Florida's general fund. In 2004, the fund for expenditure rebate was $2.45 million (Knolle).

Transient room tax. States that offer exemptions on this tax typically eliminate or refund the transient room tax after a stay of 30 consecutive nights. Because the transient room tax is often composed of a state and local tax, there is variation on whether tax credits are offered against the state portion, the local portion, or both.

Wage assessment. States that offer wage assessment credits typically offer a credit of a fixed percentage of the total aggregate payroll for in-state residents employed by a film production company. The credit is then applied to any state income tax or corporation franchise tax liability applicable to the company. It should be noted that most states that offer this type of credit do not allow for the salary of a person receiving more than $1 million in wages for the film to be included in the aggregate payroll.

There is a wide variety of other convenience incentives offered by states. These often include free use of state-owned property for filming, no permits or fees required for filming, certain types of equipment that may be borrowed from the state surplus division without charge, free police and fire protection, and flexible child labor laws. An article in Economic Development Now quoted an official with the Colorado Film Commission who noted the importance of a state being creative with its incentives and developing a reputation of being "film friendly" (Lun).

Despite efforts in many states to lure these companies, the incentive programs are not without opposition. Some critics object to state financial assistance going to companies whose products may not be suitable for everyone. Some have expressed concern that tax credits for R-rated movies might appear as a de facto endorsement of the movie by government. To address this concern, there have been some calls to allow a state the ability to refuse incentives for a film that is age restricted or politically charged.

Others argue that financial incentives should not be used to entice companies that do not establish a permanent presence, and that tax credits should be awarded to companies that create long-term jobs. In this context, opponents suggest that states should not be caught in the glamour and fame of a Hollywood movie production and instead should evaluate a film project using the same standards and requirements as other businesses.

Finally, others object to incentive packages for any business. It is argued that targeted incentive programs put government in the position of picking "winners" and "losers" and that government should stay out of the competitive market. In addition, some contend that financial incentives are little more than veiled mechanisms to shift the tax burden from selected groups to the public. In this context, it is argued that tax burdens should be shared fairly by all; yet financial incentive packages leave a few groups with a reduced tax burden while others must pay extra to make up for their share.

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Education

Should the General Assembly make changes to the assessment and accountability system for elementary and secondary students?

Background

The Kentucky Education Reform Act of 1990 established a broad set of goals regarding the abilities and capacities that all students should acquire. It also required the Kentucky Board of Education to create and implement a statewide assessment and accountability program to measure progress toward meeting those goals. The initial program was modified significantly in 1998. Since then, the Commonwealth Accountability Testing System (CATS) has served as Kentucky's statewide assessment structure. The contract for the development and implementation of CATS expires after the spring 2006 administration of the assessment, and a new contract is expected to be awarded in January 2006. That, alterations necessitated by the federal No Child Left Behind Act of 2001 (NCLB), six years of experience under CATS, and concerns raised by some education practitioners and policy makers raise questions about whether changes may be needed to the CATS assessment.

Testing experts working on behalf of the General Assembly and providing guidance to the Kentucky Department of Education have highlighted the importance of the assessment system's purpose guiding its structure (Catterall 2).

As changes are contemplated to CATS, the reliability and validity of the assessment must also be considered (Commonwealth. Legislative. Office 39-40). Many factors affect an assessment's reliability and validity, and any given test may be reliable and valid for some purposes but not for others. If the purposes or uses of an assessment change, its structure may also need to change in order to maintain sufficient reliability and validity.

CATS is a standards-based assessment of student achievement for the primary purpose of school accountability. It measures a group or school of students on the Core Content for Assessment, which under KRS 158.6457 is the subject matter that the state requires for all students. The required components of the assessment program are a norm-referenced test; open-response or multiple-choice items in reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies; an on-demand writing assessment; writing portfolios of samples of student work; performance assessments in limited circumstances; and a technically sound longitudinal component (KRS 158.6453).

Discussion

Over the past several years, several kinds of changes to the CATS assessment have been proposed and discussed, some of which are outlined below. The challenge is to ensure that Kentucky's testing system is designed to achieve the purposes for which it is intended.

Numerous observers have suggested that the writing portfolio takes too much instructional time and is not representative of a student's ability to write. They argue that implementation of the portfolio process is frequently questionable and that there is insufficient feedback to teachers. Defenders of the writing portfolio say that its elimination could diminish the degree to which writing is taught, that the appropriate implementation of the portfolio process is a good approximation of good writing practice, and that concerns can be best addressed by better training and oversight of instructional activities.

Legislation has been prefiled for the 2006 legislative session to eliminate the writing portfolio as a component of CATS. At its June 2005 meeting, the Kentucky Board of Education directed changes to the writing portfolio process, including fewer entries, a change from holistic to analytic scoring to provide more feedback to students and teachers, increased professional development, and more specific guidelines regarding portfolio administration to reduce inappropriate practices (Commonwealth. Kentucky Board 3).

The Business Forum on Kentucky Education stated in its recent report that "stakes for students are an important part of a public school accountability system and need to motivate students to do their best" (4). Numerous policy responses have been discussed to address student motivation on CATS, including the use of results on student transcripts, the incorporation of scores into course grades, and the use of scores to determine Kentucky Excellence in Education Scholarship awards. Yet, concerns have been raised regarding the validity of student CATS scores for use in high-stakes determinations. The National Technical Advisory Panel for Assessment and Accountability (NTAPAA) noted that "in current practice, different test forms are given to different students; this leads to concerns about the validity of student scores for various purposes - especially for uses that have important consequences for students or other stakeholders" (Catterall 4).

Under the revisions to the CATS assessment contemplated by the Kentucky Board of Education for 2007-2013, all test forms will include a much larger number of common items, which will be released after the test is administered. The increase in common items may somewhat diminish, though not eliminate, the validity concerns.

The statewide assessment program is required to include “a technically sound longitudinal comparison of assessment results for the same students” (KRS 158.6453). A longitudinal comparison measures individual student progress from grade to grade. According to NTAPAA, such assessments are demanding on a testing system and require design elements not present in current CATS tests (Catterall 6). For example, an assessment designed to permit comparisons of individual students over time would need to be carefully aligned with the Core Content for Assessment at each grade level and also aligned from grade to grade within each content area. Some believe that there is progress toward developing a longitudinal assessment. Building on the addition of testing in grades 3 through 8 in reading and math as required by NCLB, the request for proposals for the 2007-2013 CATS assessment invites proposals for longitudinal assessment models (Commonwealth. Department. Request 115).

End-of-course assessments in core content areas, standardized across the state, have been suggested to address a number of problems confronting high schools. Proponents suggest that such assessments could set rigorous uniform standards aligned with the expectations of postsecondary education and the workplace. The Business Forum on Kentucky Education has recommended implementation of end-of-course assessments that “…could count as part of student grades; as part of CATS; toward college and university placement policies; toward qualification for KEES scholarships” (4). No formal opposition to end-of-course assessments has been noted. However, the use of end-of-course assessments for high-stakes purposes would require careful test development to ensure validity, reliability, and fairness to all students.

Should the General Assembly address college access and affordability for underserved groups of students?

Background

In response to the requirements of the Postsecondary Education Improvement Act of 1997, the Kentucky Council on Postsecondary Education (CPE) has established a goal that Kentucky “double the number of college-educated adults…by 2020 to reach the national average” (Commonwealth. Council 8). There are many challenges that must be overcome to meet this goal, including increasing the readiness of high school graduates for college-level work, reducing the high school dropout rate, and improving retention and graduation rates of college students. Kentucky may need to dramatically expand the number of college students from traditionally underserved groups, including students from low-income families, GED graduates, minority students, and independent adults in the workforce. One barrier to college access and completion by these underserved populations is whether college is affordable, taking into account their families' ability to pay, the cost of attendance, and available financial aid.

Over the last decade, tuition and fees to attend Kentucky's public colleges and universities have experienced a sharp rise. Adjusted for inflation, median undergraduate tuition and fees at the public four-year institutions rose by 61 percent and by 122 percent at public two-year institutions between 1994 and 2004 (Southern 22-23). Yet over that same time period, on average, the percentage of family income needed to pay for Kentucky public college expenses minus financial aid has remained steady at between 21 and 22 percent (National Center 8).

A recent study by JBL Associates, commissioned by CPE, *College Affordability in Kentucky*, concluded that college in Kentucky is generally affordable, in that "most full-time students can afford to pay for college without undue effort," and that since "lower-income students pay lower net prices than those with higher incomes…the basic conditions of equity have been met" (1, 3). As a caveat to this assessment, the report noted that problems faced by lower-income independent students "who do not receive as much state aid as dependent students and face a higher net price, which requires more borrowing," and that "some dependent students in the lowest income quartile attending 4-year public or private institutions are also at the margins of affordability" (3). The report also stated that "African American students are generally at greater financial risk than other ethnic/racial groups in the state" (5).

This analysis is based on data for people who enrolled in college and who completed the Free Application for Federal Student Financial Aid. Thus, the report did not "comment directly on the effect of affordability to access in Kentucky" or address whether some independent and low-income individuals "have been dissuaded from enrolling because college is unaffordable or they have dropped out because of affordability issues" (JBL 1).

Discussion

The demographics of postsecondary students are changing and are increasingly at odds with the traditional belief that the typical student is a recent high school graduate attending college full time. According to a recent report released by the U.S. Department of

Education, *Independent Undergraduates: 1999-2000,* more than half of all undergraduates in the United States were independent adults, about one-half of whom had children or other dependents. Fifty-eight percent of independent students had full-time employment and 80 percent were enrolled part time. Sixty-four percent of community college students and 67 percent of part-time students were independent adults. These and other "characteristics have been identified as risk factors for persistence in postsecondary education" (iii). In addition, independent adult students are more likely to be first-generation college students, more likely to be women, less likely to have earned a high school diploma, and less likely to be Caucasian than their dependent student counterparts (v). And while many married, part-time students were found to have relatively high incomes, with one-half having family incomes of more than $50,000, almost one-third of all independent students were below 125 percent of the federal poverty level (vii).

The challenges to college access, retention, and graduation facing this expanding nontraditional student population are as diverse as their financial, cultural, geographic, and familial circumstances. Yet many postsecondary structures are designed to address the needs of traditional college students—students who are recent high school graduates, remain financially dependent on their parents, and who attend college full time. Student financial aid programs in particular, at the federal, state, and institutional level, tend to be less accessible to nontraditional students in terms of structure, availability, and utilization.

Federal need-based Pell Grants account for most of the relative equity of the cost of attendance in Kentucky since they provide assistance to students in the lowest income category (JBL 6, 22). Yet between 1982 and 2002, the percentage of the average cost of attendance covered by the maximum Pell Grant award declined from 56 percent to 38 percent (22). And while part-time students are eligible for Pell Grants by submitting a federal student financial aid form, only about 25 percent of part-time students submitted the requisite financial aid application (30). At the state level, "even though funds available through the College Access Program and the Kentucky Tuition Grant Program are awarded to students with financial need, Kentucky state grants are not distributed as equitably as are federal grants. This is largely due to the effects of the Kentucky Educational Excellence Scholarship (KEES), which tends to help higher-income students" (6). Concerns have been raised that this effect may be increased if a proposal to increase the rigor of the high school KEES curriculum currently being reviewed by a multiagency workgroup were to be implemented (Johnson 5).

Part-time and independent students in particular have difficulty accessing state student financial aid. In fiscal year 2006, using proceeds from the Kentucky Lottery, the General Assembly appropriated more than $87 million to support the need-based College Access Program and Kentucky Tuition Grant student grant aid programs, and more than $83 million to support the merit-based KEES (Commonwealth. Kentucky Higher 3). Yet all three of these programs require college students to be enrolled at least half time to be eligible. And although a supplemental KEES award is based on a student's ACT score, the majority of KEES awards are determined based on a student's high school grade point average and must be used within five years of high school graduation. Thus, part-time students, GED recipients, and older independent adult students are largely ineligible for Kentucky's primary state-supported student financial aid programs.

As researchers, financial aid administrators, and policy makers have come to realize the negative effect of the misalignment between financial aid policies and the needs of a significant segment of the postsecondary student population, numerous policy options have been suggested. These include suggestions to

- expand existing grant programs (Commonwealth. Council 7).
- provide low-interest forgivable loans for underserved populations, including part-time students, transfer students, and GED graduates (Commonwealth. Council 7).
- implement a "shared responsibility model" of student financial aid that takes into account family income, the cost of attendance, other student aid available, and a student contribution in an amount that could be earned at a low-wage part-time job (JBL 7).
- implement expanded outreach and information campaigns (JBL 2).
- modify student financial aid programs to help part-time students (JBL 7).
- provide partial scholarships or grants for part-time students (JBL 24).
- develop a college family savings program that provides low-income families with a state match (JBL 7). Rhode Island and Colorado have such programs in place (Savingforcollege.com).

While the financial aid needs of Kentucky's nontraditional students must be taken into account in order for Kentucky to achieve its goals, other important considerations must also be addressed. According to JBL Associates' *College Affordability in Kentucky*, in order to improve access, retention, and graduation, "providing students with adequate resources to pay for college is necessary, but it is not by itself a sufficient solution. The state needs a systematic approach that will allow barriers to student access and success to be identified. Solutions include reducing the financial barriers…but it is also necessary to consider bureaucratic, academic, and geographic barriers that reduce the chances for students to enter college and succeed" (5-6).

Should the General Assembly provide performance funding to postsecondary education institutions that increase degree and certificate completions?

Background

In 1997, the Task Force on Postsecondary Education determined that Kentucky ranked high among competitor states in postsecondary enrollment but near the bottom for student persistence and completion. The task force also found that programs were not aligned across institutions, transfers among programs were difficult, access to postsecondary education was unequal across the state, and cooperation and collaboration among educational entities were often nonexistent. The system lacked incentives for change, efficiency, and quality (Commonwealth. Task Force 18, 21-25, 44).

One of the goals to be reached by 2020 in the Postsecondary Improvement Act of 1997 was a system for adult learners that was at least comparable to the national average (KRS 164.003(2)(f). The General Assembly noted the importance of increasing educational attainment and the need for postsecondary institutions to help improve the quality of elementary and secondary education in Kentucky (KRS 164.003 (4)).

According to the Council on Postsecondary Education, considerable progress has been made since 1997. Total enrollment has increased by 25 percent; the number of degrees and certificates awarded has increased by 56 percent. However, according to the council's revised public agenda, Kentucky should double the number of adults with four-year degrees if it is to reach its goals. Postsecondary institutions must recruit and enroll more students and ensure that these students complete their programs. These students must include recent high school graduates, adults already in the workforce, and two-year transfer students (8).

Included in the council's 2005 revised strategic agenda is increased emphasis on accountability, affordability, and degree and certificate completion. The council posits several actions for the next four years. There should be

- postsecondary involvement in efforts to restructure high school curriculum and assessments.
- smoother transitions from high school, area technology centers, and GED programs to college through closer alignment of the secondary, adult, and postsecondary systems.
- more concerted efforts to close achievement gaps and increase college attendance among minority, low-income, first-generation, and adult students.
- more explicit information from the postsecondary community about what it takes to succeed in college.
- incentives and rewards to institutions linked to increased degree production (5, 9).

Kentucky is not unlike other states. According to a recent national study on improving college readiness and success, every state needs to increase the percentage of students who complete high school and finish some form of postsecondary education. To meet this demand, states need to look at the disconnect between P-12 (also called K-12) systems and higher education. They should consider policy initiatives that promote alignment between what students are asked to know and do in high school and what they are expected to do in postsecondary education. In addition, they should connect funding as well as accountability systems for P-12 and postsecondary education (Venezia et al. 29)

The ability of students to complete postsecondary education degrees or certificates is affected by how well students are prepared for postsecondary education as well as collegiate environments (Committee for Economic Development 13). While most states have developed high school accountability systems tied to graduation rates and proficiency on state assessments, accountability systems are almost nonexistent at the postsecondary level. At the postsecondary level, "students have been viewed as responsible for their own success or failure in completing their educational programs. Given inequities and systemic problems regarding persistence and completion rates in colleges and universities, it makes sense to establish and monitor higher education performance and to require K-12 and postsecondary education to work together" (Venezia et al. 35-36).

There is general sentiment that improvements in postsecondary education are made when actions at all levels are targeted to expected outcomes—not just at the top leadership levels, but by administrators, faculty, and staff. The National Commission on

Accountability in Higher Education stated in its report *Accountability for Better Results: A National Imperative for Higher Education* that college faculty must improve the use of their time and talent toward the "highest priority goals in learning, research, and service." The institutions must reward "faculty contributions that increase student learning, retention, and success" (22).

National consultants on higher education policy support the development of performance funding programs. Venezia quoted David Longanecker, executive director of the Western Interstate Commission for Higher Education, who wrote, "postsecondary institutions and systems need financial incentives for student completion and retention, additional resources for 'difficult-to-serve students,' and rewards when students finish their individual courses and their full courses of study" (31). Venezia also quoted Peter Ewell, who suggested that "incentives inherent within current accountability systems are not effective and a reasonable objective would be to increase the percentage of traditionally under-represented students who persist throughout their education systems and complete some form of postsecondary education" (36).

Discussion

While performance funding is not a new concept to Kentucky, the General Assembly has not made performance funding a priority. Nor has the Council on Postsecondary Education created an accountability system tied to performance funding. However, the council is proposing $3.5 million in its 2006-2008 biennial budget request for performance funding. The council's proposal is less than one-half of 1 percent of total General Fund appropriations being requested for postsecondary education.

Several policy decisions surround the feasibility of providing performance funding:

- If performance funding is provided, what percentage of the postsecondary education appropriation should be tied to performance incentives?
- If performance funding is provided, should it be targeted to the department, college-level faculty, and college-level staff rather than at the institutional level?
- Should performance funding be targeted only to postsecondary education degree and certificate completion or should it also be targeted to postsecondary and P-12 collaboration and innovation or a combination of both?
- If performance funding is targeted primarily to postsecondary education degree and certificate completion, do safeguards

need to be established to ensure that institutions do not become more selective, which diminishes access; or that they do not reduce their standards, which reduces the value of a credential, in order to increase the number of degrees and certificates produced?

- Since Kentucky needs to increase the participation and success of nontraditional adult students and underserved populations, should performance funding be targeted primarily to those populations?

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Elections, Constitutional Amendments, and Intergovernmental Affairs

Should the General Assembly propose an amendment to the Kentucky Constitution to restore the voting rights of convicted felons?

Background

Recent publicity has focused attention on the Kentucky process by which convicted felons may seek the restoration of their right to vote. In Kentucky, convicted felons are not permitted to vote; although, they may apply for restoration of voting rights. With the Governor announcing requirements for three character references and a written explanation of why the felon seeks to vote, the process by which restoration may occur has come under review. The estimated number of disenfranchised felons in Kentucky is 109,132 (Mauer 14).

Section 145 of the Constitution of Kentucky prohibits persons convicted of a felony in any court of competent jurisdiction from voting. Section 77 provides that the sole method by which a felon's rights may be restored is through a pardon by the governor.

The 14th Amendment to the U.S. Constitution authorizes states to determine whether a felon's right to vote will be restored. Maine and Vermont do not take away a felon's right to vote, and in 39 states, convicted felons lose the right to vote in varying degrees. Kentucky is among a group of nine states that permanently prohibit a felon from voting, absent restoration (Knowles).

The U.S. Supreme Court declined to hear companion cases involving felons' right to vote from Washington and New York in November 2004, despite inconsistent opinions from at least two federal appeals courts (Greenhouse). Inconsistent appeals court rulings often are the basis for Supreme Court review.

Discussion

The 2005 General Assembly considered House Bill 384, which proposed an amendment to Section 145 to the Kentucky Constitution to restore voting rights to felons. HB 384 did not pass, and this issue will likely be considered in 2006.

Proponents of the restoration of voting rights state that depriving a felon of the right to vote is disenfranchisement of the right to participate in the democratic process. They opine that voting is the foundation of democracy and that after an individual has paid his or her debt to society, he or she should be permitted to exercise this basic privilege of citizenship (Mahony; Morial). Opponents submit that felons should have to live with the consequences of their actions and that voting is a privilege that should not be given to citizens who have ignored the laws of their government (Stawicki).

Should the General Assembly allow candidates to loan an unlimited amount of money to their own campaigns and to receive contributions 180 days after an election?

Background

Kentucky law limits the amount of money that candidates for public office in Kentucky may loan to their campaigns and prohibits candidates from accepting contributions after the regular election. This process may leave candidates with no method by which to raise money to pay bills incurred during a campaign.

KRS 121.150 prohibits gubernatorial slates of candidates from making personal loans to their campaigns in excess of $50,000; candidates for statewide offices may not make personal loans in excess of $25,000; and other candidates may not make personal loans of more than $10,000. The statute also generally prohibits candidates from soliciting or accepting campaign contributions after the date of the regular election or any runoff or special election.

In *Anderson v. Spear (2004),* the Sixth Circuit Court of Appeals held that these statutory prohibitions were an unconstitutional violation of the First Amendment. The Sixth Circuit found that a $50,000 ceiling on loans hurt a gubernatorial candidate’s ability to deliver his or her message during a campaign and therefore violated the candidate’s free speech rights (673). The court also held that prohibiting all post-election contributions to a candidate violates the candidate’s right to freely associate (671).

Discussion

Since that court decision, there have been no limits on the amount of money candidates can loan to their own campaigns or to the amount of post-election contributions a candidate may receive. Regarding post-election contributions, the Advisory Task Force for the Development of the Registry’s Legislative Package noted that the Sixth Circuit had left open the possibility that some limitations would be acceptable but did not provide guidance on a specific dollar amount that would be constitutional. *Anderson* favorably cited a case from Alaska involving post-election time limits on contributions to candidates (670). The advisory task force discussed various time limits but determined that larger campaigns may need up to 180 days to receive contributions to cover debts incurred (Emmons).

The advisory task force also recommended imposing a 180-day post-election limitation on the campaign repaying the candidate for any personal loans. Opponents advocated that the 180-day time period was too long because it would allow fundraising to continue to the end of the legislative session following the election of the governor. Such an extended fundraising period could create "the appearance of quid pro quo corruption" during legislative sessions (Commonwealth. Kentucky Registry. *Final* Vol. III: Tab G 6).

Should Kentucky's campaign finance laws be changed to allow a gubernatorial candidate to name a running mate after the primary election?

Background

During the 2003 election for Kentucky governor, discussion and litigation arose as to the process for naming the lieutenant governor running mate and whether naming could occur after the primary.

Section 70 of the Kentucky Constitution requires the governor and lieutenant governor to be elected jointly and refers to them as a "slate of candidates." Kentucky statutes relating to the filing, nomination, and eventual election of a governor and lieutenant governor refer to these candidates as a "slate of candidates," rather than to separate candidates for governor or lieutenant governor, except in the case where a vacancy occurs in the slate prior to the primary election. As the Kentucky Supreme Court opined, "Thus, while the language of the Constitution and statutes support the idea of a unitary candidacy, recognized circumstances allow a contrary result" (*Heleringer*).

Discussion

The Advisory Task Force for the Development of the Registry's Legislative Package recommended that candidates for governor be allowed to delay naming a lieutenant governor running mate until after the primary election. Allowing a gubernatorial candidate to wait would mimic the federal system in which presidential candidates choose running mates for vice president after the primary elections and national conventions. Proponents of similar systems note that consistency between federal and states laws would allow less conflict and confusion among candidates.

Opponents argue that the constitutionality of the proposed recommendation is uncertain. Section 70 of the Kentucky Constitution requires the governor and lieutenant governor to "be elected jointly by the casting by each voter of a single vote applicable to both offices, as shall be provided by law."

The word "elected" in Section 70 could be interpreted as referencing only the general election. The statutes enacted since this section was amended in 1992, incorporating the idea of a "slate of candidates" for gubernatorial elections, may indicate that the General Assembly has interpreted this section of the Kentucky Constitution as requiring a slate of candidates for both the primary and general elections. Other state constitutions employing identical or similar language are split on requiring the slate to be formed prior to the primary election (Commonwealth. Kentucky Registry. *Summary*).

Should the General Assembly change Kentucky's campaign finance laws related to contributions for campaign and political issues committees?

Background

In response to various criticisms aimed at Kentucky's existing campaign finance laws and a series of legal decisions invalidating portions of the existing statutes, the Kentucky Registry of Election Finance established an Advisory Task Force for the Development of the Registry's Legislative Package. The final report of the advisory task force provides 88 specific recommendations for improving Kentucky's election finance system, 60 of which may require General Assembly action.

The advisory task force concluded that its recommendations will increase the benefits of campaign finance laws, including participation, transparency, equal opportunity, and public confidence, while limiting the negative effects such as transaction costs, ambiguity, inelasticity, and contradiction (Commonwealth. Kentucky Registry. *Final* Vol. I: 16). The advisory task force unanimously approved many of the specific recommendations listed in its report, but dissenting opinions were issued with the final report, outlining several areas of disagreement from individual advisory task force members (Vol. III).

Some of the recommendations involving areas of disagreement relate to contributions to campaigns and political issues committees.

Discussion

The advisory task force recommended raising the limits on contributions permitted to candidates to the federal limit and that contribution limits be increased in accordance with the federal limits by referencing the Consumer Price Index utilized by the Federal Election Commission (Vol. I: 19-20). The federal individual campaign contribution limit for 2005-2006 is $2,100, as indexed for inflation. The limit is increased every odd-numbered year according to the Consumer Price Index-U, reflecting the United States city average for all items (2 U.S. Code §441a).

Proponents of this change believe that conformity between the state and federal contribution limits is desirable and would alleviate confusion caused by the different laws (Samford). Opponents note that the recommendation immediately doubles the state contribution limit and that the indexing mechanism may create more confusion because the actual amount an individual is allowed to contribute will change on a regular basis (Vol. III: Appendix E).

The advisory task force also recommends that candidates be permitted to accept contributions for the general election prior to the primary election if those contributions are clearly designated as for the general election and are attributed to the general election (Vol. I: 20). Proponents of this proposal note that federal law permits acceptance of contributions for a general election prior to a primary election and encourage making the state statutes parallel to the federal provisions (Vol. I:20). Dissenters warn that there is great opportunity for abuse and error when presuming that candidates' campaigns will accurately attribute the contribution to the proper election; and they claim that the recommendation does not conform with the definition of "election" in KRS Chapter 121, which specifically distinguishes between the primary, regular, and special elections (Vol. III: Appendix G 13).

The advisory task force recommends eliminating a contribution limit for contributions made to political issues committees. The Registry has not enforced the limit set forth in KRS 121.150(6) because of United States Supreme Court decisions indicating that such limits are an unconstitutional abridgement of the First Amendment's freedom of speech protection (Vol. I:24).

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Energy

Should the General Assembly alleviate the affects of increased home heating fuel costs?

Background

The combination of crude oil prices and the impact of hurricanes on Gulf Coast oil and gas facilities has caused heating fuel prices to increase. The effect is expected to be especially severe in natural gas. In an appearance before the Special Subcommittee on Energy, the marketing and natural resources manager of East Kentucky Power Cooperative testified that wholesale prices for gas have risen 508 percent since January 2000 (Hohman). According to federal Energy Information Administration estimates, consumers could see a 53 percent jump in natural gas prices over last year (Ward). Propane and fuel oil prices are also expected to spike dramatically, with electricity prices somewhat less so.

There is little help for consumers whose heating bills exceed their ability to pay. There is no state program for heating assistance. According to the Department for Community Based Services' block grant status report, the federal Low Income Home Energy Assistance Program (LIHEAP) last year served 106,176 households that were at or below 110 percent of the federal poverty guidelines with a one-time benefit, typically paid to their fuel supplier, averaging $105 per household. An additional crisis component averaging $128 per household was paid to 97,114 households threatened with a cutoff (Commonwealth. Department 1). Funding levels for this year are unchanged. Some private, nonprofit charity funds may be available through churches and other programs such as WinterCare, which is a private utility-assistance program.

Discussion

The difficulties facing low-income citizens and the elderly may create pressure for lawmakers to respond. Proponents urge action to assist those in need, while opponents may find that other budget priorities should prevail. Legislative response may take a number of forms:

Weatherization or Other Efficiency Programs. Kentucky ratepayers of all classes (residential, commercial, industrial) stand to benefit from increased conservation and efficiency measures. The Commonwealth Energy Policy Task Force reported that Kentucky's average residential electric rate is 33 percent less than the national average; however, Kentucky's average residential bill is only 17 percent below the national average. Kentucky's average industrial bill is 123 percent higher than the national average. Kentucky's schools spend 7 percent more per student on electricity than the national average (Commonwealth. Commonwealth Energy 21). Conservation and efficiency programs require up-front investment, but they only pay gradual returns.

Rate Caps. Particularly with natural gas, the market is largely deregulated, making rate caps difficult. The wholesale price of natural gas has been deregulated since the late 1980s, and increases in the wholesale price are passed through directly to the retail customer. There is limited federal oversight of the cost of natural gas transportation. The Public Service Commission (PSC) retains jurisdiction over the profit on gas distribution, a charge that makes up 20 percent to 25 percent of a residential gas bill. The commission has limited power over the profit earned by private utilities but has no such power over municipally owned utilities.

Limits on termination of service. Current regulations provide that a LIHEAP-eligible household can obtain a 30-day extension before termination. Some other protections require medical need, partial payment, or agreement to a payment plan. There is no ban on cold-weather cutoffs. Limits on termination defer the problem to a later date and do not provide a long-term solution.

Tax Relief. Tax-related plans would provide a deduction or credit for low-income households. Such plans would decrease revenues at a time when the state is already facing budget difficulty. Also, many low-income households have no tax liability from which to be relieved, and the benefit of any relief would not be realized until spring.

Heating Benefit Program. Any program providing cash or other heating assistance benefits may require redirecting funding that could already be targeted for other programs. The current budget deficit and other program funding shortfalls may require the General Assembly to choose between providing additional benefits and reducing existing benefits.

Should the General Assembly enable telecommunications providers to offer services on market-based terms and conditions?

Background

The 2004 and 2005 Kentucky General Assembly considered enabling telecommunications providers to offer certain services and products on market-based rates, terms, and conditions in place of rates, terms, and conditions approved by state regulators. As of April 2005, five states had enacted legislation eliminating, reducing, or streamlining regulation of traditional basic and enhanced telephone services. Fourteen other states had considered or were considering such legislation at that time (Rosenberg 15-18).

The core issue in revision of telecommunications regulation is the perceived benefit of market competition versus the need for protection of those companies that might be negatively affected by competition.

Discussion

Currently, under KRS Chapter 278, the Kentucky Public Service Commission regulates rates and charges for basic and enhanced telecommunications services; content and filing of tariffs; terms and conditions of service; consumer complaints; service quality standards; and utility finances, management, and operation. The commission may exempt telecommunications services, products, or providers from regulation or approve alternate requirements for establishing rates and charges when it finds that doing either or both would serve the public interest while safeguarding the availability of basic services at reasonable rates. Kentucky allows small telecommunications providers to elect alternate regulatory procedures for establishing rates and charges.

The commission has certain oversight and arbitration responsibilities under the federal Telecommunications Act of 1996 relating to telephone companies' rates charged to competitors for leasing facilities and for delivery to the public of messages originating from outside the facilities of a telephone company. State responsibilities in these areas are set by federal policy.

Proponents of offering services on market-based terms and conditions seek termination or reduction of state regulations that hinder their ability to offer services and products at lower prices. Opponents argue that market competition will not adequately ensure the availability of basic telephone services to all persons at affordable prices and will not guarantee effective complaint resolution procedures (Rosenberg 3).

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Health and Welfare

Should the General Assembly establish a standardized system for public reporting of hospital-acquired infection rates in Kentucky?

Background

The Association for Professionals in Infection Control and Epidemiology (APIC) reports that hospitals have monitored their infection rates and provided infection control and prevention programs since the 1970s (Association. APIC Position 1). Infection control data has been gathered and analyzed by infection control professionals over the past 30 years to guide programs and policies in hospitals. Still, the federal Centers for Disease Control and Prevention estimated that more than 90,000 Americans die each year from hospital infections and 2 million Americans suffer from infection-related illnesses. A majority of the states, including Kentucky, have considered legislation mandating public reporting of infection rates. Kentucky's border states of Illinois, Missouri, and Virginia have recently enacted such legislation (Association. Government. Mandatory). The introduced versions of House Bill 76 and Senate Bill 185 from the 2005 Kentucky General Assembly attempted to require the public reporting of hospital-acquired infection rates.

Discussion

Although infection data has been gathered and analyzed for three decades, there has never been a "standardized system for collecting, analyzing, comparing, and publicly reporting infection data from hospitals" (Association. APIC Position 1). Not all hospitals offer the same services and level of care, and it is difficult to adjust or track infection rates from hospital to hospital. Some hospitals provide services that have higher infection rates. Therefore, comparing infection rates may reflect the types of services provided rather than the quality of care provided. However, the U.S. Department of Health and Human Services has designed several programs to increase public awareness regarding the quality of health care provided in hospitals: the Voluntary Hospital Reporting Initiative, the Premiere Hospital Quality Incentive Demonstration Project, and the Hospital 3-State Pilot Project (Association. Government. About 1). Some of Kentucky's hospitals participate in the Voluntary Hospital Reporting Initiative and the Premiere Hospital Quality Incentive Demonstration Project.

Proponents of public reporting of hospital-acquired infection rates claim that the public has the right before being treated to be informed of the kind of care hospitals provide. Proponents also note that infection rates are likely to improve because hospitals will seek to maintain the lowest possible infection rate or will not provide services that are associated with high infection.

Opponents of public reporting of hospital-acquired infection rates claim that such data is already available from the federal government. They further note that, as a requirement for accreditation, hospitals must collect data on infection control and must have existing programs and policies that address infection control. Opponents claim that the lack of a systematic approach to gathering and analyzing hospital infection data would create confusion among the public and that requiring hospitals to submit and report their infection rates to a state entity would duplicate reporting that is already submitted to the federal government. Opponents also claim that public reporting alone does not decrease infection rates.

Should Kentucky permit a parent to designate a standby guardian to care for the parent's children if the parent became incapacitated?

Background

The common purpose of standby guardian law is to allow a parent to designate the legal care and custody of his or her children to a person of the parent's choice. The standby guardian would act if the parent became unable to provide care because of death or an incapacitating illness (Larsen). A standby guardian is intended to provide an alternative between an informal arrangement for care and relinquishment of parental rights through court action. Providing for an immediate legal caretaker for a child upon a parent's incapacitation would avoid the risk of temporary court-ordered guardianship or foster care placement that would be necessary if standby guardianship had not been arranged.

Standby guardianship laws generally have four basic elements:

1) The designation of the standby guardian;
2) Agreement of the noncustodial parent, or attempt to locate the noncustodial parent;
3) Delineation of the standby guardian's role; and
4) Court determination whether standby guardianship is in the best interests of the child (Larsen).

Under the standby guardianship process, a parent would designate a person to be entrusted with the care of the child at some later time if the parent becomes incapacitated. A petition would be filed in court seeking court approval, during which the agreement of the custodial parent would be sought (Larsen). The court may request a home investigation of the parent and/or guardian and such other information as necessary to determine the child's best interests.

Upon court approval of the petition, the guardian could only act at the time when the parent became incapacitated.

The need for standby guardians became a consideration as the number of children orphaned by the death of parents with AIDS increased during the 1990s (Larsen). However, there are many situations that prevent parents from caring for their children. In Kentucky in 2002, 5,181 adults between the ages of 25 and 54 died from heart disease, cancer, unintentional injuries, suicide, and other causes (Commonwealth. Cabinet). The risk that Kentucky children younger than age 18 may be orphaned or placed in foster care is compounded by the number of single-parent families, 139,431 in 2000, and the number of grandparents with primary responsibility for grandchildren, 35,818 in 2000 (U.S. Census Bureau).

Discussion

The Federal Adoption and Safe Families Act of 1997 encourages states to enact standby guardianship legislation to improve the goal of permanent placement for all children who are unable to remain with their custodial parents. To date, at least 19 states have enacted various versions of standby guardianship legislation. These states have encountered several obstacles to implementation, including difficulty obtaining consent of the noncustodial parent and confusion related to court appointments and home investigations. The added stresses of facing a terminal illness of a family member was also noted as a complicating factor (National. Abandoned).

Kentucky does not have specific provisions related to standby guardianship. Given the costs associated with court-appointed guardianship and out-of-home care, it may be a financial advantage for Kentucky to encourage parents to make plans for the care of their children if they become unable to do so. However, the legal procedures required of standby guardianship laws may render the use of standby guardianship difficult for some families. Additionally, there may be an increased need for social services to help support children who have been placed with standby guardians who may not prepared to provide the necessary care (National. Abandoned).

Should the Kentucky General Assembly expand the prescriptive authority of advanced registered nurse practitioners to include controlled substances?

Background

Many areas of Kentucky are considered medical shortage areas that do not have sufficient numbers of health care providers. Recognizing that there are too few physicians to fully treat people in these areas, the 1996 Kentucky General Assembly granted advanced registered nurse practitioners (ARNPs) the authority to prescribe noncontrolled drugs when working under a collaborative agreement with a physician. Today, many people believe that expanding access to medically necessary controlled substances would increase access to health care for the population in medical shortage and other areas. In 2004, the General Assembly directed the Legislative Research Commission (LRC) to study the effects of authorizing ARNPs to prescribe controlled substances.

The Controlled Substance Act of 1970 classified dangerous drugs into categories based on the potential for abuse or physical or psychological dependence: known as Schedule I, II, III, IV, and V. Schedule I includes drugs such as heroin and marijuana, which have a high potential for abuse and dependency. No health care provider is permitted to prescribe Schedule I drugs. The potential for abuse and dependency diminishes as the number of the schedule increases. For example, Schedule II drugs, which include Demerol and OxyContin, have a greater potential for abuse and dependency than Schedule III, IV, or V drugs have. Schedule V drugs include cough syrups that have a small concentration of codeine.

Discussion

Proponents of expanding ARNP prescriptive authority argue that prescriptive authority for controlled substances would improve access to health care, increase autonomy, and increase accountability. When ARNPs see patients, they may diagnose and design the treatment plan. If the patient needs a controlled substance, ARNPs must ask the collaborating physician for the prescription. The physician may write the prescription without evaluating the patient. Some advocates state that the accountability of the ARNP would increase if the provider diagnosing the need for the drug also wrote the prescription. Also, if ARNPs prescribed controlled substances, they would be required under federal law to obtain a Drug Enforcement Agency number, which would allow for better tracking of prescribing patterns (Commonwealth. Legislative 12-13).

The potential for increased illegal diversion of prescription drugs and inadequate education of ARNPs were cited as the primary reasons for opposing this authority. The LRC study reported that states where ARNPs prescribe controlled substances have larger per capita quantities of controlled substances than states have where they cannot prescribe these substances; however, the study reported that the increase was minor and may reflect increased access to care or an increase in the number of prescribers.

Generally, opposition to prescribing controlled substances by ARNPs is related to patient safety and educational preparation of the nurse (Commonwealth. Legislative 13). Proponents maintain that better health care outcomes, better health care access, and lower health care costs could result from ARNPs being allowed to prescribe controlled substances. Opponents of expanded authority for ARNPs maintain this would not be the case. The majority of physicians oppose this authority, while a majority of ARNPs support it.

If the General Assembly were to consider expansion of ARNP prescriptive authority to include controlled substances, most ARNPs and physicians would support one or more of the following limitations: requiring collaborative agreements between physicians and ARNPs that specify which controlled substances can be prescribed by the ARNP; requiring the collaborative agreement to be submitted to the Kentucky Board of Nursing; and requiring the collaborating physician to review ARNP practice on a regular basis (Commonwealth. Legislative 36).

Physician and ARNP pharmacology courses at the University of Kentucky and the University of Louisville include similar content and time related to controlled substances. All of the courses include between 6 and 8 hours of content related to pain management, anxiety, sedation, and narcotics. Physicians may have more time in clinical practice relating to prescribing controlled substances (Commonwealth. Legislative 26).

Should the General Assembly support increased co-payments for Medicaid-funded health services?

Background

Kentucky's Medicaid program provides health care for poor, disabled, and elderly citizens who qualify for services. It is funded by state and federal dollars by a formula and state match rate—for every $1 spent, the federal government provides 70 cents and the state provides 30 cents. The program is administered through a federally approved state plan that reflects mandatory federal requirements and optional services determined by the state Medicaid agency.

Medicaid, like other health care plans, faces increasing costs (National. Governors). In fiscal year 2005, Medicaid expenditures were 22 percent of the total state budget, the second largest item after education expenditures. Approximately 695,000 Kentuckians are enrolled in the program. The Kentucky Department for Medicaid Services anticipates a budget shortfall of approximately $425 million for FY 2006 (Turner).

As an entitlement program, Medicaid is required to cover all medically necessary health care services for its enrollees across the state. The Department for Medicaid Services submitted a proposal to the federal Centers for Medicare and Medicaid Services seeking a waiver of the federal program requirements and a redesign of the Medicaid program. This proposal, filed under authority of Section 1115 of the federal Social Security Act and commonly known as the "1115 Waiver," would make significant changes to Kentucky's Medicaid program by limiting the type and number of services for enrollees; increasing co-payments; and offering some services on a regional rather than statewide basis. The proposal also includes disease management programs, health insurance purchasing programs, and personal health savings accounts. Medicaid co-payment requirements may be the most controversial because they involve direct out-of-pocket expenditures by low-income, disabled, or elderly persons who may be forced to avoid necessary treatment due to inability to make co-payments.

Discussion

Under federal law, certain Medicaid enrollees cannot be charged co-payments: children younger than 18; pregnant women (for up to 60 days after giving birth); persons in nursing homes, personal care or family care homes; persons in mental retardation institutions; persons receiving hospice services; foster children; and American Indians and Alaskan Natives in the KCHIP program, which is the joint state-federal children's health insurance program.

State and federal law permit $1 and $2 co-payments for prescription drugs and ambulance, dental, optometry, audiology, chiropractor, and podiatry services (KRS 205.6312). Changes in co-payments were implemented beyond those contemplated by the statute with the October 2005 filing of an emergency administrative regulation, 907 KAR 1:604E. Existing co-payments were increased and new co-payments and maximum out-of-pocket expenses were established for Medicaid enrollees:

Service	Co-payment
Physician, provider office visits	$ 1
Hospital inpatient or outpatient services	$ 3
Hospital admission	$50
Prescription drugs	
Generic	$ 1
Preferred	$ 2
Nonpreferred	$ 3

Higher co-payments for prescription drugs were established for certain population groups ($10 generic, $20 preferred, $30 nonpreferred). Annual maximum out-of-pocket expense limits were established at $225 for co-payments for services and $225 for co-payments for prescription drugs. If the waiver proposal is approved by the federal government, additional co-payments and cost-sharing requirements will be implemented in different benefit packages for specific population groups.

Most private insurance plans have premiums and cost sharing, but federal Medicaid rules have traditionally prohibited or limited cost sharing because Medicaid serves a low-income population that is generally sicker and poorer than the population covered by private insurance (Kaiser. *Increasing*). Many states are moving toward Medicaid programs that resemble traditional employer-based health insurance with managed care initiatives, co-payments, and deviations from the traditional Medicaid benefit package (U.S. General). Health policy experts disagree on the effectiveness of increasing cost sharing for the Medicaid population.

Proponents of the 1115 Waiver state that the current system with little cost sharing prevents the Medicaid program from using the health care market and patient responsibility to improve health care (National. Governors). A 1992 RAND study on health insurance found that cost sharing reduced spending significantly and had minor effects on the person's health. This study did exclude health insurance programs for the poor from its analysis.

People in poor health and those with chronic conditions need more health care and will be subject to more co-payments. In 2005, the Kaiser Commission on Medicaid and the Uninsured reviewed Medicaid cost-sharing policies in all states and reported that cost sharing can have an immediate impact on low-income populations because many cannot afford nominal out-of-pocket costs (*Increasing* 20-22). Another study found that out-of-pocket expenses for Medicaid enrollees have risen twice as fast as their incomes and grew more rapidly than out-of-pocket costs for privately insured middle-income persons when measured as a percent of their income (Center). The University of Maryland found that, in states that charge co-payments for drugs, people in poor health forego medications to a greater degree than do those in good or fair health (Kaiser. *Health*).

The Congressional Budget Office has estimated that approximately 27 percent of the Medicaid population would be affected by new cost-sharing policies and that approximately 80 percent of savings from cost sharing would be due to decreased use of services. The analysis also considered that reduced use of certain services could be partly offset by higher spending in other areas, such as emergency room visits (4).

Legislators will be considering changes in the co-payment requirements for Kentucky's Medicaid program. The Department for Medicaid Services and Centers for Medicaid and Medicare Services continue to negotiate additional changes and details of the waiver application.

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Judiciary

Should the General Assembly limit the state's eminent domain laws to protect private property from private economic development?

Background

The United States Supreme Court's recent decision in *Kelo v. City of New London* (2005) has sparked renewed interest in the government's use of eminent domain. The term "eminent domain" refers to the government's power to take private property for public use so long as the government pays appropriate compensation. The Fifth Amendment of the U.S. Constitution and Section 13 of the Kentucky Constitution have been interpreted as allowing eminent domain. The question in *Kelo* was whether private economic development constituted an appropriate public use.

In *Kelo*, the Supreme Court upheld New London's use of eminent domain for private economic development. The Connecticut city had attempted to take private property, some nonblighted, for private development in order to institute a rejuvenation plan designed to create new jobs and tax revenue. Looking at the plan as a whole, the Supreme Court found that the city's use of eminent domain for private development served a public purpose, satisfying the "public use" requirement of the Fifth Amendment.

As a result of the decision, 22 states have introduced legislation limiting the use of eminent domain for economic development purposes, with many others planning to consider such legislation.

In Kentucky, some think *Kelo* has little impact due to the Kentucky Supreme Court's decision in *City of Owensboro v. McCormick* (1979). In *McCormick,* the Supreme Court held that property cannot be taken by eminent domain for private development unless the property lies within a blighted area. That standard, however, exists only in case law. Some believe that a similar, if not more stringent, standard should be enacted statutorily to ensure adequate protection of private property rights.

Currently, Kentucky authorizes cities, counties, railroads, and utilities to take private property for public use. Public use, while not expressly defined by statute, generally includes roads, bridges, public buildings, sewers, electric lines, railroads, and similar projects benefiting the public. The process by which eminent domain is accomplished, the means of determining payments, and similar matters are all contained in KRS Chapter 416. In addition, KRS Chapter 99 allows local governments and their redevelopment agencies to use eminent domain as a way of combating blighted and slum areas.

Discussion

Proponents of changing the eminent domain laws have suggested several revisions. Some proponents argue for a total ban on the use of eminent domain for economic development. They object that redevelopment may facilitate the transfer of property from one private person to another private person. Further, they maintain that the free market will eventually cure the blighted area, without government intervention. Proponents also generally oppose the taking of nonblighted properties located within a blighted area.

Other persons, while not advocating an outright ban on the use of eminent domain for economic development, would like the practice restricted. For example, these persons advocate increasing the amount of blighted property needed before an area can be categorized as a slum or blighted. They also advocate for more redevelopment hearings, a local referendum on whether eminent domain should be allowed for a designated redevelopment project, and limits on the length of time a blight designation may remain in place.

Opponents of banning eminent domain for economic development argue that government intervention has been a needed and valuable activity in clearing slum space from the state's urban areas. While acknowledging that taking a nonblighted property within a blighted neighborhood may cause a hardship for that property owner, many opponents argue that redevelopment projects may lose their viability if the prospective land contains scattered plots of unwilling sellers. Further, they often highlight that such development can turn a nonproductive area into a productive area at a reduced cost to the taxpayer.

Opponents also argue that since local governments are subject to the power of the ballot, local officials who abuse their eminent domain power are subject to review of their actions by the people, and this review acts as an adequate brake on abusive situations.

Should the General Assembly increase punishment for and enhance postrelease supervision of sex offenders?

Background

Increasing punishment and enhancing postrelease supervision of sex offenders has gained momentum in the wake of recent national publicity. Many people believe that sex offenders warrant stricter sentences and postrelease supervision than other criminals because of the vulnerability of the victims and the high rate of repeat offenses.

Kentucky has already implemented several laws intended to restrain sex offenders. Sex offenders, depending on their specific offense, are required to register with authorities for either 10 years or life. Once registered, their personal information is available to the public via an online database. Additionally, a sex offender currently on probation or parole may not live within 1,000 feet of any elementary or secondary school, daycare facility, or preschool.

According to the Kentucky State Police, Kentucky currently has 5,415 offenders on the sex offender registry, of which 2,777 must register for 10 years and 2,638 must register for life. Of those registered, 136 have not given police their correct address (Samples).

Discussion

There is a wide range of ideas about the punishments for sex offenders. However, the debate generally revolves around increased incarceration versus other forms of management.

Proponents of longer sentences, such as lifetime imprisonment without the possibility of parole or the requirement to serve a certain percentage of a sentence, maintain that such steps will keep offenders off the streets longer, preventing them from reoffending. Some groups that oppose most other measures against sex offenders, such as more widespread notification, have stated a preference for increased incarceration. In their view, unlike some other provisions, increased sentences do not violate an offender's constitutional rights (American Criminal Law Review). Opponents, however, note the cost of keeping sex offenders incarcerated for longer times and generally advocate other measures.

Others have called for requiring sex offenders to submit to electronic monitoring via global positioning systems (GPS). This monitoring can either send information once a day or more frequently, thereby instantly notifying authorities of any violations. Proponents argue that GPS monitoring provides an invaluable tool for law enforcement not only by giving them instant access to a sex offender's location, but also by alerting them of when sex offenders have strayed into such forbidden areas as schools (Lieb).

Opponents of GPS monitoring maintain that the practice may not be effective. For instance, "more than 80% of child-sex-abuse-victims know their attackers--they're usually relatives or friends, not schoolyard stalkers" (Hamilton). Thus, GPS monitoring would do little to alert the authorities to when an attacker is approaching a victim. Opponents further stress that such a system is not foolproof. The bracelets may be cut off or offenders may simply choose to reoffend while wearing them. Opponents also argue against "attach[ing] the stigma and inconvenience of electronic anklets and GPS transmitters to those who may never commit a crime again" (Lieb).

Some proponents have argued for increased community notification. Currently, Kentucky has passive notification through the sex offender online database, but some proponents advocate active notification by which officials notify prior victims, landlords, neighbors, schools, daycare centers, and other relevant individuals or agencies. Opponents argue that such notification gives a false sense of security by focusing on "stranger danger" when in reality the majority of attackers are known by their victims. They further argue that such measures divert funds from more constructive measures, such as educating children and parents about exercising caution when dealing with all adults (American Criminal Law Review).

Another option is prohibiting sex offenders from living within 1,000 feet of any school or daycare facility. While Kentucky currently prohibits sex offenders on probation or parole from living within the designated 1,000 feet, some proponents would like to extend the restriction to all offenders on the registry (Samples). Proponents argue that such restrictions give law enforcement more control over the sex offender population. They also contend that it keeps more sex offenders away from areas where children congregate and keeps them away from temptation. Opponents argue that such a measure gives a community a false sense of security. They also assert that offenders who cannot find housing may become more transient, minimizing their chances of becoming reintegrated into society.

Another issue is how to balance the safety of the community against the civil rights of the sex offender. Proponents often contend that a sex offender's constitutional rights are not absolute. However, opponents tend to argue that public safety and civil liberties are not mutually exclusive and urge that such rights remain on the forefront of legislators' minds (American Criminal Law Review).

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Licensing and Occupations

Should the General Assembly change the prohibition against the direct sale of out-of-state wine to persons in Kentucky?

Background

For an out-of-state winery to sell wine in Kentucky, it must use a three-tier system of sale; that is, it must broker its wine through a Kentucky wholesaler, who in turn distributes it to retailers. Another restriction placed on out-of-state wineries is that they are not allowed to directly ship wine to consumers in Kentucky. Kentucky limits a small or farm winery's production to no more than 50,000 gallons annually.

Certain Kentucky wineries, however, are not required to abide by the same requirements as the out-of-state wineries. Kentucky statutes allow small wineries (KRS 243.155) and farm wineries (KRS 243.156) to circumvent the three-tier system by allowing them to bypass the wholesaler and sell their wine directly to retailers and consumers. Kentucky law also allows these Kentucky wineries to sell two cases of wine to consumers by direct shipment if certain conditions are met.

A regulation, 804 KAR 4:330, allows Kentucky citizens to purchase an unspecified amount of wine from an out-of-state winery if done so as part of a face-to-face transaction. Notably, the regulation permits the retail customer and not the seller to ship the wine into Kentucky. In contrast, there is no provision that allows the out-of-state winery to sell wine directly and bypass the three-tier system.

The differences in the treatment of in-state and out-of-state wine shipment was the central issue in a recent United States Supreme Court case *Granholm et al. v. Heald* (2005). Michigan law allowed direct shipment by in-state "wine-maker" licensees but required an out-of-state winery to sell only to an in-state wholesaler. New York law allowed local wineries to make direct sales on terms not available to out-of-state wineries. In-state wineries that produced wine only from New York grapes were permitted to apply for a license to sell to in-state consumers through direct shipments. That license also allowed a New York winery to deliver the wine of other wineries if the wine was made primarily from grapes grown in New York. An out-of-state winery could ship directly to a New York resident only if it established a branch office in New York. *Granholm* held that Michigan and New York statutes permitting direct shipments by in-state wineries while banning such shipments by out-of-state wineries discriminated against interstate commerce in violation of the Commerce Clause of the United States Constitution. Generally, states have taken the position that the 21st

Amendment gives them plenary power to regulate alcoholic beverages, but the Supreme Court found that such discrimination as existed in Michigan and New York is neither authorized nor permitted by the 21st Amendment.

Kentucky has 39 licensed wineries, 26 of which are engaged in the making of wines (Hudgins). Grape production is promoted as an alternative to tobacco. Recent data indicates that in 2004, Kentucky wineries purchased four times more grapes from Kentucky vineyards than the previous year and that the vineyards more than doubled their production of wine grapes. Additionally, the data show that Kentucky wineries in 2004 used Kentucky grapes in 71 percent of their wines as compared to 55 percent in 2003 (Green).

Discussion

At the time of the *Granholm* decision, Kentucky was one of 20 states that banned interstate shipment (Wine Institute). Under *Granholm*, a state must treat shipments by out-of-state wineries the same as it treats shipments by in-state wineries. The court's decision does not require a state to authorize interstate shipments, but it prohibits preferences given to in-state wine shipments.

Huber Winery of Indiana has filed suit against the secretary of the Environmental and Public Protection Cabinet, in the U.S. District Court of Kentucky, Western District, questioning the constitutionality of Kentucky's system. Two Kentucky wholesale associations have intervened in the case.

The 2006 Generally Assembly may address the issue of wine shipments. Options available to the legislature include 1) permitting direct shipments by in-state and out-of-state wineries, 2) prohibiting direct shipments by in-state and out-of-state wineries, 3) allowing limited shipment with parallel provisions for in-state and out-of-state wineries, or 4) taking no action pending the resolution of the *Huber* lawsuit.

Advocates for allowing direct shipment by in-state and out-of-state wineries assert that permitting such shipments provides the smaller wineries more markets for their products and allows consumers more choices (Goehring). Additionally, the proponents say that many of the small and farm wineries are startup businesses whose ability to make a profit during the initial years of their businesses will be difficult if they are required to share their profits with distributors. Moreover, the proponents assert that due to the limited quantities of wine produced by small wineries, wholesalers are not interested in distributing the wineries' products (Frohling).

Those opposed to direct shipments say that the wholesaler or distributor can more cost-effectively market the wineries' products. They contend that, due to economy of scale, the distributor is better able to expose the wineries' products to more markets. Opponents also assert that banning direct shipment maintains the orderly marketing of alcohol through the three-tiered system of distribution by eliminating conflicts of interest, enabling the efficient collection of taxes, and preventing access to minors and persons in areas where the sale of alcohol is prohibited (Frohling).

Should the General Assembly require licensure, rather than certification, of physician assistants?

Background

Currently, all 50 states regulate physician assistants (PAs): 42 states and the District of Columbia license them; 4 certify them; and 4 register them. The National Commission on Certification of Physician Assistants (NCCPA) is a national entity that grants certification to individual PAs who meet its academic criteria and receive a passing score on an examination (United). Nearly all states, including Kentucky, require that PAs be members in good standing of NCCPA to be eligible for a state regulatory credential to practice. Physicians assistants must be supervised by physicians in all states. The education criteria, scope of practice, and oversight by supervising physicians for PAs vary little from state to state.

Discussion

Staff research of states' laws found that more than 30 states since 1992 have changed the titles of PAs from certified to licensed. Interested parties in Kentucky do not agree that the terminology should be changed. Opponents say that the current regulatory environment for Kentucky PAs is better served through certification than licensure. The licensed supervising physician determines the PA's scope of practice; and whether the PA is licensed, certified, or registered is not an issue. Opponents further contend that licensing both the PA and the supervising physician could mislead the general public as to each professional's authority to practice medicine. Certification denotes the PA's dependence upon his or her supervising physician. Opponents also argue that the change from certification to licensure would not improve health care, decrease medical errors, or improve patient safety. Some, including the Kentucky Medical Association, argue that PAs may have other motives for licensure status that may include expansion of scope of practice. Generally, opponents contend that a change from certification to licensure for physician assistants in Kentucky is unnecessary and will not enhance public protection.

Proponents, including the Kentucky Academy of Physician Assistants, cite the 42 states and the District of Columbia that license their PAs as justification for Kentucky following the national trend toward licensure. They contend that some people may be confused by the national certification and state certification terminology and that a state licensure system would help alleviate the confusion. Proponents further contend that qualified PAs are leaving Kentucky to practice in states that offer a license. Finally, proponents contend that, because Kentucky's PA requirements for certification are more stringent than many other states' requirements for licensure, Kentucky's PAs should be licensed.

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Local Government

Should the General Assembly increase the existing funding amounts or restructure responsibilities for the incarceration of state prisoners in county jails?

Background

County government is constitutionally mandated as the primary provider charged with responsibility for the local incarceration of all prisoners entering the state's judicial system. These incarcerated prisoners remain the responsibility of county government until they are sentenced by the courts or released. Kentucky's statutes and administrative regulations have established the framework by which local jails are operated and funded from state revenues. Funding beyond the state appropriations is often necessary and then must be supplemented by local funds. For example, according to the Campbell County county administrator, the average cost to house a prisoner in that county is $34.69 per day. Of this amount, the state pays $30.51 (KRS 441.206). The county must make up the difference for each prisoner and also pay any additional medical expenses that may be incurred by a prisoner.

This responsibility for the local incarceration of all prisoners is the county's regardless of whether the accused is arrested for violating a federal, state, or local law or ordinance. And even a county, which has closed its own jail, has the responsibility, at the minimum, to contract with another county for the care of its own prisoners and to provide for the transportation of these prisoners to and from the contracted jail as needed. Also, the current funding system does not permit counties to receive any funds from the state for incarceration costs until the accused is convicted and sentenced. To further compound the state payment issue, if a judge credits the prisoner with time already served, then the county receives no state reimbursement despite the amount of time that the prisoner may have been held in a county jail. Representatives of the Kentucky County Judge/Executive Association have said that the funding of jails may be the greatest financial challenge facing counties since the creation of county government (Turner).

The state's financial condition, other funding commitments, and higher alternate priorities have often been cited as reasons the state cannot increase its financial share of jail costs or take over the responsibility for the local incarceration of its prisoners.

Discussion

County officials believe that, despite an increase in per diem allotments in 2005, the current system leaves county governments with the primary responsibility of funding facilities and inmate medical costs, and with little flexibility in the administration of the jails or little input in jail-related matters. They maintain that counties have seen funding from cities eliminated and the state's proportional share of actual incurred costs continually decrease. County officials have said it is not uncommon for one-third to one-half of a county's general fund revenues to be dedicated to bridging the gap between state jail funds to meet the operational and funding requirements of the local jail system. According to testimony given by officials of the Kentucky County Judge/Executive Association, the costs relating to the operation and maintenance of the 76 full-service jails and 16 life-safety jails and the costs of prisoner care continue to steadily rise (Lang). The cost of providing health care for prisoners was mentioned as a primary factor. County representatives have said that prisoner populations tend to be among the unhealthiest due to the lifestyles of many of the prisoners prior to incarceration. Counties can also be faced with payment for expensive surgical and other medical procedures for which the county receives no insurance or state reimbursements.

County officials say almost all locally incarcerated prisoners are charged with violating either state or federal laws. They point out that each county is able to negotiate with the federal government for the per diem rate for the 35 to 50 federal inmates housed by county jails each year. They note that these negotiated rates usually cover the full costs for the care of the federal inmates. Thus, the ultimate goal for counties is the receipt of full funding from the state for the care and housing of state prisoners.

The county officials have acknowledged that the current budget climate could prevent the state from assuming more financial responsibility for jails at this time. In the absence of a state takeover or additional state funding, county officials have asked for a continued dialogue between state and local governments on jail funding and the inclusion of local governments in any continued tax modernization efforts.

State executives have acknowledged the need to provide more assistance to counties for the care of the approximately 7,000 inmates being kept in local jails (White). In 2005, the state's per diem for full service jails was increased by $4 going from $26.51 to $30.51. There was also an increase in jail allotment funding for counties with closed and life-safety jails from $20,000 to $24,000 per year, as well as an appropriation of $295,000 for catastrophic medical costs. State officials have also suggested counties could be more efficient in the delivery of the services they provide (White). They note the need of increasing the collection rates for the fees owed by inmates, the possibility of cooperative bulk purchasing of food and supplies, and competitive pricing for inmate pharmaceutical needs. Despite these increases and suggestions, county officials maintain there is still on average a $100 million annual deficit between the amount provided by the state and the amount that is actually contributed by county governments to cover the full cost of care and housing of state inmates (Lang).

Other options that may be available as possible means for assistance to county governments on this issue include a state-level, multi-jurisdictional task force on jails; experimentation with alternative health care delivery systems for inmates; and alternative revenue sources for counties as a result of tax modernization.

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Seniors, Veterans, Military Affairs, and Public Protection

Should the General Assembly strengthen the "veterans preference" in the hiring of state employees?

Background

The Commonwealth of Kentucky has created a preference for the state to hire certain military-connected individuals. According to the commissioner of the Kentucky Department of Veterans Affairs, this veterans preference helps eliminate penalizing veterans and National Guard members for time spent in military service and acknowledges the larger obligation owed to disabled veterans and their families (Beavers). The preference comes into play when an examination is a part of state hiring. Five points are added to the score of a veteran or National Guard member who passes the examination. Ten points are added to the score of a disabled veteran, spouse of a disabled veteran (if disability prevents the disabled veteran from working), unremarried spouse of a deceased veteran, or dependent parent of a deceased or disabled veteran who passes the examination (KRS 18A.150).

According to the secretary of the Personnel Cabinet, the veterans preference applies to the filling of a limited number of state merit jobs. There are more than 1,400 job classifications in the merit system that involve one of three selection methods: Qualifying (applies to 73 percent of the total job classifications), Written Test (16 percent), and Training and Experience (11 percent). Examinations are used as part of the process to fill vacancies in the Written Test and Training and Experience job classifications. Therefore, the veterans preference applies to 27 percent of merit job classifications (Roberts. July 14).

Veterans' preference points are added only if the applicant passes the examination without benefit of the points (KRS 18A.150). After the preference points are added to the examination score, the Personnel Cabinet refers the five highest scoring candidates to the state hiring agency for interviews. A beneficiary of the veterans preference who does not have one of the five highest scores is not interviewed under this system (Roberts. July 7).

Discussion

Forty-nine states grant some type of veterans preference. Of these, 15 limit the amount of time that a veteran may qualify for a preference (Veterans).

With regard to preference points added to examination scores, 41 states require that an individual pass the examination before points are added. Most states add 5 points to a nondisabled veteran's examination score, while eight states add 10 points. Ohio adds 20 percent of the score to the final score. In most states, disabled veterans receive an additional 5 to 19 preference points (Veterans).

There are various other approaches to the veterans preference:

- List veterans ahead of nonveterans on the eligible list regardless of score.
- Give veterans some type of preference in promotion.
- Require appointing authorities to provide written justification to a veteran when the veteran is passed over for selection in favor of a less-qualified nonveteran.
- Give veterans a preference in retention during a reduction in force.
- Grant special appeals rights to a veteran who feels that he or she was improperly passed over for an appointment or promotion or was improperly subjected to a reduction in force (Veterans).

In recent years, the Kentucky General Assembly has considered one bill to expand the veterans preference. That bill, 00 HB 713, would have required a hiring state agency to offer a job interview to a state government employee who is seeking another job in state government and who qualifies for veterans preference points under KRS 18A.150.

The secretary of the Kentucky Personnel Cabinet has testified that he is considering identifying all veterans on qualifying registers (Roberts. July 14).

Should the General Assembly enhance benefits for members of the Kentucky National Guard and Reserves and their families?

Background

Since September 11, 2001, many Kentucky National Guard members and Kentucky resident military reservists have deployed overseas. The Kentucky Army National Guard has 6,299 soldiers, of which 3,808, or 60 percent, have deployed in 7,000 deployments (Storm). Currently, 1,600 Kentucky National Guard soldiers are deployed for federal active duty (LeMay).

A family may face many hardships when a husband, wife, or single parent is called to federal active duty overseas. Spouses and other relatives who are left behind must raise children and pay all expenses, often on income that may have significantly declined due to the disparity between civilian pay and active duty pay.

Many states have acted to address the social and financial problems confronting National Guard and Reserve families.

Discussion

Twenty states have enacted military family assistance program legislation, and 17 have considered such legislation. Military family assistance programs provide funding for necessities to eligible military families.

Military families entitled to assistance include families of National Guard members, families of resident military reservists, or both. A few states limit benefits to families of soldiers activated in response to the September 11, 2001, terrorist attacks, soldiers called up in the war on terrorism, or soldiers called up after September 11, 2001. Some programs are limited to a one- to five-year period; others have no expiration date.

States have chosen a wide range of entities to administer their military family assistance programs: adjutant general; Department of Public Defense; Department of Veterans Affairs; Department of Community, Trade, and Economic Development; or a committee or board created to administer the program.

The greatest obstacle to military family assistance programs may be funding. Various methods have been adopted or proposed. Tax return check-offs of $1 or more, depending on the refund, are the most utilized, while some states allow taxpayers to designate a specified amount in excess of tax liability for donation to the fund. In some instances, states have removed one type of voluntary contribution from tax returns to make room on the tax return form for the military family assistance fund contribution. States have designated from $5 to $30 from the sale of special license plates to military family assistance funds. The National Conference of State Legislatures reports that there are few states that directly appropriate money to military family assistance funds (2002-2005).

Should the General Assembly create a death benefit for the family of a Kentucky National Guard or Reserve member who dies on federal active duty?

Background

Eight members of the Kentucky National Guard have died on federal active duty participating in the war on terrorism (Commonwealth). Kentucky has not provided a death benefit to their families. While KRS 61.315 requires that the Commonwealth pay a lump sum of $75,000 to the family of a member of the Kentucky National Guard who dies on state active duty, there is no provision for the family of a member of the Kentucky National

Guard or Reserve who dies on federal active duty. Kentucky does not pay the premiums on federal life insurance offered to members of the Kentucky National Guard and Reserve.

The federal government has increased its lump-sum death benefit from $12,000 to $100,000, and it has increased its maximum life insurance from $250,000 to $400,000. A member of the Kentucky National Guard or Reserve can purchase $400,000 in federal life insurance for $26 per month (Public Law 109-13).

Discussion

Many states have considered one of two types of death benefit for the family of a member of the National Guard or Reserve who dies on federal active duty.

Lump-sum payment is one type of death benefit. This year, Delaware and Virginia enacted such a death benefit, and Massachusetts is considering raising its death benefit from $5,000 to $100,000. Indiana, North Carolina, New Jersey, and Iowa all took up but failed to pass the lump-sum death benefit (National. 2005). In 2004, Illinois increased its lump-sum death benefit from $1,000 to $3,000 (330 ILCS 100/4).

Kentucky pays a lump sum of $75,000 to the family of a member of the Kentucky National Guard who dies on state active duty. During the 2005 Session of the Kentucky General Assembly, three bills (SB 161, HB 161, and HB 222) were introduced to amend KRS 61.315 to extend the payment to the family of a member of the Kentucky National Guard or Reserve who dies on federal active duty. The bills were not enacted into law.

Several states have opted or are considering the second type of death benefit: paying life insurance premiums on policies offered by the federal government. Other states have appropriated specific sums for this type of death benefit or commissioned a study of the issue. The Kentucky General Assembly has not considered state payment of federal life insurance premiums (National. 2005).

Critics of a Kentucky death benefit for members of the Kentucky National Guard or Reserve who have died while on federal active duty argue that the federal government has the responsibility for the creation of and payment for a death benefit (Editorial).

Should the General Assembly prohibit unemployment insurance disqualification of a worker who leaves employment due to the military transfer of the worker's spouse?

Background

Several states currently provide eligibility for unemployment compensation benefits to spouses of members of the military when the family is obliged to move out of state because of military transfer, while a number of others evaluate eligibility for military spouses on a case-by-case basis. Still other states disqualify military spouses from receiving unemployment compensation (United).

Kentucky has a period of ineligibility ranging from 6 to 25 weeks before an employee can receive benefits and mandates ineligibility for anyone who voluntarily quits employment (KRS 341.370). To regain eligibility, a person must work at least a portion of 10 consecutive weeks, earning total wages at least 10 times the weekly benefit rate established when the claim was filed (KRS 341.370). At the completion of the 10-week period, the disqualification ends.

In 2000 and 2005, the General Assembly considered but did not pass proposals to provide unemployment compensation eligibility to workers upon military transfer of a spouse: 00 HB 505 (included both military spouses and victims of domestic violence); and 05 HB 293 and 05 SB 33.

Discussion

Proponents of prohibiting unemployment insurance disqualification of a military spouse argue that military members, their spouses and children, and the nation benefit from unemployment compensation eligibility. With the eligibility, a transfer produces much less economic repercussion, resulting in less family stress. “Studies show our country’s ability to recruit and retain the finest individuals in military service is dependent upon the satisfaction of military family members with the unique military family lifestyle” (Military 10). Preventing unemployment disqualification of a military spouse would help increase this satisfaction.

While military spouses would benefit from unemployment compensation eligibility, so would many other workers who move out of state for compelling reasons. They may argue that other categories of workers would be entitled to this benefit and that it is unfair to provide preferential treatment to military spouses.

Expansion of unemployment compensation eligibility could impact the state unemployment insurance trust fund. Under the previously considered legislation, compensation drawn by employees would not count directly against the employer's account nor would it negatively impact the employer's tax schedule for purposes of establishing rates. However, the compensation would draw from the state's trust fund pooled account. Since the pooled account is created by contributions from all Kentucky employers, individual employers would make increased contributions. The amount of the increase is indeterminable because of the inability to predict how many military members will be transferred out of state and the amount of unemployment insurance benefits that will be claimed by each spouse.

Some actuaries claim that the trust fund will become insolvent in 2009 and possibly as early as 2008. Expanding benefit eligibility may increase the danger of insolvency. To avoid insolvency, proposed changes to the trust fund have included implementing a one-week waiting period for benefits and freezing the maximum weekly benefit amount at current levels (Frauenhoffer).

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State Government

Should the General Assembly authorize state contracts in which the state receives monetary or nonmonetary benefits in exchange for intangible rights?

Background

Contracts with the Commonwealth of Kentucky are procured through the provisions of KRS Chapter 45A, otherwise known as the Kentucky Model Procurement Code. However, some people believe that the code may not apply to instances where the Commonwealth receives benefits, tangible or intangible, for no payment or other consideration. For example, one of the state parks may be offered free golf score cards by a company that has printed its name and advertising on the back of the cards. The state may also seek sponsorships for events at the Kentucky Horse Park and State Fairgrounds or solicit door prizes in conjunction with the Kentucky Employees Charitable Campaign.

Presently there is no statutory direction for state agencies in instances where the Commonwealth receives such benefits without expending public funds. In the past, some agencies handled the acquisition of those benefits through issuing their own requests for proposal, but statistics and information are not available from the executive branch to provide detail on past practices.

Despite questions over using KRS Chapter 45A as statutory authority for such contracts, in October 2005, the Finance and Administration Cabinet promulgated 200 KAR 5:080 to assist in regulating "contract[s] for the receipt of cash or noncash value by an agency from a business in exchange for advertising or similar commercial considerations, except for contractual agreements for naming rights." Because the Model Procurement Code may be limited to contracts involving purchases and expenditures of state funds and not to sponsorship circumstances, some people believe the General Assembly should clarify whether KRS Chapter 45A applies to the kinds of tangible and intangible benefits that are the subject of the regulation.

Discussion

A sponsorship relationship between a private corporation and the Commonwealth may be the subject of possible misunderstanding. State sponsorship agreements may address a wide variety of issues, such as the precise benefits the Commonwealth would receive with the sponsorship, the services or properties provided by the Commonwealth for the event or property being sponsored, advertising to be performed by the Commonwealth and allowed by the sponsor, copyright and other intellectual property issues arising from the sponsorship, exclusivity rights, confidentiality issues, and cancellation provisions.

Sponsorships may have an inherent conflict of interest concern, especially if the sponsor has a contractual, regulatory, or lobbying relationship with the state agency. The Executive Branch Ethics Commission's official comment on the Finance and Administration Cabinet's proposed sponsorship administrative regulation indicated that sponsorship solicitation by state agencies would only be allowed under certain circumstances: "It would not be appropriate for an executive branch agency to solicit or accept the proposed sponsorships from entities that have a business or regulatory relationship with that agency, or who may be lobbying or attempting to influence matters of the agency, unless the purpose of the partnership is to promote a state program that will benefit the entire Commonwealth or will promote economic development or tourism in the state" (LeMaster). Such broad language may lead to differing interpretations, and statutory clarity concerning the solicitation and use of sponsorships by state agencies may be required to prevent the appearance of impropriety.

Statutory or regulatory controls over sponsorships may also give the Commonwealth the ability to support an overall business strategy through promotional opportunities. Without such control, sponsorships may be obtained on an agency-by-agency basis with no concern as to the state's overall business strategy.

Should the General Assembly increase deductible and co-payment components and implement disease management and wellness programs for the state health insurance group?

Background

The cost of health insurance has been increasing for private business and state government. From 2004 to 2005, the cost of premiums to the state of Kentucky rose 38 percent (Commonwealth. Personnel. Self). Rising premiums have significantly impacted the states' budgets, requiring them to increase employees' co-payments and deductibles.

In the 2004 Special Session, the General Assembly passed House Bill 1, continuing the 2004 levels of coverage for the 2005 plan year. The bill authorized the Blue Ribbon Panel on Public Employee Health Benefits to study health insurance issues. In the fall of 2005, the panel submitted its recommendations to the Legislative Research Commission, Governor, and Chief Justice of the Commonwealth.

Discussion

The Blue Ribbon Panel on Public Employee Health Benefits submitted a number of recommendations that may require legislative action before they can be implemented. The recommendations included

- retaining current levels of co-pays, deductibles, and other employee cost sharing;
- including disease management and wellness programs in the health insurance program; and
- permitting adoption of a health savings account, coupled with a high deductible insurance plan instead of a plan with fewer health benefits (Commonwealth. Legislative).

A recent survey conducted by the Kaiser Family Foundation found that the health insurance market is moving toward higher employee deductibles and consumer-driven health plans. Twenty percent of companies that offer health benefits offer a high-deductible health plan, according to the survey. Some of the high-deductible plans are designed to curb high-cost occurrences, such as unnecessary trips to the emergency room, and also to provide incentives for preventive care. These plans may be combined with health savings accounts that may reimburse employees for health care-related expenses that are subject to the high deductibles.

Increasing the burden placed on consumers regarding their health insurance costs could have unintended consequences. The shift of health care costs from employers to employees comes at a time when many workers already face wage freezes and wage cuts; adding higher deductibles, co-pays, and other cost-sharing ultimately results in employees facing static wages (Martinez). Cost shifting may also have a negative effect on the employer. Costs to employer-sponsored health plans may increase if preventive care or other chronic disease management is avoided due to high out-of-pocket costs or limited coverage (Kaiser).

Disease management for chronic conditions has also been shown to be an effective cost-containment tool. Disease management and wellness programs can alleviate prolonged absenteeism and improve productivity while controlling cost. Approximately 10 percent of patients with chronic diseases or complex medical issues account for nearly 70 percent of overall health care spending (Kaiser). In Kentucky, early retirees (the 55-65 age group) account for 21 percent of membership but 30 percent of net medical costs, 35 percent of prescription drug costs, and 31 percent of total costs. Condition identification and disease management programs would help to manage the cost associated with this group. However, incentives would be key to encouraging participation in disease management programs and health risk appraisals (Commonwealth. Personnel. Group).

Should the General Assembly increase the employer contribution rates for the public employee pension benefit programs?

Background

It has been estimated that pension costs could increase 98 to 152 percent over the next 10 years, while the state's General Fund is estimated to grown 27 to 46 percent. The cost of maintaining retirement benefits could reduce the share of revenues available for other uses, including salaries or other programs (Commonwealth. Long-Term). Yet, the budget bill passed during the 2005 General Assembly adopted the same employer contribution rates for fiscal year 2006 as was adopted for fiscal year 2005. The General Assembly has passed budget bills that have contained lower employer contribution rates than were actuarially recommended for 7 out of the last 16 fiscal years (Kentucky).

Discussion

The consulting actuary for the Kentucky Retirement Systems recommended higher employer contribution rates for the Kentucky Employees Retirement System (KERS) and the State Police Retirement System (SPRS) in order to fund retirement benefits over the long term. The actuary's recommendations are higher than the employer contribution rates in the current budget for KERS and SPRS as shown in the chart below.

	Actuary's Recommended Rate (Contribution as a percentage of payroll)	**Budget's Current Rate (Contribution as a percentage of payroll)**
KERS Nonhazardous	13.62%	5.89%
KERS Hazardous	21.59%	18.84%
SPRS	34.83%	21.58%

Source: The Segal Company.

It is estimated that, for fiscal years 2005 and 2006, budget reductions will result in a $213 million shortfall for KERS and SPRS combined for the two-year period (Kentucky).

Opponents argue that increasing employer contributions for pension benefits could force the General Assembly to consider reducing expenditures for other employee benefits or government programs.

Although the focus of the General Assembly is on addressing other budget shortfalls, the issue of funding the public employee pension benefit programs may continue to affect current and future members of the Kentucky Retirement Systems.

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Transportation

Should the General Assembly adopt standards to expedite the removal of motor vehicles involved in accidents from Kentucky roadways?

Background

In 2004, 133,718 accidents were reported on Kentucky highways (Kentucky Transportation 1). These traffic accidents and the related roadway congestion create their own set of highway safety problems. Traffic incidents pose three primary concerns: traffic congestion delays, increased risk of secondary crashes, and risk to incident respondents (State of Ohio. Ohio Lane Closure). The number of Kentucky accidents attributable to previous incidents is not known, although the Federal Highway Administration estimates the national figure at approximately 20 percent (United).

The practice of rapid removal of vehicles or other temporary obstructions from the main traveled portion of the roadway after an accident is known as "quick clearance." A quick clearance law places a statutory duty on either the motor vehicle operator or the authority at the accident scene to act in a manner that would hasten the return of normal traffic flow (Swan). These laws may include provisions requiring the driver to immediately move vehicles in minor property-damage accidents or requiring towing companies to remove the vehicles in a timely fashion from the roadway or roadway shoulders.

More than 30 states have adopted quick clearance legislation. During the 2005 Regular Session, Senate Bill 59 that would have established a procedure for quick clearance of interstate and parkway accidents, except for those involving fatalities, apparent serious injury, and hazardous materials, was considered but not adopted.

Discussion

In 2004, 102,931 (77 percent) of the 133,718 accidents reported on public roads involved property damage only (Kentucky Transportation 2). It is these accidents that are likely candidates for quick clearance. Proponents focus on safety, time savings, and reduction of other highway incidents as positive consequences to expediting the return to normal traffic flow after an accident (State of Ohio. Ohio State Highway). Concerns have been raised that first responders may fail to properly treat accident victims and record evidence related to accidents if the top priority becomes the restoration of traffic flow on the highway.

Should the General Assembly place restrictions on new operator's license holders younger than 18?

Background

In 1996, the General Assembly strengthened requirements for a young driver to receive an operator's license by lengthening from one to six months the period a learner's permit must be held, placing minor restrictions on the permit holder, and requiring a driver education course. In the intervening years, several other states have established more stringent three-step graduated driver's license systems, which include a permit phase, some form of intermediate license with curfew and passenger restrictions, and a full-privileged driver's license issued upon completion of the first two steps (Insurance Institute).

Only six states, including Kentucky, have no intermediate license step involving a curfew or passenger restrictions in place for young drivers. Of the 44 states with such an intermediate step, 10 only establish a curfew for drivers, while 34 establish both a curfew and passenger restrictions. Kentucky is also one of only 12 states that do not mandate a minimum amount of supervised driving prior to taking the test for a license (Insurance Institute).

Discussion

Historically, motor vehicle accident rates for teen drivers are significantly higher than rates for other age groups (Blackistone). Nationally, 16-year-old drivers have crash rates three times higher than the rates of 17-year-olds, and five times higher than those of 18-year-olds (Swan). In Kentucky, for 2004, licensed teenaged drivers (including those with a learner's permit) accounted for 6 percent of all licensed drivers in the Commonwealth. However, this age group was involved in 20 percent of all collisions and 16 percent of fatal collisions (Kentucky Transportation 21).

Studies by government agencies and private organizations have shown that 16-year-olds are more likely to be involved in single-vehicle crashes, be responsible for the crash, be cited for speeding, and be carrying more passengers in their vehicles than are older drivers. A representative of the National Transportation Safety Board testified to the Interim Joint Committee on Health and Welfare that this "often...results in a deadly combination of inattention, inexperience, and immaturity" (Blackistone).

Several legislative attempts have been made to implement a true graduated driver's license system in Kentucky. Opponents have argued that further restriction on teen drivers could create a hardship in getting teenagers to and from jobs and extracurricular activities and assisting in family transportation. Additionally, restrictions on passengers and driving hours could cause problems for law enforcement officers who would be forced to make snap determinations on age when deciding whether to stop a young driver for possible violations. Eleven states have addressed that particular problem by making the curfew and passenger restrictions a secondary offense, meaning that a law enforcement officer would need some other cause to stop a driver besides the curfew or passenger violation (Insurance Institute).

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