Issues Confronting the 2007 Kentucky General Assembly

An Update of Informational Bulletin No. 218 (2006)

Prepared by

Members of the
Legislative Research Commission Staff

Informational Bulletin No. 221

Legislative Research Commission
Frankfort, Kentucky
lrc.ky.gov

October 2, 2006

Paid for with state funds. Available in alternative form by request.

Foreword

The Kentucky General Assembly meets on an annual basis. During even-numbered years, the annual session lasts for 60 legislative days. This "long session" is constitutionally designed as the principal opportunity for the legislature to develop and enact statutory programs of benefit to the citizens of Kentucky. The passage of a constitutional amendment in 2000 mandated that the General Assembly also meet in a 30-day session during odd-numbered years. The "short session" was generally intended to allow the General Assembly to deliberate the important issues facing Kentuckians on a more timely basis, and it was specifically intended to offer the General Assembly the opportunity to refine issues addressed during the previous long session.

This publication contains a summary of issues that may face the 2007 General Assembly in the upcoming short legislative session. It is formatted as an update of the more extensive publication that was produced by LRC staff for the 2006 Regular Session (Informational Bulletin No. 218). Production of the detailed issues publication for even-year sessions, followed by an update for odd-year sessions, was chosen as a reflection of the intended functions of both the long and short legislative sessions of the General Assembly. It should be noted that this publication also contains summaries of new issues that have emerged since adjournment of the last legislative session.

Those who follow the activities of the General Assembly recognize that important issues must often be considered by successive sessions of the legislature before resolution is achieved. Therefore, an indicated lack of enactment of legislation pertaining to a particular issue in 2006 does not alone diminish the relevance of the issue for the upcoming 2007 General Assembly; and legislative action taken does not necessarily indicate that an issue has been fully resolved.

The listing of issues in this publication is not exhaustive. Issue summaries and updates are presented objectively and concisely and are grouped according to the various jurisdictions of the Legislative Research Commission's interim joint committees. There is no particular significance to the order in which these issues are presented. LRC staff members who prepared articles were selected on the basis of their knowledge of the subject matter.

Robert Sherman
Director

Legislative Research Commission
Frankfort, Kentucky
October 2006

Contents

Agriculture and Natural Resources

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). To prevent the introduction of CWD into Kentucky, Governor Paul Patton issued, and Governor Ernie Fletcher upheld, Executive Order 2002-1256 that prohibited importating cervids into the state and directed the Kentucky Department of Fish and Wildlife Resources (KDFWR) to suspend issuing new permits for captive cervid operations and non-bird private hunting preserves. 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 administrative regulations.

Those in favor of the existing regulations and the Executive Order argued that this regime had served the state well, and no confirmed case of CWD has been reported in Kentucky. Opponents argued that Kentucky should adopt a containment approach in which cervid importation is monitored and captive facilities are regulated, yet neither cervids nor captive facilities would be completely banned.

Update

During the 2006 Regular Session, the General Assembly enacted Senate Bill 230 that bans importing cervids and establishes associated penalties for violating the ban. The bill contains the following provisions:

- KDFWR and the Department of Agriculture must provide separate reports to the Interim Joint Committee on Agriculture and Natural Resources each year in November for the purpose of determining the continuing need for a ban on the importation of cervids;
- KDFWR must immediately seize, without compensation, cervids imported into Kentucky. Owners may request a hearing and appeal a decision to the Franklin Circuit Court;
- KDFWR must seize and destroy, without compensation, captive cervids that are in the process of being imported into the Commonwealth in violation of the Act;
- KDFWR must issue or deny, within 30 days, permits for propagating and taking of captive cervids by any legal hunting or slaughter methods. Permits may be transferred;
- Captive cervid fences may be placed directly on the property line (without a setback), and a permit holder may petition for

expansion if the expansion is adjacent and connected to the existing facility;
- Existing administrative regulations in conflict with the bill may be amended only upon order by the State Veterinarian, and/or by KDFWR in an emergency;
- Violators of cervid provisions to have 60 days to come into compliance. Failure to comply could result in seizure of the cervids. Appeal procedures are established, and depending upon the outcome of any appeal, the cervids may be disposed of without compensation to the owner; and
- KDFWR must promulgate administrative regulations to effectuate the bill by October 2006.

Should the General Assembly consider an alternative revenue source to the Master Settlement Agreement?

Background

Kentucky has received more than $115 million annually over the last five years as its share of the Master Settlement Agreement (MSA) signed by 46 state attorneys general and tobacco companies (United. Government). 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.

Under the MSA, each state receives a fixed negotiated percentage of the annual MSA payments based, in part, on smoking-related health care costs for each state. Kentucky receives 1.76 percent of the payment. Nonparticipating cigarette manufacturers place funds into an escrow account annually to cover potential future claims.

Citing the MSA provision that allows payments to be withheld to account for market share loss by MSA companies to companies that have not joined the agreement, revenue forecasters predict that MSA receipts will decrease in coming years (Levin).

Kentucky has several mechanisms aimed at recognizing and enforcing the agreement. These include a consent decree or state court judgment and a “model statute” (KRS 131.602) requiring cigarette makers to either join the MSA or place a certain amount of money per pack into an escrow fund. Any significant statutory change to the model statute would be a first among states.

During the 2006 Regular Session, the Senate and House Appropriations and Revenue Committees heard testimony regarding the substitution of a flat fee for MSA payments. Also, House Bill 704 would have imposed a new type of direct tax on tobacco product manufacturers. Participating manufacturers would have received a dollar-for-dollar credit for payments made to the state under the MSA. The bill did not pass.

Discussion

Proponents for changing Kentucky's MSA statutes contend the MSA revenues will continue to decline; and health, education, and agriculture programs that are funded by the MSA will be imperiled unless the state replaces payments in the MSA with a direct tax or finds other replacement funds. They argue that Kentucky, using its taxation power as a state, can apply taxes and fees to tobacco products sold in the state regardless of the MSA (Kentucky).

Proponents argue that based on Kentucky sales, the flat fee or direct tax would capture MSA payment assessments that now go out of state. Kentucky, they argue, sells 3 percent of the nation's cigarettes yet receives only 1.76 percent of the MSA payment assessments.

Opponents contend that repealing the escrow statute and replacing it with a direct tax applicable to all manufacturers may expose the Commonwealth to claims that such action breaches the MSA and consent decree, which are subject to the jurisdiction of the North Carolina courts. Any resulting claims could jeopardize most, if not all, of the annual MSA payments to Kentucky, putting MSA tobacco-control provisions in the state at risk (Plumley).

Opponents further believe that repeal of the escrow statute and creation of a direct tax could lead to a finding that Kentucky is not diligently enforcing its model escrow statute, as required under the MSA. Failure to diligently enforce the statute could lead to the loss of future payments to Kentucky. They also argue that MSA manufacturers may have to pay a greater amount under the flat fee proposal with the credit than under the MSA. Also, it should be noted that in the absence of other states increasing their cigarette taxes, tobacco products are declining revenue sources.

Should the General Assembly allow the sale of raw (unpasteurized) milk and milk products directly to the general public?

Background

Kentucky law prohibits the sale of raw milk and raw milk products in all cases, except that unpasteurized goat milk may be sold upon the written recommendation of a physician (KRS 217C.090).

The Cabinet for Health and Family Services oversees the processing, sale, and other aspects of milk production and has adopted the milk standards recommended by the U.S. Food and Drug Administration.

According to the Dairy Division of the National Association of State Departments of Agriculture Raw Milk Survey (November 2004), 22 states allowed the sale of raw milk either at the farm level, at farmer's markets, or the retail level. Of those states, 14 recorded foodborne outbreaks traceable to raw milk consumption. States reported outbreaks that had occurred since the inception of state surveillance of foodborne contamination relating to raw milk consumption.

In addition, five states permitted cow-share agreements as the only legal means to obtain raw milk. Cow sharing is an agreement between a farmer and one or more individuals where the individual buys or leases a portion of the farmer's herd in exchange for raw milk. Of those five states, three recorded foodborne outbreaks traceable to raw milk consumption. Kentucky law is silent regarding the legality of cow sharing.

Of the states that did not permit the sale of raw milk for human consumption by any means, 12 recorded foodborne outbreaks traceable to raw milk consumption.

Discussion

Supporters of the consumption of raw milk claim that it provides more energy, tastes better, and is natural and more nutritious. They disapprove of pasteurization because they claim that pasteurization kills good bacteria and other micro-organisms, causes digestive problems when consumed, and causes milk to turn rancid with aging.

Consumers of raw milk claim that an animal raised on pasture, kept clean, and handled properly will have milk free of disease-causing organisms.

Supporters of pasteurization point to the outbreaks of human sickness that occur every year due to the consumption of raw milk. They claim that no matter how clean an animal or barn is, raw milk can become contaminated with harmful bacteria and fecal matter.

Supporters of pasteurization also state that it destroys disease-causing bacteria and spoilage-causing bacteria, and that there is no scientific evidence that raw milk is more nutritious or that pasteurization diminishes the quality of milk. The Food and Drug Administration recommends milk pasteurization as "the only effective method for eliminating [*E. Coli*] bacteria in raw milk and milk products" (United. Food).

Works Cited

Kentucky Farm Bureau Federation. “Kentucky’s Participation in the Master Settlement Agreement.” Confronting the Issues, Policy Development Brief. July 2006.

Levin, Peter J. “MSA Payment Issues.” Presentation. National Conference of State Legislatures Annual Meeting: Nashville, Tenn. Aug. 14, 2006.

Plumley, Michael. Assistant Attorney General. Letter to Representative Joe Barrows. Jan. 26, 2006.

United States. Food and Drug Administration. "FDA Warns Consumers to Avoid Drinking Raw Milk." Dec. 2005. <www.fda.gov/bbs/topics/NEWS/2005/NEW01278.html> (accessed Sept. 20, 2006).

---. Government Accountability Office. "Tobacco Settlement - States' Allocations of Fiscal Year 2005 and Expected Fiscal Year 2006 Payments." GAO-06-502, April 2006. <www.gao.gov/news.items/d06502.pdf> (accessed April 12, 2006).

Appropriations and Revenue

Should the General Assembly review the method in which the variable motor fuels excise tax rates are set?

Background

Until 1980, Kentucky levied a fixed excise tax rate on both gasoline and special fuels such as diesel fuel. At that time, the fixed rate was 9 cents per gallon. Due to the increasing costs of motor fuels during 1980, the General Assembly replaced the fixed tax rates on gasoline and special fuels with a variable rate based on the average wholesale price of gasoline to ensure that tax collections would remain stable should consumption drop due to increased fuel prices (Cowgill).

Under Kentucky's current method of taxing fuel, the gasoline and special fuels excise tax rates are computed quarterly at 9 percent of the weighted average wholesale price on gasoline received in Kentucky. The weighted average wholesale price is determined the first month of each calendar quarter, and the rate is applied to all gasoline and special fuels received during the next quarter.

The law (KRS 138.210 through 138.448) also prescribes a minimum and a maximum average wholesale price on which to calculate the motor fuels tax rates. A minimum wholesale price of $1 per gallon was originally established in 1980. The minimum whole price was increased to $1.11 in 1982, $1.22 in 2005, and $1.342 effective July 1, 2006. The maximum rate for each fiscal year can be no more than the average wholesale price at the end of the previous fiscal year plus 10 percent. For fiscal year 2007, the maximum average wholesale price that can be used to calculate the rate is $1.476 ($1.342 plus 10percent). As a result, the excise tax rates can be no more than 13.3 cents per gallon ($1.476 x .09) and no less than 12.1 cents per gallon ($1.342 x .09).

For the calendar quarter ending September 30, 2006, the excise tax rate for gasoline and special fuels has reached the maximum of 13.3 cents per gallon (Commonwealth. Department). Therefore, the tax rate cannot go above the 13.3 cents per gallon but could go down if the average wholesale price should drop below $1.476 per gallon this fiscal year. Kentucky imposes a supplemental highway user fee on gasoline of 5 cents per gallon and 2 cents per gallon on special fuels. An underground storage fee of 1.4 cents per gallon is added to both gasoline and special fuels. Thus, the total amount of state tax on gasoline for July 1, 2006, through September 30, 2006, is 19.7 cents per gallon and 16.7 cents per gallon on special fuels.

Barring further legislative changes, for fiscal year 2008, the maximum average wholesale price that can be used to calculate the excise tax rate on gasoline and special fuels is $1.624 ($1.476 plus 10 percent). The minimum excise tax rate would be 12.1 cents per gallon, and the maximum excise tax rate would be 14.6 cents per gallon.

Discussion

Those in favor of reviewing the method in which motor fuels are taxed note that Kentucky is one of only four states to impose a variable excise tax rate on gasoline and special fuels. All other states' rates (except Kentucky, Nebraska, North Carolina, and Wisconsin) are specifically set by statute. In addition, Kentucky is the only state that allows the rate to vary each quarter. Proponents of review contend that the excise tax rates should be specifically set by statute and that it is unfair to consumers to increase the tax rate at the same time that the cost of fuel is increasing.

Other proponents of review contend that, while the rates steadily increased during 2005 and until late summer of 2006 due to the rise in the wholesale price of gasoline, Kentucky's rates were still below the national average and those of its surrounding states. Because of this, some proponents argue that Kentucky could have increased rates without putting the state at a competitive disadvantage. Nationally, the average total state tax rate, including all taxes levied by the state, on gasoline is 21.7 cents per gallon and 22.3 cents per gallon on special fuels. The average total state rate on gasoline in Kentucky's surrounding states is 21.4 cents per gallon and 20.8 cents per gallon for special fuels (Federation).

Those who oppose reviewing the method believe that the tax should continue to be directly related to the wholesale price of gasoline thus allowing the tax to fluctuate with the cost of the motor fuel.

Should the General Assembly modify the structure of Kentucky's income tax so nonresident individuals can claim all of the Kentucky tax paid as a credit when filing their home state tax return?

Background

Income tax is generally assessed on business income wherever it is earned, regardless of the residence of the individual. A nonresident who earns business income in Kentucky is subject to Kentucky income tax laws and must pay Kentucky income tax in the same way that a Kentucky resident who has business interests in another state must pay income tax to that state. Almost all states assess income tax on the full income of their residents but allow a credit for similar income taxes paid by residents to other states. The purpose of this credit is to prevent double taxation of income.

Kentucky assesses two taxes against business income: an income tax against net taxable income and a Limited Liability Entity Tax (LLET) against gross receipts or gross profits. The LLET is calculated first and is allowed as a credit against the income tax calculated to be due. If no income tax is due or if the LLET liability exceeds the income tax liability, the business pays the LLET.

The LLET is not an income tax under the traditional definition historically used by states in determining whether a credit for "similar" taxes paid in another state will be allowed. Because of this, some states have denied residents a credit for LLET taxes paid in Kentucky, increasing the overall tax burden for these businesses.

Discussion

If Kentucky's tax on business income was restructured solely as an income tax, then all tax paid to Kentucky would be allowed as a credit against the tax liability in a business's home state. However, the LLET was added to the income tax structure to specifically target businesses operating in Kentucky that do not have taxable income as calculated under traditional methods. Alternatively, Kentucky's tax structure could be modified to recharacterize the LLET paid as an income tax payment if the amount of income tax due exceeds the amount of LLET due, without collecting any more or less revenue from the business. If this could be accomplished, it may be possible to provide nonresident investors in Kentucky businesses with the benefit of a credit against their home state tax liability, while not reducing Kentucky's receipts.

Should the General Assembly provide alternative methods for local governments to fund 911 services?

Background

The official national emergency number, 911, connects a caller to a Public Safety Answering Point (PSAP) dispatcher who routes the call to a local emergency medical, fire, or law enforcement agency.

Basic 911 service links the caller to an emergency dispatch center, which sends emergency responders to the caller's location. The caller must report a location to the call center operator. Enhanced 911, or E911, automatically gives the emergency dispatch center the caller's location because it associates the caller's physical address with the caller's telephone number. Typically, the telephone company provides a computer software directory that associates the caller's phone number and address. This allows the call center to send emergency responders to the emergency without requiring the caller to provide his or her location.

Originally, dialing 911 from a cellular phone reached the state police instead of the local PSAP. Because the precise location of a cellular phone is not transmitted with the phone call, the caller had to describe his or her location so that the state police could transfer the call to the correct local PSAP. However, the Federal Communications Commission (FCC) issued an order in 2000 requiring wireless carriers to determine and transmit the location of callers who dial 911 using a cellular phone. The order created accuracy requirements, technical details, and objectives for the completion of wireless location services implementation. The compliance process is underway but is hindered in part by the inadequate funding to local agencies for the conversion of PSAP equipment to wireless E911-compatible equipment.

Funding comes from two sources: local revenues and a state fund. KRS 67.760 authorizes a city, county, or urban county government to levy a special tax, license, or fee not in conflict with the Kentucky Constitution or statutes to establish and operate 911 emergency telephone services. Generally, this is levied by local governments as a fee on land telephone lines. The special tax, license, or fee may include a subscriber charge levied on an individual exchange line basis, limited to a maximum of 25 exchange lines per account per government entity.

KRS 65.7627 creates the commercial mobile radio service emergency telecommunications (CMRS) fund, which is administered by the CMRS Board. The board is charged with administrating the CMRS fund for the purpose of implementing wireless E911 service throughout Kentucky in accordance with the FCC Order. The statute requires all wireless service providers to charge a 70-cent fee on wireless telephone users. Revenues collected from the service charge are deposited into the CMRS fund. KRS 65.7631 sets forth the CMRS fund disbursement scheme that grants funds based upon improvement of E911 services, efficiency incentives, and county consolidation. The statute also disburses excess funds to eligible PSAPs.

Money in the CMRS fund is only disbursed to local governments with complying wireless E911 call centers that have requested to receive disbursements. Some small counties and counties that did not have adequate resources to install wireless E911 equipment consolidated their PSAPs, and others use Kentucky State Police posts as E911 call centers. The local basic 911 call centers in those counties are not eligible to request CMRS funds because they do not have the necessary funding to install wireless E911 equipment, and therefore will not receive CMRS disbursements.

Discussion

To provide adequate funding for local governments to properly sustain 911 emergency telephone services, some propose the creation of new methods of funding 911 emergency telephone services. Some suggest that local governments should be allowed to place a fee on wireless phones similar to those on land lines. Opponents assert that the distribution of fees to the appropriate local governments would be too burdensome on cellular telephone providers and the CMRS Board.

Some people who support the expansion of funding methods recommend that local governments should be given the option to replace the 911 fee on land lines with a dedicated property tax. Still others propose that the state fee on telecommunications providers should be increased to provide funding for local 911 call centers.

Those opposed to the expansion of funding methods might assert that legislation passed during the 2006 Regular Session intended to provide more funding to local governments has already addressed the issue. Previously, CMRS funds were earmarked solely for the implementation and operation of wireless E911 systems. However, with the enactment in 2006 of House Bill 656, local 911 call centers are not limited to spending CMRS solely for wireless E911 purposes; therefore, they are granted more flexibility to spend CMRS funds as they would the revenues from local land line fees.

HB 656 also amended KRS 65.7631 to increase the amounts disbursed to local 911 call centers under the pro rata formula and the wireless workload formula to from 25 percent to 40 percent. Additionally, the legislation made pre-paid wireless cellular telephone users liable for paying the CMRS service charge, thus increasing the CMRS fund and ultimately the amount of money payable to eligible local 911 call centers.

Some contend that HB 656 did not alleviate the decrease in revenue generated from the fee on land telephone lines. Because HB 656 could not eliminate the federal mandate requiring emergency service providers to be wireless E911 compliant, some maintain that there is no relief for local 911 call centers that are not wireless E911 compliant.

Should the General Assembly propose an amendment to Section 181 of the Kentucky Constitution to allow the General Assembly to establish a more flexible local government tax structure?

Background

The Kentucky Constitution includes several provisions relating to the taxing authority of cities, counties, and the state. In general, the Constitution vests the General Assembly with broad authority to establish the parameters of the taxing power of local governments.

Limitations on this authority are found in Section 181 of the Kentucky Constitution. Section 181 prohibits the General Assembly from levying any tax for the benefit of any county, city, town, or other municipal corporation but allows the General Assembly to pass general laws granting local governments the power to levy and collect taxes. Section 181 also limits the types of taxes that the General Assembly may permit local governments to levy. Local option sales and use taxes, which would provide local governments with additional revenue sources, are not authorized under Section 181.

Discussion

The Task Force on Local Taxation, established in 2005 by the General Assembly by House Bill 272, examined the local tax system and issued a final report on June 27, 2006. The task force identified the limitations included in Section 181 of the Constitution as the "primary constitutional impediments to the development of a modern local tax system" (Commonwealth. Legislative).

Those in favor of a constitutional amendment note that the limitations included in Section 181 prevent direct revenue sharing programs between the state and local governments. Some believe that revenue sharing programs could offer an alternative approach to local government funding that is more efficient and more taxpayer friendly. Proponents of a constitutional amendment also argue that the constitutional limitations on the types of taxes the General Assembly can authorize local governments to levy substantially decrease the flexibility of local governments, which in turn compromises the ability of local governments to effectively meet the needs of their citizens.

Those opposed to a constitutional amendment argue that local governments already have many options available under the current system and that local governments do not fully utilize those options. They also argue that the implementation of revenue sharing programs will reduce the autonomy of local governments and will increase local reliance on the state.

Works Cited

Commonwealth of Kentucky. Legislative Research Commission. Task Force on Local Taxation. *Final Report of the Task Force on Local Taxation.* Research Memorandum No. 500. Frankfort: LRC, 2006.

---. Department of Revenue. Kentucky Tax Alert, July 2006, Vol. 25, No. 4. <www.ky.gov.rev>(accessed Aug. 11, 2006)

Cowgill, Bradford L. Office of State Budget Director. Tax Expenditure Analysis Fiscal Years 2006-2008. Oct. 17, 2005.

Federation of Tax Administrators. “Motor Fuel Excise Tax Rates, January 1, 2006.” <http://www.taxadmin.org/fta/rate/motor_fl.html>(accessed Aug. 11, 2006)

Banking and Insurance

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 Association). In 2005, 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).

Update

In 2006, Kentucky became of one of 25 states to have a *security freeze* law. The Kentucky General Assembly enacted House Bill 54 that permits consumers to put a freeze on their consumer reports to help prevent identity theft. The freeze prohibits a credit reporting agency from releasing information about the consumer's file unless the consumer authorizes a temporary or permanent lifting of the freeze. Security freeze legislation is one type of law designed to prevent fraudulent use of credit information.

HB 4 was similar to HB 54 but also contained provisions creating a *security breach* notification law similar to the California law. HB 4 passed the House but failed to receive favorable approval from a Senate committee.

In 2006, security breach notification legislation was introduced in at least 28 states, including Kentucky. Such legislation was enacted in at least 10 states: Arizona, Colorado, Hawaii, Idaho, Indiana, Kansas, Maine, Nebraska, Utah, and Wisconsin (National Conference). As of July 18, 2006, security breach notification laws have been passed in at least 34 states, including Illinois, Indiana, Ohio, and Tennessee (The State).

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

Background

Many states have enacted tort reforms and insurance reforms over the past several years in an effort to limit medical malpractice insurance premium increases and stabilize the market. Among the insurance reforms proposed but not enacted in Kentucky is one that would require all medical malpractice insurance rates be filed with the Kentucky Office of Insurance. Unlike some states, Kentucky does not mandate that medical malpractice insurance rates be filed with its state insurance oversight office; although, 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. The order remains in effect.

In 1868, the U.S. Supreme Court in *Paul v. Virginia* held that insurance affected the public interest, and government has regulated the insurance industry ever since. The degree of state regulatory scrutiny varies by line of insurance. States regulate insurance rates to control what insurers charge for coverage. Overcharging and undercharging are deemed contrary to the public interest. Overcharging of rates unnecessarily increases the cost of doing business. Some people allege that medical malpractice insurance carriers have engaged in a cyclical pattern of undercharging premiums to gain market share that eventually leads to steep premium increases and restrictive underwriting. Regulators have been unable to eliminate the cycle and instead have tried to restrict rates at the top of the cycle when insureds have faced sharp rate hikes. By requiring the filing of proposed rates, Kentucky can monitor the market and, in some circumstances, require actuarial justification.

Update

Medical malpractice insurance rate increases have declined since peaking in 2002. Citing data from the Council of Insurance Agents and Brokers, Americans for Insurance Reform notes that the average rate hike for the fourth quarter for medical malpractice insurance in the United States was 63 percent in 2002, 34 percent in 2003, 3 percent in 2004, and 0 percent in 2005. A similar declining trend was found in other lines of property/casualty insurance through the fourth quarter of 2005 (Doroshow).

In the 2006 Regular Session of the General Assembly, three bills were introduced that would have required the filing of medical malpractice insurance rates with the Kentucky Office of Insurance.

House Bill 72 was not acted on by a House committee. Senate Bill 240 was not acted on by a Senate committee. HB 700 was passed favorably by a House Committee, but did not receive a floor vote.

Works Cited

Doroshow, Joanne and J. Robert Hunter. "Insurance 'Crisis' Officially Over." *Americans for Insurance Reform*.< http://www.insurance-reform.org/> (accessed Aug. 14, 2006).

National Association of Mutual Insurance Companies. "Security Breach Notification Laws: What Threats Do They Pose for Insurers?" David B. Reddick. July 2005.

National Conference of State Legislatures. "2006 Breach of Information Legislation." Updated June 22, 2006. <http://www.ncsl.org/programs/lis/cip/priv/breach06.htm> (accessed Aug. 14, 2006).

Patton, Zach. "Stolen Identities." Governing. Aug. 2005. <http://www.governing.com/articles/8ident.htm> (accessed Nov. 7, 2005).

Paul v. Virginia, 75 U.S. 168 (1868).

The State Public Interest Research Group. "State PIRG Summary of State Security Freeze and Security Breach Notification Laws." Updated July 18, 2006. <http://www.pirg.org/consumer/credit/statelaws.htm> (accessed Aug. 15, 2006).

Economic Development and Tourism

Should the General Assembly amend the tax increment financing laws?

Background

Tax increment financing (TIF) is an economic development financing tool that seeks to use future tax benefits to pay the present cost of a development project. For each proposed project, there is an estimate of the impact on economic activity and increased tax revenues. This increased revenue is called the tax increment, and it includes taxes from new jobs, increased sales, and new or higher property values. The project is then financed with increment bonds, which are paid from the tax increment. In theory, the project generates its own financing and the government does not extend itself financially or impose new taxes or raise existing rates.

There are several distinct TIF programs in Kentucky. Each operates in the same basic manner, but the specific requirements vary on issues such as the type of project, the degree of state or local involvement, and the types of taxes subject to the TIF.

Local governments may use TIF for purely local purposes. The project must be on previously undeveloped land and may not exceed 500 acres. Taxes subject to TIF include 100 percent of incremental property taxes, excluding state, school, and fire district portions; and a 2 percent employee wage assessment that is credited against local occupational license taxes.

Local governments also may create TIF districts for infrastructure development with or without state involvement. The project must be on previously undeveloped land with a minimum of 50 acres, or 1 acre for brownfield sites. If the state is involved, the project is submitted to the Cabinet for Economic Development for approval and must meet the requirements of any of several state economic develoment incentive programs. Taxes subject to TIF include 100 percent of incremental property taxes, including the state portion, but excluding school and fire district taxes.

Finally, TIF may be used for single projects that make a significant contribution to economic development in the state. These projects require a minimum investment of $10 million, must create at least 25 new jobs for Kentuckians within two years, and must generate at least 25 percent of their revenue from out of state. State approval is required. Taxes subject to TIF include property, income, sales, and insurance premium taxes; TIF is limited to 80 percent of incremental revenue and 25 percent of project costs. This type of TIF has been used for projects such as the Churchill Downs expansion and the Kentucky International Convention Center in Louisville.

Discussion

There has been some debate recently about the application of TIF to particular projects and also about whether the laws should be amended or expanded to make greater use of TIF as a financing tool. The discussions have centered mainly around the use of TIF for large-scale projects and around legislation introduced in the last session. The two issues are not necessarily related, but they both have served to put TIF in the spotlight and to highlight some issues that may be addressed in the future.

TIF can provide a significant portion of the funding for large projects. High levels of financing can be achieved by expanding the TIF district, or the area from which the tax increment can be drawn, around a project. Some emphasize the enormous contribution that large TIF districts would make toward constructing large-scale projects and fueling economic development. Others, however, say that large districts could lock up tax incentives that might otherwise be available for other projects. It is also suggested that they could siphon off too much tax revenue, much of which might not be related to the project itself. The question is how to structure TIF districts to account for these issues and provide needed financing while remaining flexible for future developmental concerns.

While discussions continue about the use of TIF for particular projects, some have advocated expanding TIF laws to provide additional alternatives for its use as a development tool. Bills introduced in the 2005 and 2006 Regular Sessions of the General Assembly would have established a TIF program for community redevelopment. Under these proposals, local governments would create redevelopment plans for areas affected by deteriorating buildings, loss of business activity, or high rates of poverty. TIF could then be used for infrastructural projects such as roadway and other transportation improvements, water and sewer development, parks, and other initiatives to improve the condition of the area, attract additional private development, and increase business and other activity.

TIF is a fairly recent economic development financing tool in Kentucky, having been first enacted in 2000. As its poplularity increases, issues will arise concerning its use and value on particular projects, its relation to other incentives and programs, and its applicability to various types of development. Some of these issues have already been discussed at the state and local levels and may be addressed in future legislative sessions.

Education

Should the General Assembly change the assessment and accountability system for elementary and secondary students?

Background

The General Assembly has made changes over time in the statewide assessment and accountability system that was established in response to the Kentucky Education Reform Act of 1990. Significant changes were made in 1998 when the Commonwealth Accountability Testing System (CATS) was initiated. Some policy makers and education practitioners have suggested that additional changes are needed, given alterations in the system required by the federal No Child Left Behind Act of 2001 (NCLB) and perceived problems in the accountability system after six years of experience under CATS.

NCLB requires annual assessments in grades 3 through 8 in reading and math, which may afford Kentucky the possibility of moving toward a longitudinal assessment model that measures growth in student achievement over time. Additionally, concerns have been raised regarding the breadth of the core content for assessment and the program of studies, the amount of class time spent on testing and test preparation, and implementation problems with the writing portfolio.

Update

In 2006, the Kentucky Board of Education adopted a revised program of studies and core content for assessment that set forth a narrower range of grade-specific content. The board also revised regulations and guidance documents regarding the appropriate implementation of the writing portfolio. Additionally, the board is considering other changes to reduce testing time, revise the weights within the accountability calculation, and incorporate a growth measure within CATS.

During the 2006 Regular Session, General Assembly passed Senate Bill 130 that required the ACT examination to be administered to all high school students and House Bill 197 that related to end-of-course testing. These new laws, recent decisions by the Kentucky Board of Education, and phased-in requirements of NCLB require changes to the assessment of Kentucky students over the next two years. These changes will be fully implemented by the end of the 2007-2008 school year, and the General Assembly will have new data and information on which to consider specific assessment requirements.

House Concurrent Resolution 214, also passed in the 2006 Regular Session, required a study of how to effectively provide assistance to schools not meeting established goals for student achievement.

The Subcommittee on Assistance to Schools of the Interim Joint Committee on Education was established to study the current assistance requirements to schools under state and federal accountability requirements. The subcommittee's study and recommendations relating to support systems, assistance, and interventions will be completed by November 30, 2006, with a final written report to be provided by December 15 to the Legislative Research Commission.

Should the General Assembly change the length of the school year, alternative school calendars, and the opening date for schools?

Background

During the past several years, there has been interest in lengthening the minimum school term to provide more time for instruction and for teachers' professional development. In addition, some parents and businesses have expressed concern about the growing trend of early-August opening dates. While these are two separate concerns, they are related because they affect school calendars.

Adding instructional days and professional development days to the current school calendar requirements has been discussed as a method to improve student performance and teacher quality.

- A 2001 Compensation and Benefits Legislative Task Force recommended that, by the 2007-2008 school year, the school calendar be extended 9 days to 194 days to include a minimum of 180 instructional days and 8 professional development days.
- The 2005 Business Forum on Kentucky Education recommended that the school year be extended to 195 days to provide 10 additional instructional days.
- The Kentucky State Board, in its 2006-2008 biennial budget request, proposed additional funding to add one instructional day and one professional development day each year of the biennium.

Update

House Bill 380, passed by the 2006 General Assembly, provided for the addition of two instructional days to the school calendar in 2007-2008, effectively changing the required number of days. The current 185-day calendar, with a minimum of 175 instructional days or equivalent, is referenced in several statutes for other purposes, such as calculation of average daily attendance and retirement service credit calculations. If the General Assembly chooses to make added instructional days a permanent provision, statutory amendments may be necessary.

One such statute, KRS 158.070, provides that each local board of education adopt a school calendar that establishes the beginning and ending dates for the school year. Some parents, as well as tourism-related businesses, have expressed a desire to limit the flexibility of the local board of education in establishing the opening day. Tourism opposition to the early-August start dates includes concerns about availability of student workers, tourist participation in attractions, and loss of overall tourism revenue (Commonwealth.) On the other hand, school officials want local boards of education to keep their flexibility to determine their respective opening dates without limitation, based on local needs (Commonwealth).

HB 380 also directed the Kentucky Department of Education to evaluate school calendars to determine the impact of alternative school calendars, including the use of extended time beyond the 6-hour instructional day, shortened days or weeks, and year-round calendars. The study will look at the positive and negative effects on students, including academic achievement, extracurricular activities, parental support, and community acceptance; and the impact of alternative calendars on school district operations and finances related to transportation, utilities, staffing, facilities, food service, and other operating costs. A preliminary report is due to the Interim Joint Committee on Education by November 15, 2006; a final report, including recommendations for regulatory or statutory changes, is due by January 15, 2007.

Works Cited

Commonwealth of Kentucky. Legislative Research Commission. Task Force on School Calendars and the Tourism Industry. *Report of the Task Force on School Calendars and the Tourism Industry (HCR 55)*. Research Memorandum No. 499. Frankfort: LRC, 2005.

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

The 14th Amendment to the U.S. Constitution authorizes states to determine whether a felon's right to vote will be restored. Kentucky is among two other states—Florida and Virginia—that permanently prohibit a felon from voting, absent restoration (Jackson).

Section 145 of the Kentucky Constitution prohibits persons convicted of a felony in any court of competent jurisdiction from voting. Section 77 authorizes a pardon by the governor as the sole method of restoration in Kentucky. Convicted felons who wish to restore their voting rights must apply to do so.

The estimated number of disenfranchised felons in Kentucky is 109,132 (Mauer 14).

Update

Three bills (House Bills 647 and 480 and Senate Bill 251) were filed during the 2006 Regular Session of the General Assembly. All three bills proposed an amendment to Section 145 of the Kentucky Constitution to restore voting rights to felons upon a set of prescribed standards such as completion of sentence, expiration of probation or final discharge from parole, a three year period of Kentucky residency without re-offending, and 100 hours of completed community service. None of the bills passed.

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. However, the Sixth Circuit Court of Appeals held that such prohibitions were an unconstitutional violation of the First Amendment (*Anderson v. Spear*).

The 2005 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. 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 (Commonwealth).

The advisory task force also recommended imposing a 180-day post-election limitation on the campaign repaying the candidate for any personal loans.

Update

House Bill 670, introduced during the 2006 Regular Session, encompassed these advisory task force recommendations. The bill did not pass.

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

Background

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, nominating, and electing of a governor and lieutenant governor refer to these candidates as a "slate of candidates."

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 (Commonwealth).

Update

House Bill 670 was introduced during the 2006 Regular Session and included many of the recommendations of the Advisory Task Force for the Development of the Registry's Legislative Package. However, the recommendation that candidates for governor be allowed to delay naming a lieutenant governor running mate until after the primary election was not included in that bill. No amendments were filed to include the recommendation. The bill did not pass.

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 advisory task force made recommendations related to contributions to campaign and political issues committees:

- 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;

- permitting candidates 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; and
- eliminating a contribution limit for contributions made to political issues committees (Commonwealth).

Update

House Bill 670 was introduced during the 2006 Regular Session and included many of the recommendations of the Advisory Task Force for the Development of the Registry's Legislative Package. The bill did not pass.

Language in the proposed HB 670 did not incorporate the task force's recommendation

- that the limits on contributions permitted to candidates be raised 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; and
- that a contribution limit for contributions made to political issues committees be eliminated. No amendments were filed to include either recommendation.

HB 670 did incorporate the task force's recommendation 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. No amendments were filed to exclude the recommendation.

Works Cited

Anderson v. Spear, 356 F.3d 651 (6th Cir. 2004).

Commonwealth of Kentucky. Kentucky Registry of Election Finance. *Final Report of the Advisory Task Force for Development of the Registry's Legislative Package*. Frankfort: KREF, 2005. Vols. I-III.

Jackson, Derrick. "Where are voting rights for ex-felons?" *The Boston Globe.* Nov. 16, 2005. <http://www.boston.com/news/globe/editorial_opinion/oped/articles/2005/11/16/where_are_voting_rights_for_ex_felons?mode=PF> (accessed Sept. 19, 2005).

Mauer, Marc, and Tushar Kansal. *Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States*. The Sentencing Project: Washington, Feb. 2005. <www.sentencingproject.org/pdfs/barredforlife.pdf> (accessed Dec. 5, 2005).

Energy

Should the General Assembly address the effects of increased home heating fuel costs?

Background

High crude oil prices and high demand for natural gas have resulted in higher home heating costs over the past few years. Some forecasters are predicting a 10 percent increase in electric bills over last winter. A previously predicted decline in natural gas costs for this winter has disappeared in the wake of the summer heat wave that put gas-fired peaking generators into heavy service (Kiplinger).

According to the Department for Community Based Services' block grant status report, the federal Low Income Home Energy Assistance Program (LIHEAP) served 109,667 households in 2005 that were at or below 110 percent of the federal poverty guidelines. The program paid a one-time benefit, typically to the fuel supplier, averaging $106 per household. An additional crisis component averaging $163 per household was paid to 121,962 households threatened with a cutoff (Commonwealth. Department 1). No increase in federal funds is anticipated this year. Until 2006, there was no state funding for heating assistance. Some private, nonprofit charity funds may be available through churches and other programs such as WinterCare, which is a private utility-assistance program.

Possible legislative initiatives may include weatherization or other efficiency programs, rate caps, limits on termination of service, tax relief, and a heating benefit program.

Update

The 2006 General Assembly passed House Bill 283, thereby appropriating $10 million of state funds to the federally funded LIHEAP. This was the first time that the state had appropriated funds to this federal program. Inclusion of funds in the 2006 two-year budget bill does not guarantee inclusion in future budget bills. Proponents of this funding note that additional funds and responses are needed for future budget cycles. Heating costs are expected to increase in the winter of 2006, although not at the same rate of increase as 2005 (United).

Senate Bill 252, filed during the 2006 Regular Session, would have prohibited termination of heating utility service for low-income customers during winter months; required termination notices to include available exceptions; required payment plan negotiations to be made in good faith and offer at least two different options; and required written payment plans. The bill did not pass out of committee.

Should the General Assembly change the existing incentives for biodiesel producers and blenders?

Background

Recent high crude oil and gasoline prices have created intense interest and commercial development activity in alternative fuels and energy feedstocks. The alternatives include biofuels derived from renewable, organic sources such as ethanol distilled from corn, and biodiesel produced from soybean oil, recycled cooking oil, or animal fats. Increased demand for biofuels as partial substitutes for petroleum, when blended as an additive with gasoline or diesel fuel, is claimed to yield multiple benefits, according to biofuel advocates (Jobe). They cite the promise of lower pollutant emissions, reduced dependence on foreign sources of oil, and the benefits of expanded markets and higher corn and soybean crop prices.

The 2005 General Assembly enacted a $1 per gallon biodiesel and blended biodiesel nonrefundable excise tax credit for producers or blenders of biodiesel fuel to encourage its use as a diesel fuel additive. The tax credit was capped at an annual amount not to exceed $1.5 million and applies only to biodiesel that meets international specifications. Blended biodiesel must have at least 2 percent biodiesel (B2 or greater) to qualify for the tax credit (KRS 141.422 to 141.425), which applies to tax years beginning on or after January 1, 2005.

The Commonwealth's biodiesel tax credit supplements a federal biodiesel tax incentive. The federal tax incentive for biodiesel was extended through 2008 in the Energy Policy Act of 2005. The Act also provides a 10-cent per gallon income tax credit for producers of biodiesel derived from agricultural crops.

By making renewable resource-derived biofuels more affordable to consumers, federal and state tax incentives have directly contributed to growth in the sale of biodiesel in recent years. National biodiesel sales tripled from 25 million gallons in 2004 to 75 million gallons in 2005 (Jobe). The National Biodiesel Board told Congress that the biodiesel industry is on track to double production in 2006, to 150 million gallons. More than 600 major corporate and government vehicle fleets are fueled with commercial biodiesel, and more than 700 retail filling stations offer biodiesel or blended biodiesel to consumers.

States are considering many different approaches with biodiesel fuel. These include incentives, use requirements, point of tax clarification, study authorizations, state fleet use requirements, and biodiesel promotion. Kentucky, among others, has considered tax reforms to encourage use and/or production of biodiesel. States are also considering

- a form of mandate or encouragement to use biodiesel in fleet vehicles, including a mandate for state diesel vehicles and equipment;
- infrastructure improvement for greater access to biodiesel; and
- other biodiesel incentives, such as state bond issues, use of public lands for oilseed production, conversion allowance programs and grants, and offering incentives to schools and school districts for purchasing biodiesel fuel for school buses (Jobe).

Discussion

Griffin Industries' Butler plant in Pendleton County is Kentucky's only biodiesel production facility, with a production capacity of about two million gallons of biodiesel annually (Paeth). Additional plants are under construction or in commissioning near Morganfield in Union County, Owensboro in Daviess County, Burlington in Boone County, and Irvine in Estill County. The new plants are expected to bring biodiesel production capacity in Kentucky to around 70 million gallons a year by mid-2007 (Kentucky). Of 31 states reporting production capacity of biodiesel fuel, 5 states currently produce less than Kentucky (National). The projected 2007 levels would place Kentucky among the top three producers. The Kentucky Clean Fuels Coalition counted 35 biodiesel distributors providing B2 or B10 blends to more than 30 retail outlets as of the first quarter of 2006. Nearly all biodiesel availability is located in northern, central, and western Kentucky.

Some producers propose eliminating the Commonwealth's excise tax credit for blenders and directing accrual of all of the $1.5 million annual credit to producers in order to more directly incentivize increased production, while letting market demand set the wholesale price for biodiesel blended with petroleum diesel. Blenders oppose limiting the Commonwealth's tax credit to biodiesel producers. They argue that without sharing in the tax credit, blenders will have reduced incentives to make biodiesel blends more widely available throughout Kentucky.

Works Cited

Commonwealth of Kentucky. Department for Community Based Services. "Block Grant Program Status Report, Jan. 1, 2006-June 30, 2006." Frankfort, 2006.

Jobe, Joe. Chief Executive Officer. National Biodiesel Board. Testimony. Meeting of the U.S. Senate Committee on Agriculture. Washington, D.C. April 26, 2006. <www.biodiesel.org/resources/PR_supporting_docs/4-26-06_SenAg_Comm_Testimony_final.pdf> (accessed Aug. 20, 2006).

Kentucky Clean Fuels Coalition. "Marathon to Provide Biofuel at Louisville Terminal." July 24, 2006. <www.kentuckycleanfuels.org/news/Biofuel%20press%20release%2007 1706v6%202.pdf> (accessed Aug. 20, 2006).

Kiplinger, Knight. “Energy.” *The Kiplinger Letter*. Vol. 83 No. 31. Washington, DC, Aug. 4, 2006.

National Biodiesel Board. Commercial Biodiesel Production Plants, Sept. 13, 2006. <http://www.biodiesel.org/buyingbiodiesel/producers_marketers/ProducersMap-Existing.pdf#search=%22Kentucky%20biodiesel%20production%20capacity%22> (accessed Sept. 20, 2006).

Paeth, Greg. "Kentucky Biodiesel Maker Looking to Expand." *Cincinnati Post.* July 20, 2006. <http://news.cincypost.com/apps/pbcs.dll/article?AID=/20060720/BIZ/607200336/1001> (accessed Aug. 20, 2006).

United States. Department of Energy. Energy Information Administration. “Short-Term Energy Outlook.” Sept. 12, 2006. <http://www.eia.doe.gov/emeu/steo/pub/contents.html> (accessed Sept. 20, 2006).

Health and Welfare

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

Background

Hospitals have monitored their infection rates and provided infection control and prevention programs since the 1970s (Association. APIC Position 1). Infection control data have 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.

At the federal level, a law enacted in July 2005, the "Patient Safety and Quality Improvement Act" (P.L. 109-41), encourages health care providers to promote a "culture of safety" through voluntary submission of medical errors data and provides some protections for submitting data on medical errors. The law defines "patient safety work products" as data, reports, and other documentation from a provider that is submitted to a patient safety organization (also established under this legislation). The information is treated as privileged and not subject to subpoena or discovery in a civil, criminal, or administrative disciplinary proceeding against a provider; not subject to disclosure under the Freedom of Information Act; and not permitted as evidence in any civil, criminal, or administrative disciplinary proceeding. Disclosure is permitted for use in a criminal or civil proceeding after a court determines that the information meets specific guidelines. In addition, the data could be used for educational and research initiatives and analyses supported by the U.S. Agency for Healthcare Research and Quality.

Update

The 2006 General Assembly passed House Bill 380, the executive branch budget bill, that included language that required the Cabinet for Health and Family Services to "make every effort to make health data findings that can serve as a basis to educate consumers on the cost and quality of health care and providers...through the cost-effective and timely use of the media and the Internet and through distribution of the findings to health facilities and health-care providers for dissemination to their patients." The budget language changes prior existing requirements by adding "charges, quality, and outcomes of health care services" to the types of data to be collected and disseminated; prohibiting the sale of aggregate data; requiring that the sources of data be identified and explanations provided about how the data should be used by consumers; and specifying that accepted national quality indicators will be used to report quality and outcomes of health services. The cabinet plans to post claims data on the Internet by November 2006.

During the 2006 General Assembly, the House of Representatives considered, but did not pass, HB 622. This bill would have required the Cabinet for Health and Family Services to collect and post information about the cost, quality, and outcome of health services provided by hospitals and ambulatory facilities, instead of its current practice of conducting statistical surveys from a sample of those health care facilities.

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

Background

A standby guardian law allows a custodial parent to designate a person of the parent's choice to assume the legal care and custody of his or her children. The standby guardian would act if the parent became unable to provide care because of death or an incapacitating illness. Providing for an immediate legal caretaker for a child upon a parent's incapacitation could avoid the risk of temporary court-ordered guardianship or foster care placement.

The need for standby guardians became a consideration as the number of children orphaned by the deaths 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 2003, 5,336 adults between the ages of 25 and 54 died from heart disease, cancer, unintentional injuries, suicide, and other causes (Commonwealth. Cabinet. Table). 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, 156,620 in 2005 (U.S. Census Bureau. Kentucky). The risk is also heightened by the number of grandparents with primary responsibility for grandchildren, 37,990 in 2003 (U.S. Census Bureau. American).

Update

The 2006 General Assembly considered, but did not pass, House Bill 221 that would have permitted a parent to designate the legal care and custody of his or her children to a person of the parent's choice when the parent is unable to provide care because of death or an incapacitating illness. As of May 2005, 21 states have provisions for standby guardianship (National Adoption).

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. In 1996, the Kentucky General Assembly granted advanced registered nurse practitioners (ARNPs) the authority to prescribe noncontrolled drugs when working under a collaborative agreement with a physician. Some 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.

Update

The 2006 General Assembly passed Senate Bill 65 that permits an ARNP to prescribe, but not dispense, controlled substances. It also limits the prescribing authority of psychostimulants to an ARNP who is certified in psychiatric nursing and practicing at specific licensed facilities. The law requires an ARNP to have a specific written collaborative agreement with a physician and certification by the United States Drug Enforcement Agency before prescribing controlled substances. There are also specific requirements for licensure and data collection to prevent unlawful prescribing practices relating to controlled substances.

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

Background

Medicaid, like other health care plans, faces increasing costs. In fiscal year 2005, Medicaid expenditures were 22 percent of the total state budget, the second-largest item after education expenditures. Approximately 700,000 Kentuckians are enrolled in the program.

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 avoid necessary treatment due to inability to make co-payments.

Update

During the time that the Department for Medicaid Services was in the process of applying for the 1115 Waiver, Congress passed the Deficit Reduction Act of 2005, giving states new flexibility to operate their Medicaid programs. Most of the changes proposed in the waiver application may be implemented under the the Act. In July 2006, the department submitted amendments to existing administrative regulations to implement KyHealth Choices—the new Medicaid program.

KyHealth Choices now requires a $1 co-payment for generic drugs, a $2 co-payment for preferred drugs, and a 5 percent coinsurance for nonpreferred drugs (Commonwealth. Cabinet. Global). Certain federally excluded categories, such as children younger than age 18, women who are pregnant, and individuals receiving hospice services, are not subject to these co-payments. The "preferred" and "non-preferred" drugs relate to Medicaid's formulary, or preferred drug list. The number of name brand drugs per recipient is limited to three, and the total number of prescriptions per month per recipient is limited to four. Annual maximum out-of-pocket expense limits were established at $225 for co-payments for services and an additional $225 for co-payments for prescription drugs. Additional co-payments and cost-sharing requirements were implemented in different benefit packages for specific population groups. The Medicaid agency states that these are "soft" limits, and with demonstration of medical need, services and drugs may be approved over the specified limits.

Medicaid's preferred drug list, those with the lowest co-pays, exclude many drugs that are necessary for effective treatment of cancer, renal disease, organ transplants, and other serious, life-threatening conditions. The Department for Medicaid Services advised it will limit the 5 percent coinsurance requirement for specific Tier 3 drugs, including psychotropic medications and cancer drugs, to $20 per prescription, effective October 3, 2006. It is expected that the department will review the experience of this policy.

Works Cited

Association for Professionals in Infection Control and Epidemiology, Inc. "APIC Position on Mandatory Public Reporting of Healthcare-Associated Infections March 14, 2005."
<http://www.apic.org/AM/Template.cfm?Section=Position_Papers1&Tem

plate=/CM/Content/ContentDisplay.cfm&contentFileID=2240> (accessed Oct. 24, 2005).

Commonwealth of Kentucky. Cabinet for Health and Family Services. Table 2-I Leading Causes of Resident Deaths by Age Group; Number and Age-Specific Rate: Kentucky, 2003. <http://chfs.ky.gov/NR/rdonlyres/5A265A8C-D7A4-4090-BAD1-0902D5E48AF5/0/2003_Deaths_Table_2I.pdf> (accessed Sept. 20, 2006).

---. ---. Global Choices. <http://chfs.ky.gov/NR/rdonlyres/E34D6CC0-6434-406F-9A03-7376F4AA17A0/0/GlobalChoicesGrid5806.pdf> (accessed Sept. 20, 2006).

Larsen, Judith. Standby Guardian Laws: A Guide for Legislators, Lawyers, and Child Welfare Professionals. Prepared by The American Bar Association Center on Children and the Law and Circle Solutions, Inc. for the U.S. Dept. of Health and Human Services, Administration for Children and Families Children's Bureau. <http://www.abanet.org/child/guardianship_download.html> (accessed Oct. 20, 2005).

National Adoption Information Clearing House. *Standby Guardianship: Summary of State Laws*, May 2005. <http://www.childwelfare.gov/systemwide/laws_policies/statutes/guardianshipall.pdf> (accessed August 29, 2006).

United States. Census Bureau. American Community Survey 2003 Multi-Year Profile Kentucky. <http://www.census.gov/acs/www/Products/Profiles/Chg/2003/ACS/Tabular/040/04000US212.htm> (accessed Sept. 20, 2006).

---. ---. Kentucky General Demographic Characteristics: 2005. <http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=04000US21&-qr_name=ACS_2005_EST_G00_DP1&-ds_name=ACS_2005_EST_G00_&-_lang=en&-_sse=on> (accessed Sept. 20, 2006).

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.

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.

Update

The 2006 Regular Session the General Assembly passed House Bill 508, relating to eminent domain. HB 508 specified that the power to use "eminent domain shall be subject to the condition that the authority be exercised only to effectuate a public use of the condemned property." The bill further defined "public use" to include, among other things, government ownership, possession or enjoyment, or acquisition and transfer of property.

HB 508 permits continued use of eminent domain to take property under KRS Chapter 99, which is designed to eliminate blighted areas and slum areas. It also limits the power of government to transfer property taken by eminent domain to a private developer where the public benefit of the action is indirect.

The bill amended KRS 416.540, relating to definitions for condemnation actions, to change the phrase "public purpose" to "public use."

Should the General Assembly increase protections for identity theft victims?

Background[1]

Identity theft occurs when a person acquires another's personal information in order to commit fraud or theft. In 2005, approximately 9 million Americans were the victims of identity theft with an average fraud amount of $6,383 per victim (Better Business Bureau). Identity theft victims often find funds missing from their bank accounts or make the unfortunate discovery that someone has taken over their identity altogether, "running up debts and committing crimes while using the victims' names. A victim's losses may include not only out-of-pocket losses, but additional costs associated with trying to restore his or her reputation in the community and correcting erroneous information about his financial or personal status" (United States. Department of Justice). For example, in 2003, victims of identity theft paid on average between $500 and $1,200 each in out-of-pocket costs and spent a total of nearly 300 million hours trying to undo the effects of identity theft (United States. Federal. Identity Theft Survey). However, victims do not bear the entire brunt of identity theft crimes; businesses absorb the majority of the costs. According to the U.S. Federal Trade Commission, identify theft in 2003 cost United States businesses nearly $48 billion and cost consumers nearly $5 billion (Identity Theft Survey).

Discussion

The Kentucky General Assembly first outlawed identity theft in 2000 but considered the subject again in the 2006 Regular Session by enacting legislation that limits a consumer reporting agency from releasing a credit report or any information from the report

[1] For information about a related issue considered by the 2006 General Assembly, please refer to the summary of security freeze legislation discussed under "Banking and Insurance" in this publication.

without authorization from the consumer (House Bill 54). However, with the number of identity theft victims increasing, the General Assembly may consider additional identity theft safeguards (United States. Federal. Identity Theft Victim. 2003-2005). Kentucky's legislative response could take a number of forms:

Security Breach Notification
Some states (including four of Kentucky's border states) require that companies and/or state agencies notify consumers when their personal information has been breached (National. Breach). Several states began enacting legislation after the ChoicePoint controversy in 2005, when the company revealed that, as a victim of a security breach, it had sold the personal information of 145,000 people to a criminal enterprise. While the company promptly notified California residents (the first state to enact security breach notification laws), it delayed notifying the affected residents of other states. The University of Kentucky has also been a victim of a security breach.

Proponents argue that victims of identity theft must act quickly to minimize damage and that swift notification is essential. Early detection reduces the overall cost of the theft, the cost to the victim, the amount of resolution time, and the number of new accounts opened by the perpetrator under the victim's name (United States. Federal. Identity Theft Survey). However, opponents argue that the monetary costs of compliance, such as staff training, implementation costs, the actual cost of issuing the notifications, and the payment of fines (if included in the legislation), are prohibitive. In addition, data and technology companies contend that these laws are often too broad to be effective and they fail to distinguish between important data breaches and inconsequential information losses.

Identity Theft Passports
Several states (including two of Kentucky's border states) have created identity theft passports to provide victims a way of demonstrating to law enforcement and creditors that their identity has been stolen (National. Breach). Proponents maintain that the passport makes it easier for identity theft victims to begin rehabilitating their credit history and identifying any fraudulent criminal charges (State of Ohio). Opponents counter that the passport provides another method of identification for identity theft perpetrators to exploit and that the monetary costs of compliance outweigh the benefits. Some also believe that passport programs detract from the underlying problem of the identity theft itself (Evers).

Procedures for the Disposal of Personal Records
Several states (including four of Kentucky's border states) have prescribed procedures for disposing of records that contain personal information, such as shredding the documents or redacting the personal information (National. Identity). Proponents argue that such disposal requirements are necessary in order to keep sensitive information out of the public domain, especially in situations where consumers are completely unaware that their information has been leaked. Opponents argue against such procedures because of the monetary costs and time restraints associated with shredding or redacting possibly thousands of documents.

Police Report Requirement
Several states (including one of Kentucky's border states) require police and sheriffs' departments to provide a police report at the request of a person claiming to be an identity theft victim (National. Identity). Proponents argue that many creditors require a police report in order to start the process of disputing a claim and that often consumers have difficulty obtaining police reports (Leatherman). In addition, without police reports, many victims are unable to obtain transaction records of the accounts opened fraudulently in their names that they are otherwise entitled to under the federal Cantwell-Enzi Act (Identity Theft Resource Center). Opponents are concerned about the possible misuse by those who are not identity theft victims.

Protection of Social Security Numbers
Several states have enacted measures to protect Social Security numbers, such as prohibiting their being printed on certain documents, restricting their use by private businesses, and/or redacting them from public records. Kentucky's proposed Civil Rule 10.01, relating to the concealment of personal information from public court records, and existing statutes that shield Social Security numbers from public display or that authorize other forms of identification already offer some protection for victims. Proponents argue that Social Security numbers allow perpetrators to open accounts in the victim's name with ease (Wern). Any law that would restrict access to this information would better protect consumers. Some employers and businesses argue that Social Security numbers are necessary to run credit checks, to identify clients, and to accurately bill clients. They are likely to resist any attempt to restrict their access to and use of such information (Kiviat).

Miscellaneous
Some other states have enacted legislation prohibiting discrimination against identity theft victims (for example, denying utility service or charging higher insurance rates), banning prisoners from working with personal information, banning identity theft perpetrators from working with the elderly, allowing expungement of false arrest records for a person whose identity was used, and authorizing court proceedings to declare a person an identity theft victim (National. Identity).

Works Cited

Better Business Bureau. “New Research Shows Identity Fraud Growth Is Contained and Consumers Have More Control Than They Think.” Jan. 31, 2006. <http://www.bbbonline.org/IDtheft/safetyQuiz.asp> (accessed Aug. 25, 2006).

Evers, Joris. “Iowa Proposes ID Theft ‘Passport.’” *CNET* Mar. 22, 2006. <http://news.com.com/2102-7348_3-6052308.html> (accessed Aug. 25, 2006).

Identity Theft Resource Center. “Current Laws: ITRC Recommendations for Legislation.” <http://www.idtheftcenter.org/lawsrecomm.shtml> (accessed Aug. 24, 2006).

Kiviat, Barbara. “Who’s Got Your Number.” *Time* July 17, 2006.

Leatherman, Todd. Testimony. Meeting of the Judiciary Committee. Frankfort. Feb. 22, 2006.

National Conference of State Legislatures. “Breach of Information.” <http://www.ncsl.org/programs/lis/cip/priv/breach.htm> (accessed Aug. 24, 2006).

---. “Identity Theft.” <http://www.ncsl.org/programs/lis/privacy/idt-legis.htm> (accessed Aug. 24, 2006).

State of Ohio. Office of the Attorney General. “Identity Theft Verification Passport Program.” <http://www.ag.state.oh.us/victim/idtheft/fact_sheet.pdf> (accessed Aug. 25, 2006).

United States. Department of Justice. “In the Spotlight: Identity Theft.” <http://www.ncjrs.gov/spotlight/identity_theft/summary.html> (accessed Aug. 24, 2006).

---. Federal Trade Commission. “Identity Theft Survey.” Sept. 2003.

---.---. “Identity Theft Victim Complaint Data: Figures and Trends in Kentucky.” 2003.

---.---. “Identity Theft Victim Complaint Data: Figures and Trends in Kentucky.” 2004.

---.---. "Identity Theft Victim Complaint Data: Figures and Trends in Kentucky." 2005.

Wern, Theodore. Testimony. Meeting of the Committee on Ways and Means Subcommittee on Social Security. Washington, D.C. July 10, 2003.

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 the three-tier system of sale: it must broker its wine through a Kentucky wholesaler who in turn distributes the wine to retailers. Out-of-state wineries are prohibited from shipping their wines directly to consumers in Kentucky (KRS 244.165). Kentucky farm and small wineries may bypass the three-tier system and sell directly to the retailers and consumers. Kentucky wineries are also allowed to sell wine to consumers by direct shipment if certain conditions are met. Farm wineries, by definition, must be located in Kentucky (KRS 243.156). Similarly, small wineries, by definition, must make their wine from grapes, fruit, or honey grown in Kentucky (KRS 243.155).

The constitutionality of treating in-state and out-of-state wineries differently was the central issue in the United States Supreme Court case *Granholm et al. v. Heald* (2005). The Supreme Court held that a state could not discriminate against an out-of-state winery unless the discriminatory practices advance a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. The Supreme Court held that the 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 and that such discrimination is neither authorized nor permitted by the 21^{st} Amendment.

Update

The 2006 Regular Session of the General Assembly enacted Senate Bill 82 in response to *Granholm*. Effective January 1, 2007, the new law

- creates a small farm winery license that is available to both in-state and out-of-state wineries that produce less than 50,000 gallons of wine annually;
- eliminates the requirement that Kentucky wineries use Kentucky products in making their wines; and
- permits out-of-state wineries to ship into Kentucky under the same conditions that Kentucky wineries ship to consumers out of state. The wine must be purchased in person, be shipped by common carrier, and be limited to two cases shipped per visit.

Recently, the U.S. District Court in *Huber Winery v. Wilcher* (2006) held that some of Kentucky's existing statutes discriminated against interstate commerce. In its decision, the court

- struck down provisions requiring that licensed farm wineries be located in Kentucky;
- struck down provisions requiring that wines be made from Kentucky products;
- held that the in-person purchase requirement discriminated against out-of-state interests by creating an economic barrier that benefits in-state wineries while burdening out-of-state wineries; and
- prohibited the state from imposing criminal penalties on all properly licensed out-of-state small or farm wineries that ship wine into the state in violation of KRS 244.165.

Huber is on appeal to the U.S. Sixth Circuit Court of Appeals. The case was filed prior to the 2006 Regular Session. The newly enacted provisions of Senate Bill 82 are not included in the issues.

Works Cited

Granholm et al. v. Heald. 125 S.Ct. 1885 (2005).

Huber Winery v. Wilcher, 2006 U.S. Dist. Lexis 60237 (W.D. Ky. August 21, 2006).

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 for local incarceration of all prisoners entering the state's judicial system. Incarcerated prisoners remain the responsibility of county government until they are sentenced by the courts or released. Subsequent statutes and administrative regulations have established the framework by which local jails are operated and funded from state revenues. State appropriations are often supplemented by local funds.

County government has responsibility for the local incarceration of all prisoners regardless of whether they are arrested for violating federal, state, or local laws or ordinances. A county that has closed its jail still has the responsibility to contract with another county for the care of its prisoners and to provide transportation to and from the contracted jail as needed.

While county governments receive funding from the state for the care of inmates, county officials maintain that additional local funding is often necessary (Turner). In *Kentucky Jails: A Financial Overview*, the cost of housing an inmate in Kentucky's county or regional jails in 2005 was found to be $19.90-$84.84 per day. The average for the majority of counties was $36.25, and the median was $32.65. The state paid $30.51 per day in fiscal year 2006 plus the medical care and transportation costs incurred by a prisoner (Commonwealth). There are approximately 7,000 state prisoners in local jails.

Representatives of the Kentucky County Judge/Executive Association say costs relating to the operation and maintenance of the 76 full-service jails and 16 life-safety jail facilities continue to rise. They cite health care costs for prisoners as a primary factor for the dramatic rise in the costs (Lang).

County officials point out that almost all locally incarcerated prisoners are charged with violating either state or federal laws. They note that each county is able to negotiate with the federal government for the per diem rate paid for federal inmates. The number of federal inmates annually averages from 35-50 statewide. They also say that these negotiated rates usually cover the full costs for the care of federal inmates. The goal of county officials is for the state to provide full funding for caring and housing state prisoners; however, they acknowledge the possible limitations in the current budget climate. In the absence of a state takeover or additional state funding, county officials have said that at a minimum they would like a continued dialogue between state and local governments on this issue, no passage of unfunded mandates on local governments in this area, 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 inmates incarcerated in local jails (White). They also note that counties received an increase in the per diem alottment in fiscal years 2005 and 2006; an increase in 2005 from $20,000 to $24,000 in the annual jail allotment funding for counties with closed and life-safety jails; and state appropriation assistance for catastrophic medical costs. They argue that improved efficiency, collection rates of inmate fees, and food and drug buying methods would reduce costs.

In *Kentucky Jails: A Financial Overview*, the Auditor of Public Accounts supported many assertions of both the county officials and the state executives. Improved local management and budgetary practices of jails and jail funds and better oversight of inmate costs could lead to local government savings. The state's reimbursement rates exceed the per diem costs in more than 40 counties, and eight counties operate their jails with a profit. The state practice of leaving state prisoners in county jails causes overcrowding. The state does not fairly allocate funds for payment of medical costs. The state pays "$9.2 million less than its proportionate share of costs based on its share of inmate days" (Commonwealth).

Update

The 2006 Kentucky General Assembly passed House Bill 380, the executive branch budget bill, that

- appropriates $1 million in each fiscal year to provide an increase of the per diem rate paid to counties for housing state inmates. This increases the state per diem to $30.94 for fiscal year 2007; and
- designates $931,100 in each fiscal year to provide for medical care contracts for local inmates. The funds will be distributed to counties upon approval by the Department of Corrections.

County officials maintain that the increased per diem amount does not cover the costs of housing state prisoners in most county jails. The deficit is compounded by unfunded mandates on local governments. For example, the General Assembly passed House Bill 3 that requires jails instead of police to fingerprint all incoming prisoners. It has been estimated that this mandate will cost counties $295,000 in the next two fiscal years (Hampton).

Other options offered by legislators and special interest groups as possible means for assistance to county governments in this area include a state-level, multijurisdictional task force on jails; experimentation with alternative health care delivery systems for inmates; better rate negotiations with hospitals and doctors regarding inmate medical care; and the possibility of alternative revenue sources for counties as a result of tax modernization.

Works Cited

Commonwealth of Kentucky. Auditor of Public Accounts. *Kentucky Jails: A Financial Overview*. Frankfort. Feb. 2006.

Hampton, Shellie. Kentucky County Judge/Executive Association. Telephone interview. Sept. 21, 2006.

Lang, Vince. Kentucky County Judge/Executive Association. Testimony. Meeting of the Interim Joint Committee on Local Government. Frankfort. Sept. 28, 2005.

Turner, Tommy. Larue County Judge/Executive. Testimony. Informational meeting of the House Committee on Local Government. Louisville. July 2005.

White, Kelly. Kentucky Dept. of Corrections. Testimony. Meeting of the Interim Joint Committee on Local Government. Frankfort. Sept. 28, 2005; and telephone interview. Sept. 29, 2006.

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 the families of deceased or disabled veterans (Beavers).

For each of the 1,400 job classifications, the state uses one of three selection methods to fill a vacancy in the classification: Qualifying, Written Test, and Training and Experience. The preference comes into play when a written examination is required, as is the case with the Written Test and Training and Experience methods. These selection methods apply to 27 percent of all merit job classifications (Roberts. July 14).

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 (KRS 18A.150). Veterans preference points are added only if the applicant passes the written examination without benefit of the points (KRS 18A.150). After the preference points are added to the examination scores of individuals who qualify for veterans preference, the Personnel Cabinet ranks all candidates for a job who have passed the examination from highest score to lowest score. The five highest-scoring candidates are finalists listed on a register certificate. The cabinet refers them 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 (Roberts. July 7).

Update

The 2006 Kentucky General Assembly considered, but did not pass, House Bill 24 that would have established a veterans preference for the filling of all merit job vacancies. As introduced, HB 24 required that the register certificate of finalists for a merit job identify all veterans and family members on the certificate who qualified for veterans preference points under KRS 18A.150, regardless of the selection method (Qualifying, Written Test, or

Training and Experience). The bill further required a hiring state agency to offer a job interview to these veterans and family members. During the legislative process, amendments to HB 24 changed the number of veterans and family members who would have to be interviewed. The first amendment limited the number to the 10 most qualified veterans and family members, and subsequent amendments changed that number to 3 and 5.

Should the General Assembly create a military family assistance fund?

Background

Since September 11, 2001, many Kentucky National Guard members and Kentucky resident military reservists have deployed overseas. As of September 1, 2005, the Kentucky Army National Guard had 6,299 soldiers, of which 3,808, or 60 percent, had deployed more than once (Storm). As of October 31, 2005, 1,600 Kentucky National Guard soldiers were serving in Afghanistan, Iraq, or other federal duty (LeMay. 2005).

A family may face significant hardships when a husband, wife, or single parent is called to federal active duty. 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.

According to the National Conference of State Legislatures, at least 20 states have created a military family assistance fund to help military families when a family member is deployed (2002-2005).

Update

During the 2006 Regular Session, the Kentucky General Assembly passed House Bill 380 that appropriated $500,000 to fund the newly created Military Family Assistance Trust Fund. When a Kentuckian is deployed as a member of the regular military outside the United States or as a member of the National Guard or Reserve on any federal active duty, the trust fund comes into play. The service member’s family may apply to receive a grant from the trust fund to pay for necessities such as housing, utilities, groceries, health insurance co-pay, and child care.

A large number of Kentuckians continue to serve on federal duty. For example, as of September 25, 2006, 1,200 Kentucky National Guard soldiers were serving (LeMay. 2006).

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

As of October 31, 2005, eight Kentucky resident members of the National Guard and three Kentucky resident members of the Reserve had died on federal active duty in Afghanistan and Iraq since September 11, 2001 (Commonwealth. 2005). Until this year, Kentucky did not provide a death benefit to their families. While KRS 61.315 required that the Commonwealth pay a lump sum of $75,000 to the family of a member of the Kentucky National Guard who died on state active duty, there was no provision for the family of a Kentucky resident member of the National Guard or Reserve who died on federal active duty. Kentucky did not and 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).

Update

During the 2006 Regular Session, the Kentucky General Assembly passed House Bill 380. Section 12 of Part XXVIII creates a death benefit, in the amount of $80,000, for the family of a member of the Kentucky National Guard who dies on state active duty or a Kentucky resident member of the National Guard or Reserve who dies on federal active duty. This death benefit is owed to the families of the 12 Kentucky resident members of the National Guard and three Kentucky resident members of the Reserve who have died between September 11, 2001 and September 25, 2006, on federal active duty participating in Afghanistan and Iraq (Commonwealth. 2006).

Should the General Assembly permit a worker who leaves Kentucky due to the out-of-state military transfer of the spouse to be eligible for unemployment insurance benefits?

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. 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, three bills to provide unemployment compensation eligibility to workers upon military transfer of a spouse: HB 505 in 2000, and HB 293 and SB 33 in 2005.

Update

During the 2006 Regular Session, the Kentucky General Assembly passed House Bill 380. The bill prohibits the unemployment insurance disqualification of a worker who leaves employment due to the military transfer of the worker's spouse to a different state. However, this provision favoring eligibility applies only if the state of relocation has adopted a substantially similar statute.

Works Cited

Beavers, Les. Testimony. Meeting of the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection. July 14, 2005.

Commonwealth of Kentucky. Department of Veterans Affairs. "Kentucky Losses in the War on Terror." <http://www.kdva.net/casualties.pdf> (accessed Oct. 31, 2005).

---. Department of Veterans Affairs. "Kentucky Losses in the War on Terror." <http://www.kdva.net/casualties.pdf> (accessed Sept. 25, 2006).

LeMay, Jason. Personal E-mail. "Kentucky National Guard FY05 Activation/ Deployment." Oct. 31, 2005.

LeMay, Jason. Personal E-mail. "Mobilization Information." Sept. 25, 2006.

National Conference of State Legislatures. "2002-2005 Legislation Regarding Military Family Assistance Funds." Oct. 18, 2005.

Roberts, Erwin. Testimony. Meeting of the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection. July 7, 2005.

---. Testimony. Meeting of the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection. July 14, 2005.

Storm, Donald. Testimony. Meeting of the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection. Sept. 1, 2005.

United States. Department of Defense. USA4MilitaryFamilies.org. PowerPoint Presentation on Unemployment Compensation for Military Spouses. April 2005. <http://itcpre.itc.dod.mil/dav/lsn/LSN/BINARY_RESOURCE/BINARY_CONTENT/1806371.ppt> (accessed Oct. 17, 2005).

State Government

Should the General Assembly (1) increase deductible and co-payment components and (2) 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. Rising premiums have significantly impacted the states' budgets, and states have increased employees' co-payments and deductibles to offset the higher costs. From 2004 to 2005, the cost of premiums to the state of Kentucky rose 38 percent (Commonwealth. Personnel. Self).

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. These recommendations involved higher deductibles and co-payments and disease management and wellness programs.

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 costs. 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 costs associated with this group. However, incentives would be key to encouraging participation in disease management programs and health risk appraisals (Commonwealth. Personnel. Group).

Update

The 2006 General Assembly passed House Bill 380, the executive budget bill, that creates a health reimbursement account for state employees. As implemented, this program includes a high-deductible health plan and a $1,000 annual contribution from the Commonwealth.

For plan year 2007, public employees will not experience an increase in co-payments and deductibles. While premiums will increase by 5.9 percent, the Commonwealth "will continue to pay 100% of the cost of single coverage in the Commonwealth Enhanced option" (Crall). The Commonwealth is also offering disease management, smoking cessation, maternity, preventive care, and personal health analysis programs (Commonwealth. Personnel. 2007). Better health management is offered as an incentive to employees, but there are no financial incentives.

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

Background

It is estimated that the percentage increase of employees' pension costs will outpace the percentage increase in General Fund growth over the next 10 years (Commonwealth. Long-Term). Although House Bill 380 from the 2006 Regular Session increased funding for retirement by a total of $100.9 million for the biennium, the rates are not at the level that was recommended by the consulting actuary for the Kentucky Retirement Systems (Kentucky Retirement. KRS Member News).

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 as shown in Table 1.

Table 1
2006-2007 Employer Pension Contribution Rate Comparison

Type of Employee	2006-2007 Rates (%)	Recommended Rates (%)
KERS nonhazardous	7.75	17.13
KERS hazardous	22.00	23.32
SPRS	25.50	42.30

2006-2007 rates taken from HB 380.
Source: Kentucky Retirement Systems. Employer.

Based on the two-year budget reduction, Kentucky Retirement Systems projects a shortfall of more than $377 million. According to the retirement systems, reductions to the KERS and the SPRS employer contribution rates have occurred in 9 of the last 15 fiscal years and for the sixth year in a row, resulting in more than $744 million in lost contributions and investment opportunities (Kentucky Retirement. KRS Member News).

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.

Should the General Assembly change the state's retirement systems from a defined benefit plan to a defined contribution plan for new hires?

Background

Defined benefit plans are pension plans typically offered by state and local governments under which employees receive a set monthly amount upon retirement, which is guaranteed for life. The set monthly amount given upon retirement is dependent on a formula and the employee’s length of service. Defined contribution plans do not guarantee a set monthly amount upon retirement but rather the employer guarantees a certain contribution to the employee’s account. These plans are savings programs dependent on contribution amounts and investment returns. Because they are savings plans, the benefit may cease before the death of the individual retiree.

Several states have recently moved their plans from a defined benefit to a defined contribution as a means to control employer costs (Hanes).

Discussion

Most governments offer defined benefit plans to their employees. Under a defined benefit system, government employees are guaranteed a certain retirement income as long as they become vested in the system and work the required number of years. The private sector began changing from defined benefit to defined contribution retirement plans in the 1980s as a way to control financial risk. Unlike defined benefit plans, defined contribution plans do not reward length of service but are portable in nature (Sostek).

The District of Columbia, Michigan, Nebraska, and West Virginia moved their employees into defined contribution retirement plans. Other states, such as Colorado, Florida, Montana, North Dakota, Ohio, and South Carolina, offer defined contribution retirement plans as optional primary plans. At least five states offer hybrid plans that maintain defined contributions for employee contributions, but with regard to employer contributions, the plas are based on a defined benefit (National).

Some states that moved to defined contribution plans or optional defined contribution plans did not experience the results that they anticipated, and the nationwide trend of moving to defined contribution plans has “slowed significantly” since the peak in the late 1990s (Sostek).

Instead of moving Kentucky retirees from a defined benefit plan to a defined contribution plan, the Kentucky Retirement Systems suggests other options such as reducing benefit levels for new hires and keeping insurance premium increases at a minimum (Hanes).

Works Cited

Commonwealth of Kentucky. Long-Term Policy Research Center. "Retirement Systems Will Require a Bigger Share of State Funds." Policy Note No. 14. Frankfort. Oct. 2003.

---. Personnel Cabinet. “2007 Plan Year Health Insurance Handbook.” <http://personnel.ky.gov/NR/rdonlyres/D963EF26-5475-4337-80B8-C4C2F1E46CBB/0/2007Handbook.pdf> (accessed Sept. 20, 2006).

---. ---. "Group Composition Committee -Group Analysis." June 22, 2005.

---. ---. “Self-Insurance, Premium Contributions, Collective Bargaining, Retiree Medical, and HRA/HSA Comparison.” July 8, 2005.

Crall, Brian. Secretary, Personnel Cabinet, and Mark Birdwhistell, Secretary, Cabinet for Health and Family Services. Letter to State Employees. Aug. 30, 2006.

Hanes, William P. Executive Director. Kentucky Retirement Systems. Letter to Interim Joint Committee on State and Local Government. July 24, 2006.

Kaiser Family Foundation and Health Research and Educational Trust Program Area: Health Care Marketplace Project. Employer Health Benefits 2005 Annual Survey. Sept. 14, 2005.

Kentucky Retirement Systems. Employer Contribution Rates. <http://www.kyret.com/Employers/EmployerContrRates_11-21-05.htm> (accessed Sept. 20, 2006).

---. KRS Member News. Volume 24 Number 2, June 2006. <www.kyret.com/newsltrs/membernews062006.pdf> (accessed Sept. 20, 2006).

Martinez, Barbara. "Employees Pay More As Health Costs Rise." *Career Journal. Wall Street Journal Online.* June 2003. <http://www.careerjournal.com/hrcenter/articles/20030624-martinez.html> (accessed Nov. 4, 2005).

Sostek, Anya. “Pension Pendulum.” *Governing*. March 2004. <http://66.23.131.98/archive/2004/mar/pensions.txt> (accessed Sept. 20, 2006).

National Conference of State Legislatures. Defined Benefit and Defined Contribution Retirement Plans. Feb. 2005. <www.ncsl.org/programs/fiscal/defineretire.htm> (accessed Aug. 29, 2006).

Transportation

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

Background

Traffic accidents pose three primary concerns: traffic congestion delays, increased risk of secondary crashes, and risk to incident respondents (State of Ohio). The Federal Highway Administration estimates that nationally, approximately 2 percent of all accidents are secondary crashes. 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.

Update

During the 2006 Regular Session, the General Assembly enacted two identical bills, Senate Bill 44 and House Bill 272, that instituted quick clearance provisions for accidents on interstates, parkways, and entrance and exit ramps associated with these types of roads. The quick clearance provisions apply only to accidents where there is no visible injury or hazardous materials involvement. Additionally, in crashes that involve injuries or deaths, the quick clearance provisions that allow law enforcement officers to move vehicles or cargo from the roadway apply only after all medical treatment and site investigations are complete.

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 1 to 6 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 that 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. Only six states, including Kentucky, have no intermediate license step involving a curfew or passenger restrictions in place for young drivers (Insurance Institute).

Update

During the 2006 Regular Session, the General Assembly adopted House Bill 90 that instituted a model graduated driver's license system for young drivers. The changes made by the legislation will be phased in over the next year.

Instruction Permit Stage

- Persons 16 and 17 years of age may apply for a permit and, if they wish to pursue an operator's license, must later apply for an intermediate license. Persons 18 to 20 years of age who wish to drive must apply for a permit and later an operator's license.
- Drivers are limited to one passenger younger than age 20 who is not related to the driver, with exemptions for students taking driver's education classes and for vehicles with farm tags that are engaged in agricultural activities.
- A violation of the passenger restriction is deemed a secondary offense.
- Before applying for an intermediate license, a permit holder aged 16 or 17 must hold a permit for 180 days without a violation of the supervision, curfew, or passenger restrictions; any violation of KRS Chapter 189 for which penalty points are assessed; or a conviction for driving under the influence (DUI) under KRS 189A.010(1).

Intermediate Stage

- A permit holder aged 16 or 17 may apply for an intermediate license after holding a permit for 180 days with no violations and having a parent or guardian attest that the applicant has driven a minimum of 60 hours, 10 of which must be at night.
- After passing the road test, the individual will receive a sticker on the permit signifying that the individual possesses an intermediate operator's license.
- Intermediate licenses have the same curfew restrictions that exist for permits (midnight to 6 a.m.).
- Drivers are limited to one passenger younger than age 20 who is not related to the driver, with exemptions for students taking driver's education classes and for vehicles with farm tags that are engaged in agricultural activities.
- A violation of the passenger restriction is deemed a secondary offense.
- Before applying for a full operator's license, an intermediate license holder must hold the intermediate licensee for 180 days without a violation of the supervision, curfew, or passenger restrictions; any violation of KRS Chapter 189 for which

penalty points are assessed; or a conviction for DUI under KRS 189A.010(1).

Full Operator's License

- An intermediate license holder may apply for a full operator's license after holding an intermediate license permit for 180 days with no violations and after completing the state-mandated education course as prescribed in KRS 186.410. Currently, this course must be completed within a year of getting an operator's license.

The effective date of the provisions of the bill is October 1, 2006, for those drivers ages 16 to 18. These drivers can first apply for an intermediate license on April 1, 2007; and they can first apply for a full license on October 1, 2007.

Works Cited

Insurance Institute for Highway Safety. US Licensing Systems for Young Drivers. Oct. 2005.

State of Ohio. Department of Transportation. Ohio Lane Closure Protocol Committee. Ohio Quick Clear Best Practices Guide. Ohio Department of Transportation: March 2003.

Swan, Asa J. Kentucky Transportation Cabinet. Testimony. Meeting of the Interim Joint Committee on Transportation. Nov. 1, 2005.