

Issues Confronting the 2008 Kentucky General Assembly



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Legislative Research Commission
Frankfort, Kentucky

Kentucky Legislative Research Commission

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

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

Issues Confronting the 2008 Kentucky General Assembly

**Prepared by
Members of the
Legislative Research Commission Staff**

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Foreword

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

This publication is a compilation of major issues confronting the 2008 General Assembly. It is by no means an exhaustive list; new issues will arise with the needs of Kentucky's citizens.

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

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

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

Robert Sherman
Director

Legislative Research Commission
Frankfort, Kentucky
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Agriculture and Natural Resources

Should the General Assembly increase the regulation of and penalties relating to Kentucky's ginseng law?

Background

Ginseng is a plant whose roots are used as a medicinal herb, mostly in Asian markets, to purportedly cure conditions from headaches to heart ailments. Though not currently on the endangered species list, the plant is protected under U.S. Fish and Wildlife Service laws. Because of this protection, the Fish and Wildlife Service strictly regulates the exportation of ginseng.

Kentucky is the largest supplier of wild ginseng in the U.S., exporting approximately 7-8 tons per year. At an average wholesale price of \$300-\$500 per pound, Kentucky dealers pay harvesters up to \$8 million annually (U.S. Fish and Wildlife Service).

The harvesting and sale of ginseng is regulated by the Kentucky Department of Agriculture under KRS 246.660. This statute directs the department to administer a wild ginseng program that would provide a framework for Kentucky ginseng to meet federal exportation requirements.

Ginseng dealers are required by administrative regulation 302 KAR 45:010 to register with the department. They must comply with recordkeeping and reporting guidelines and may only purchase and sell ginseng from September 1 to March 31. The regulation also establishes a harvesting season from August 15 to December 1 to ensure that ginseng plants reach maturity each year and produce seeds prior to being harvested.

The current penalty for violating ginseng regulations is a civil fine of not less than \$100 and not more than \$500. Bills that would increase the penalties for violating the ginseng law in Kentucky were introduced in the 2006 and 2007 Regular Sessions.

Other states treat ginseng law violations in differing ways. For example, Oregon permits fines of up to \$2,000 for violations of ginseng growing regulations and classifies certain violations as misdemeanors. Virginia imposes criminal sanctions of up to a \$2,500 fine and 5 years in jail. West Virginia imposes fines of up to \$500 and 6 months in jail.

Discussion

Events involving Kentucky ginseng have kept the issue before the public. In late 2004, the U.S. Fish and Wildlife Service, in cooperation with the Kentucky Department of Agriculture, began

an undercover sting operation that resulted in citations for 20 of the state's roughly 100 registered ginseng dealers. The violations included buying ginseng outside the sales season and falsifying documents relating to the purchases (U.S. Fish and Wildlife Service; Stone).

Although the Fish and Wildlife Service has not imposed any exporting sanctions against Kentucky, it has indicated that restricting or banning the export of ginseng is an option if the department does not show improvement in its enforcement efforts. To meet this challenge, the department has been negotiating with the Fish and Wildlife Service, dealers, and others in an attempt to reach a consensus as to what can be done to force noncomplying dealers to follow the law.

Proponents of stricter enforcement argue that the recent indictments show that existing penalties are not sufficient to discourage dealers from breaking the law.

Proponents also argue that if dealers are not more strictly regulated and export sanctions are implemented, the sanctions will impose an economic hardship on many rural constituents who depend on the income generated by the sale of ginseng.

Opponents of stricter enforcement caution against imposing requirements that would make it difficult for even compliant dealers to adhere to. Opponents are also concerned that stricter penalties may be imposed upon harvesters or that harvesters may have to begin registering with the department. Currently, enforcement and oversight of the ginseng law has primarily focused on dealers.

Should the General Assembly adopt the California greenhouse gas emissions standards for new motor vehicles or wait for federal regulations?

Background

"A well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere. Respected scientists believe the two trends are related. For when carbon dioxide is released into the atmosphere, it acts like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat. It is therefore a species—the most important species—of a 'greenhouse gas,'" said U.S. Supreme Court Justice John Paul Stevens, writing for the majority in *Massachusetts v. Environmental Protection Agency* (2007).

Motor vehicles emit several greenhouse gases—carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons—that produce

more than 30 percent of the nation's greenhouse gas total. Because the transportation sector is the largest source of carbon dioxide emissions, states and the federal government are considering regulations to increase emissions standards for motor vehicles (United States).

Prior to the 2007 ruling in *Massachusetts*, the U.S. Environmental Protection Agency (EPA) refused to regulate greenhouse gases because it did not believe it had the authority. In *Massachusetts*, the U.S. Supreme Court held that the EPA has authority under the federal Clean Air Act to regulate greenhouse emissions from new motor vehicles. If the EPA determines that greenhouse gases contribute to climate change, then it must regulate them under *Massachusetts*.

In 2002, California directed the California Air Resources Board to promulgate regulations that would increase vehicle emissions standards for new passenger vehicles and light duty trucks. The new standards would measure emissions reductions in terms of grams per mile of carbon dioxide-equivalent emitted. Using this method, there would be a uniform standard to measure the emissions reductions of all greenhouse gases. There are additional emissions standards associated with efficient vehicle operation (State of Calif.).

To comply with the new standards, manufacturers would be able to choose to implement any combination of currently available or soon-to-be-available technologies in their new vehicles. California authorities anticipate that the new regulations will lower greenhouse gas emissions by as much as 30 percent by 2016 (NewsHour).

The Clean Air Act of 1990 preempts state law, but the Act also exempts California by authorizing the state to petition the EPA for a waiver to enact stricter emissions standards. While the EPA has not finalized regulations authorized by the Act, California has petitioned for a waiver because its regulations are stricter than those expected from the EPA. Therefore, before its regulations may be enforced, California must receive federal approval.

Discussion

Thirty-one states are participating in a voluntary national greenhouse gas registry in an effort to identify, track, and reduce carbon emissions (Gardner). These states are expected to implement targeted greenhouse gas reductions, a portion of which may come from the transportation sector.

If the EPA grants California's petition for a waiver, other states may either enact the California standards or follow the federal standards, but they are not permitted to enact a different set of standards because the Act's specific exemption applies only to standards adopted by California. The EPA is expected to issue a ruling by the end of 2007.

Since California adopted its greenhouse gas emissions standards for new vehicles, 14 states have adopted the California regulations through legislative action or executive order. Arizona, New Mexico, and Florida have issued executive orders to adopt the regulations, while Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington have all adopted the California standards and are awaiting approval of the waiver request to put the standards into effect. These states account for more than one-third of the U.S. automobile market.

Proponents of adopting the California greenhouse gas regulations in Kentucky argue that the increased standards are necessary to curb the amount of greenhouse gases emitted from vehicles within the state that are contributing to global climate change. Adding Kentucky to the number of states that have adopted the California regulations would help to increase the environmental benefits of reducing greenhouse gas emissions in concert with the other states and spread the economic burdens of doing so over a larger portion of the nation's vehicle purchasing market. Passing the legislation now would enable Kentucky to implement the known California standards instead of waiting for the new EPA regulations of greenhouse gas emissions, whatever they may be. Further, it would help Kentucky reduce its overall carbon dioxide emissions in preparation for reductions that must be made if a carbon dioxide cap and trade program is implemented.

Opponents of adopting the California greenhouse gas regulations argue that the issue can only properly be addressed at the federal level. The federal government must promulgate uniform regulations for all states in order to significantly reduce greenhouse gas emissions and to prevent creating competitive advantages in car manufacturing for states that refuse to adopt the regulations. Some opponents also argue that greenhouse gases do not significantly contribute to climate change and that climate change should not necessarily be avoided. Further, they argue that increased manufacturing and consumer costs will be too burdensome and would outweigh any purported beneficial environmental effects. Some also argue that it is meaningless for

Kentucky to act now because the new regulations cannot be implemented until after California has been granted a waiver from the EPA.

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Appropriations and Revenue

Should the General Assembly modify Kentucky's taxation of military personnel?

Background

Under current law, Kentucky taxes military pay following federal tax treatment as set forth in the Internal Revenue Code. Under the Internal Revenue Code, military pay is generally taxable unless it meets specific guidelines. The most significant exception to the general taxability of military pay is an exemption for pay earned while in a combat zone (Internal Revenue Service).

Military pay and all other income earned by Kentucky residents in the military is taxable to Kentucky regardless of where the recipient is stationed. If a Kentuckian earns income in another state and is taxed by that state, a credit is allowed against Kentucky tax that would be due on that income (KRS 141.070).

Nonresidents stationed in Kentucky are not taxable by Kentucky on their military pay but are taxable on other income earned in Kentucky (KRS 141.070).

Of those states that impose an individual income tax, 10 have passed legislation exempting all active-duty military compensation of some or all persons serving in the military. Some states exempt all military persons, while some only exempt reservists and National Guard members who have been activated. Four states contiguous to Kentucky offer an exemption: Illinois exempts all military pay, Indiana and West Virginia exempt all active-duty military pay of reservists and National Guard members, and Tennessee exempts military pay but does not have a state income tax. Nine other states have no personal income tax, so military pay is not taxed there, along with all other income (State Income Tax; West Virginia Code 11-21-12e; Indiana).

It should be noted that Tennessee, Texas, and Florida (all states with significant military installations) do not have an individual income tax but impose higher effective rates on sales tax and property tax than Kentucky imposes (Federation).

Military retirement benefits are generally not taxable in Kentucky. The 1995 Extraordinary Session of the General Assembly provided an exemption for retirement pay and excluded all state and federal retirement (including military retirement) for service prior to January 1, 1998. Retirement pay for service on or after January 1, 1998, is excluded up to \$41,110 per year per individual (KRS 141.010).

Discussion

Some proponents argue that Kentucky should exempt all military pay. The most prevalent reasons given are below.

- Military personnel sacrifice significantly for the United States, and their income should not be subject to tax. Exempting military pay is another way to honor the sacrifice of Kentucky's service members and their families.
- If Kentucky exempts military pay, military persons who are stationed in Kentucky will be encouraged to declare Kentucky as their state of residence. Kentuckians who are stationed in other states will be much less likely to change their residence away from Kentucky.
- There is some expectation that military personnel will return to their state of residence upon retirement. If Kentucky is the state of residence of more military personnel, then more will come to Kentucky when they retire.

Opponents of a military pay exemption claim that military personnel are adequately compensated and should be taxed in the same manner as all other citizens of Kentucky. They argue that an exemption of military pay is an unnecessary benefit and an unnecessary drain on Kentucky's revenues and is bad public policy (Loftus).

Still other opponents claim that exemption of military pay from Kentucky income tax will not have the intended result of encouraging military personnel to live in Kentucky and of encouraging more military retirees to locate in Kentucky. They state that

- military personnel from other states who might change their residence to Kentucky would become taxable on their nonmilitary income. For example, it is unlikely that military personnel stationed at Ft. Campbell will declare Kentucky as their residence because they can just as easily live in Tennessee, where there is no income tax. If an individual moves to Kentucky, the individual's and the family's nonmilitary income would be taxable in Kentucky even if military pay was excluded by the Kentucky legislature.
- military retirees who return to Kentucky will be taxed on other income they earn or receive. A Kentucky military person who retires is currently not taxed on most or all military retirement. But other income earned from employment after retirement is currently taxable and would continue to be taxable if a military pay exemption was enacted. Other states that do not have an income tax would not tax this income. Thus, even if military income were exempted, the fact that Kentucky would continue

to tax other income weighs against a decision to move to Kentucky.

If the General Assembly considers changing Kentucky's taxation of military pay, it may also consider whether the exemption would result in a need for other sources of revenue to replace the revenue that would no longer be collected. It has been estimated that state receipts from income taxes would decrease by \$18 million annually if all active-duty military pay is exempted from income tax.

Should the General Assembly adopt combined reporting in order to determine taxable income for Kentucky corporate income tax purposes?

Background

Fair corporate taxation has been an issue at the state and national levels for many years. Several states, including Kentucky, have enacted significant tax reforms over the past few years that include sweeping changes in the way corporations—especially multistate corporations—report and pay state taxes. These changes have, in large part, been attempts to address provisions in the law that allow multistate corporations to legally reduce or avoid paying taxes. One method often used by these corporations is to create related corporate entities and shift income to them in states that have a lower tax rate or no corporate tax at all.

The goal of any corporate tax system is to fairly and accurately measure the income earned by an entity or group of entities within a state so that the income can be appropriately taxed by that state. Variations in state corporate tax systems and the ability of corporations to create multiple entities that operate together make it difficult for states to determine the appropriate taxable income for groups of corporations. To address this problem, most states have developed different ways to group corporations in an attempt to fairly assess corporate taxes. Kentucky's approach thus far has been to target individual corporate tax shifting strategies rather than considering a comprehensive approach to prevent tax shifting.

Some believe that this case-by-case method may not effectively deter large multistate companies from seeking other income shifting avenues (Gardner).

A comprehensive approach to tax shifting involves combined reporting. Combined reporting could require related corporate entities to file a single tax return. Depending on its structure, the system would require an analysis of several factors, such as whether the entities have a single management team or consolidation of administrative functions. If all of the transactions

among the corporations create a total value more than the value of the separate entities, they are commonly called a unitary business. All entities found to be a part of the unitary business would be included as a group in a combined report.

Discussion

Legislative bodies in Iowa, Massachusetts, North Carolina, and Pennsylvania have recently received recommendations to implement combined reporting. Since 2004, Vermont, Michigan, New York, Texas, and West Virginia have adopted combined reporting, bringing the total number of states using combined reporting to 21. These states point to combined reporting as a means to meaningfully address income tax loopholes utilized by corporations (Mazero).

Many individuals and organizations support combined reporting because it attempts to minimize tax avoidance and is more efficient (McLure; Fox). Some proponents argue that combined reporting is a neutral system given that some corporations will pay more and others will pay less, depending on the structure and relationships that related corporations have created (McIntyre). The Institute on Taxation and Economic Policy supports combined reporting for these same reasons.

Opponents of combined reporting state that it is not appropriate for Kentucky because it would create too much uncertainty in predicting which groups are included and their overall tax liability. Because the corporations that are included or excluded from combined reporting could change each year, the initial step of determining which entities are subject to it may be the most difficult aspect of the system. The Kentucky Department of Revenue notes that an additional administrative burden would be placed upon its compliance staff to determine the correct composition of the group included in the combined report. Some argue that combined reporting could increase the amount of corporate tax litigation.

Kentucky data is not available to determine the number of business entities that would be impacted or the fiscal impact if combined reporting was enacted. It is generally accepted that those most impacted will be large multistate corporate groups with diverse organizational structures. Recent studies in Iowa, Maryland, Massachusetts, and Wisconsin have projected between a 10 percent and 20 percent increase in tax revenue due to combined reporting (Massachusetts). If those percentages were appropriate for Kentucky, using the FY 2007 corporate data, increased revenue

of \$98 million to \$197 million might be ultimately received at full implementation and with full compliance.

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Banking and Insurance

Should the General Assembly prohibit an insurer from considering an individual's credit history when pricing property and casualty insurance policies?

Background

Kentucky statutes prohibit property and casualty insurers from declining to issue, cancelling, nonrenewing, or otherwise terminating insurance contracts covering personal risks solely because of credit history or lack of credit history (KRS 304.20-042 and 304.20-040(4)(a)). Insurers use an “insurance score” along with other factors, such as motor vehicle records and loss history records, to evaluate new and renewal auto and homeowner insurance policies. Insurance scores are based solely on information in consumer credit reports. Fair Isaac Corporation develops insurance scores for insurers. The information taken from consumer credit reports by Fair Isaac to develop insurance scores includes outstanding debt; length of credit history; new applications for credit; types of credit in use; and credit performance such as late payments, collections, and bankruptcies. The categories that receive the most weight are previous credit performance (40 percent) and current level of indebtedness (30 percent). A consumer can get a copy of his or her consumer credit report from the credit reporting agencies. An insurance company or agent can tell a consumer the main reasons behind the consumer's insurance score, but only insurance companies can obtain insurance scores (Fair Isaac).

At least 20 states require insurance companies to file the credit scoring models they use to calculate insurance scores with their state's insurance regulatory agency; however, the models are not public information. At least 10 states have required insurers to notify consumers that they use credit history in their underwriting process. Twenty-six state legislatures in 2007 have considered legislation on use of insurance scores. Two states have enacted legislation in 2007. Maine enacted a law in May 2007 requiring an insurer within 30 days of a request from an insured to obtain an updated credit report, recalculate the insured's insurance score, and underwrite and rate the insured using the new score. Nevada enacted a law in May 2007 requiring that a notice explaining the reasons for adverse actions, such as premium increases and nonrenewal of policies, based on a credit report be provided in a form approved by the commissioner of insurance (National Conference).

Discussion

Current Kentucky law restricts property and casualty insurers from using credit history as the only factor considered by the insurer in determining whether to terminate or refuse to issue a contract.

There is currently no restriction on use of credit history in rating a risk. During the 2007 Regular Session, House Bill 111 was introduced, and the House Banking and Insurance Committee after discussion moved to consider the issue during the 2007 Interim. HB 111 would have prohibited a property and casualty insurer from rating a risk in whole or in part on the credit history of the applicant or insured.

Proponents of insurance scores contend there is a high correlation between a person's insurance score and the person's future risk. Because the scores predict the likelihood of claims, insurers are able to charge the appropriate premium. Because most persons manage their debt well, it is contended that because credit history is incorporated into insurance scores, insurance scores benefit most persons. Therefore, restrictions on use of credit history will result in decreased availability of coverage or increased costs for some insureds. A 2005 study by the Texas Department of Insurance found that insurers could better classify and rate risks based on differences in claim experience by using credit scores (State of Texas).

Opponents of insurance scores argue there is no correlation between credit history and a person's future insurance risk. They contend that although it makes sense that a lending score would be affected by a late payment, there is no relevance between a late payment and whether a person will or will not file insurance claims. It is contended that use of insurance scores has more impact on lower-income and minority consumers who tend to have lower credit scores and may pay higher premiums. A 2004 study by the Missouri Department of Insurance found that credit scores have a significantly disproportionate impact on minorities and on the poor (National Conference). Furthermore, since current Kentucky law merely prohibits use of an insurance score as the sole factor in issuing or terminating contracts, the law is of little value since an insurer will always use a factor in addition to the insurance score.

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Economic Development and Tourism

Should the General Assembly expand preferences for Kentucky firms when awarding state government contracts?

Background

State governments spend significant portions of their annual budgets contracting with private businesses for goods and services. Kentucky spent more than \$655 million contracting for services alone in fiscal year 2004 (Commonwealth ii).

The Texas Comptroller of Public Accounts found that in awarding these contracts, nearly all states grant some sort of preference to in-state firms. However, resident business preferences vary greatly from state to state and within states depending on the type of contract or situation involved (State of Texas). Preferences can be defined and applied in a multitude of ways.

While preferences may vary extensively, similarities emerge. Some states grant a preference to in-state firms only in the case of a tie bid. Others allow a percentage, typically 5 percent, on bid amounts by in-state firms. For example, an in-state firm may bid \$100 to provide certain goods. An out-of-state firm may be \$96. After applying the 5 percent preference, the state would award the contract for the goods to the in-state firm.

Many states have “reciprocal preferences” that exclude, to some extent, nonresident businesses that receive preference in the home states. Most states also limit their preferences to particular situations or types of contracts, often targeting their dominant industry, though frequently there will be multiple preferences applied in various situations.

All of Kentucky’s surrounding states have some variation of resident business preferences. Ohio, for example, has the typical 5 percent preference on supply and service contracts. Tennessee has a tie-bid preference on public contracts, as well as preferences for Tennessee meat products. All surrounding states have reciprocal preferences. Indiana has a 15 percent preference for Indiana small businesses and requires state agencies to buy almost all supplies and services from in-state businesses.

Kentucky has several specific resident business preferences. All state agencies are required to purchase Kentucky-grown agricultural products, as long as they meet price and quality requirements (KRS 45A.645). All government agencies and political subdivisions are also required to give first preference to products made by the Division of Prison Industries and then to Kentucky’s industries for the blind, as long as they are offered at

market prices (KRS 45A.470). Finally, Kentucky has both a reciprocal preference and a tie-bid preference for attorneys providing legal counsel to a bond-issuing agency (KRS 45A.873).

Recently proposed legislation would have expanded preferences for Kentucky businesses. House Bill 185 during the 2006 Regular Session would have granted a 5 percent preference to Kentucky small businesses for government purchases under the Model Procurement Code. It also would have required that all awarded contracts use Kentucky small businesses for at least 20 percent of the contract price. House Bill 185 did not pass.

Discussion

Increased use of contracted services by state governments, recent Indiana legislation, and continued efforts to support Kentucky businesses have renewed attention to this topic. Some propose enacting greater preferences for Kentucky firms, such as implementing a 5 percent advantage as in HB 185.

Proponents of expanding the preferences argue that the policy helps in-state businesses, thereby improving the state economy. They claim that preferences would improve economic opportunities and increase tax revenue through greater business activity, citing successful “buy local” programs in Austin, Texas, and San Francisco, California (Civic Economics 27). Preferences may also offset disadvantages that Kentucky businesses face in surrounding states with in-state preferences. Proponents argue that a desired flexible economic development strategy would target preferences for specific industries or types of businesses, such as small or minority-owned businesses.

Opponents argue that these laws could increase costs by emphasizing business location over the best value for taxpayer dollars. They also argue that preferences can be a state subsidy of less-than-competitive businesses and could be detrimental to the economy. Some point out that preferences could cause unintended consequences by penalizing Kentucky businesses selling to surrounding states that have reciprocal preferences. Nationally, associations representing state purchasing officials have adopted resolutions opposing resident business preferences (Natl. Association 7).

Another objection is the cost of implementation. The fiscal note on HB 185, for example, estimated a \$1.5 million start-up cost with an additional \$500,000 per year to implement and track the preferences.

Because preferences can take a multitude of forms, they are difficult to evaluate without a specific proposal. For instance, whether a Kentucky preference would subject a Kentucky business to a reciprocal preference in another state would depend on the particular item to which the preference applied and how it interacts with the other state's laws. Additionally, there is little economic analysis of state preference programs. Thus, even specific resident business preference proposals could be difficult to evaluate.

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Education

Should the General Assembly enhance postsecondary education programs to allow better access and to increase affordability for nontraditional students?

Background

The economic, social, and civic benefits of an educated citizenry are well documented. Several analyses have identified a high correlation between higher levels of education and increased civic participation, better health, less crime, and economic innovation and prosperity (Committee for Economic Dev. 20; Baum, 9-42).

In 1997, Kentucky policy makers passed House Bill 1, known as the Postsecondary Education Improvement Act of 1997, that established a goal of significantly elevating the level of education of the adults of the Commonwealth. Even though Kentucky has increased educational attainment of a large number of adults in the last 10 years, other states have not been standing still; Kentucky still lags behind most of its Southern Regional Education Board counterparts and much of the nation in educational attainment. Seventeen percent of adults have bachelor's degrees, and more than 700,000 Kentuckians 18 or older do not have a high school diploma (U.S. Census. Profile). Since 2003, between 9,000 and 9,700 Kentucky citizens annually completed a general equivalency diploma, or GED, which is a significant decrease as compared to fiscal years 2000-2003 (Hawker).

It is generally recognized that Kentucky faces a shortage of skilled workers as an increasing number of citizens exercise their retirement options and as the demand for persons with higher levels of education increases. It is estimated that national job openings that are the fastest growing and highest paid will require a college degree. Nationally, job openings are projected to grow by 13 percent. It is predicted that persons with associate degrees will be qualified for 1.4 million of those openings, and persons with a bachelor's degree without work experience will qualify for 3.3 million openings. Persons with a bachelor's degree and work experience will qualify for 1.1 million additional openings. While there will be a large number of job openings that require only on-the-job-training, these will generally be low-paying jobs (Southern. *Fact Book* 94).

As Kentucky continues to remain below the national average for educational attainment on several measures, the Commonwealth faces a challenge to increase the number of traditional and nontraditional students who enter and complete a postsecondary education program. To meet the goal of raising the educational attainment levels of adults in Kentucky, the Council on Postsecondary Education has set goals of doubling the number of

college-educated citizens by 2020 and increasing the adult college participation rate of those between the ages of 18 and 49 from 3.6 percent to 4.5 percent. Whether this is attainable is unclear; however, it is known that there are not enough persons graduating high school to transition into postsecondary education and sufficiently increase the number of working-age residents with a bachelor's degree. To meet the goal, returning adult populations must be reengaged in learning (Hawker).

Nontraditional students, classified as students who are 25 years of age or older, face many time and financial constraints. Researchers at the University of Virginia have found that there is no "typical" adult learner. Adult students represent a diverse set of individuals with varying demographics, social locations, aspirations, and levels of academic preparation. They often work full time and have children or other dependents for whom they are responsible (Pusser 4).

Many nontraditional students lack broad-based academic skills in mathematics, reading, and writing that are essential for their successful transition to college. According to Kentucky Adult Education, 80 percent of GED recipients who enroll in college and 80 percent of returning adult college students 25 or older are underprepared in at least one subject (Hawker). Nontraditional students often need financial aid as well as academic and student supports including tutoring, counseling, academic remediation, and academic advising to be successful (Pusser 4).

Discussion

In Kentucky, low-income and median-income independent students find few institutions in which they can enroll without borrowing money (Kipp 37). Federal and state financial aid is generally unavailable to students who enroll in college less than half time, which is defined as 6 credit hours.

The Kentucky Higher Education Assistance Authority has established with its own resources a pilot, need-based grant program for some nontraditional students. This Go Higher Grant is for Kentucky citizens who are 24 or older and have never taken college classes, who enroll in less than 6 credit hours, and who demonstrate financial need. The grant program provides up to \$1,000 for one academic year and covers tuition and a book allowance of \$50 per credit hour (Commonwealth. Kentucky). The grants are only available for the 2007-2008 school year. The scope and scale of the program are limited and would not help those adults who have taken some college work and need to continue taking courses on a less than half-time basis. As of September 19,

2007, 162 persons had applied, and grants had been approved for 64 of the applicants. It is too early to know the benefit of this program or whether there is sufficient awareness of the program and its goals among student financial aid officers and potential consumers (Gilpatrick).

Beyond financial aid and academic support services for adults enrolling in postsecondary education, additional initiatives will be needed for Kentucky to reach its educational attainment goals. For example, Kentucky Adult Education has identified the need for increased resources to expand its capacity in serving those without high school diplomas to help them develop the academic skills necessary to complete a high school credential and to be able to transition to postsecondary education.

The General Assembly could

- increase funding for Kentucky Adult Education to expand the availability of tutoring, counseling, and academic instruction for nontraditional students who wish to enroll in full- or part-time postsecondary education programs.
- establish a student financial aid option of grants for students enrolled less than half time, regardless of the number of college hours they have taken.
- provide continuation funding for Kentucky Adult Education and make no changes in existing student financial aid programs.

Additional funding for Kentucky Adult Education should result in increased capacity to deliver services to postsecondary education nontraditional students. On the other hand, increasing appropriations for this purpose might limit postsecondary education funds for other purposes.

If the General Assembly were to appropriate additional money for a nontraditional student financial aid program for less than half-time students, the extra funds might provide sufficient incentive for an increased number of adult students to return to postsecondary education. However, it is unknown whether this would provide the necessary motivation and financial relief to engage these adults. Funding such a program could take funds from other priorities.

Should the General Assembly create programs to improve adolescent and adult literacy levels?**Background**

The ability to read is critical to a child's success in school, and unsuccessful students often end up dropping out of school. Figures released by the Kentucky Department of Education show that 3.31 percent of Kentucky's students dropped out of school during the 2005-2006 school year (Commonwealth. Department. Briefing). And research using surveys of high school dropouts indicated one of the most frequently cited reasons for dropping out is the inability of students to keep up with peers because of low achievement in basic skills, including reading (Southern. *Reducing* 15).

The lack of academic success in elementary and secondary school has a significant impact on people as they reach adulthood. The United States Census Bureau, using figures from the 2006 American Community Survey, estimated that 18.5 percent of Kentucky's population between the ages of 18 and 24 and 20.4 percent ages 25 and older have less than a high school diploma or general equivalency diploma (GED). The 2006 population survey data show a person with a high school diploma or a GED has a median annual income of \$6,821 more than a person without a school diploma or GED (U.S. Census. American).

The General Assembly, on several occasions, has focused attention and resources on both literacy in the early grades and on adult literacy. Less targeted attention has been paid to the literacy needs of adolescent students. In 1998, the General Assembly established the Collaborative Center for Literacy Development: Early Childhood through Adulthood (CCLD). The group, a collaboration among the eight public universities and the National Center for Family Literacy, provides training for educators in reliable, replicable, research-based reading instruction and promotes literacy development (Commonwealth. Collaborative. History).

In 2000, with the passage of Senate Bill 1, the Council on Postsecondary Education was required to establish a statewide mission for adult education and develop a 20-year strategy, in partnership with the Department for Adult Education and Literacy, for raising the knowledge and skills of the state's adult population. The bill directed CCLD to provide professional development in early reading instruction for adult education instructors. House Bill 502, also passed in 2000, provided additional funding for the Reading Recovery Teacher Leader Training Program, a program to train teachers to deliver an intense model of instruction for at-risk 1st graders.

Senate Bill 19, passed in 2005, emphasized diagnostic and intervention services for primary school students. The bill required CCLD to make available to teachers professional development activities related to the essential components of successful reading. The resulting Content Literacy Project assists middle and high school teachers integrate literacy into the content areas. The same year, the passing of House Bill 93 provided funding for CCLD and the Kentucky Department of Education to develop the Adolescent Literacy Coaching Project for teachers in grades 4 through 12. The project is to be evaluated annually, but the evaluation will not focus on the performance of individual coaches or schools. Instead, it will report findings across sites (Commonwealth. Collaborative. Adult).

Discussion

The General Assembly recognizes that reading proficiency is an important gateway skill to student achievement in all academic content areas. Funding and support have been provided for programs to address reading difficulties experienced by children in the early grades. In addition, there are existing provisions in Kentucky statutes that focus attention on teachers' professional development and content needs to provide reading instruction in the early grades. Despite that investment, a significant number of adolescents struggle with reading.

The 2006 statewide Commonwealth Accountability Testing System (CATS) Academic Index score for reading in elementary school was 89.4 on a 140-point scale. The middle school score was 87.2, and the high school score was 78.0. In addition, results from the 2006 CATS show 30.3 percent of elementary students, 36.9 percent of 7th-grade students, and 59.6 percent of high school students scored at the novice or apprentice levels in reading (Commonwealth. Department. Briefing 23-27).

While some students achieve early reading success, they sometimes face difficulties when challenged with the more complex demands of a middle school or high school curriculum. According to The Nation's Report Card, in 2005, 70 percent of Kentucky 8th graders scored at or below the basic level on the National Assessment of Education Progress reading assessment (U.S. Department).

The General Assembly might consider legislative action to improve adolescent and adult literacy by amending postsecondary education teacher and administrator preparation program requirements to include class work in teaching reading and writing

for all candidates, regardless of major; by expanding the use of research-based intervention reading programs in middle-level, upper-level, and adult reading programs; by providing additional training in reading instruction and teaching strategies for upper-level and adult teachers. In addition, the General Assembly might review assessments of existing intervention programs, such as the Adolescent Literacy Coaching Project, to determine future policy decisions and funding levels.

Should the General Assembly make changes in the current administrative procedures, processes, and financing of the construction and renovation of elementary and secondary school facilities?

Background

Since the mid-1980s, the Kentucky General Assembly has focused on improving school facilities in local school districts through an equitable funding formula. Kentucky is one of the few states that has a statewide facilities planning and funding system—it is required to do so as part of the constitutional requirement in Section 183 that the General Assembly provide a system of common schools.

In its ongoing effort to improve the system, the 2005 General Assembly directed the Office of Education Accountability (OEA) to conduct a study of the school facilities funding system and the School Facilities Construction Commission (SFCC). At the same time, the Program Review and Investigations Committee was studying the facilities funding and planning system. The resulting Legislative Research Commission reports, OEA's *A Review of the School Facilities Construction Commission* and Program Review's *Planning for School Facilities Can Be Improved to Better Serve the Needs of All Students*, made several recommendations for programmatic, regulatory, and statutory changes.

As a follow-up to the reports, the 2006 General Assembly passed House Bill 380—the biennial budget bill—directing the Kentucky Department of Education (KDE), in partnership with the SFCC, to conduct a comprehensive evaluation of the current facilities planning process, the process for categorizing schools for planning and funding purposes, major plant maintenance planning and implementation, the process used to determine unmet school facility needs, and the degree of equity in the distribution of state capital funds. In addition, the Urgent Needs Trust Fund Advisory Committee was established and directed to develop guidelines for the distribution of funds and to advise the SFCC on the distribution of funds from this trust fund.

In addition, KDE established in 2006 the School Facilities Evaluation Task Force that included various educators and school

administrators. The task force was divided into four subcommittees that made several recommendations, many of which overlap with the recommendations in the two legislative reports. Lawrence O. Picus and Associates was hired to study the degree of equity in distribution of funds. The following recommendations would take General Assembly action to implement:

1. Increase capital outlay funding;
2. Add a second Facilities Support Program of Kentucky (FSPK) equalized nickel;
3. Retain an unequalized growth nickel;
4. Merge the regular SFCC program with the urgent needs funding; and
5. Roll other funding streams into the second FSPK nickel (Koch).

The term “nickel” in the above recommendations refers to a tax of \$0.05 per \$100 in assessed property value. There is currently a mandatory “first nickel” that is equalized by the state. The unequalized growth nickel is optional for districts with rapid student growth.

Discussion

Kentucky and its school districts have worked through the years to update, upgrade, and otherwise improve the quality of the facilities where thousands of children attend school every day. Through the development of required district facilities planning efforts, the thoughtful initiation of construction projects to address the facilities needs, and the support of the General Assembly, the school inventory in the Commonwealth has been greatly improved over the years. The process for determining the areas with greatest school construction needs and for coordinating the program statewide falls largely under the purview of the SFCC and KDE (Commonwealth. Department. *School Facilities* 3).

Though there has been a great deal of progress, there are still many questions and concerns about the current administrative procedures, processes, and financing of the construction and renovation of elementary and secondary school facilities. Since 2005, the Urgent Needs Trust Fund Advisory Committee has developed the guidelines as directed by the General Assembly, and three major studies have been completed with a variety of recommendations, many of which are the same (Tarvin). The majority of the recommendations can be implemented by KDE or the SFCC through the administrative regulation process, but at this time the boards of the agencies have not taken any action. Several

of the recommendations, particularly those that relate to funding, require General Assembly action.

The school facilities planning and funding process is complex. The three recent studies have provided historical background, have included a variety of people in the deliberations, and have provided recommendations for all areas of the issues. The General Assembly could consider a comprehensive bill to implement the statutory recommendations that are the same or similar in all three studies. Consideration of such a bill would provide the General Assembly the opportunity to address the recommendations that have come from the people most directly involved in providing quality facilities for Kentucky's students. The discussions would be timely since the studies are recent and could provide direction and leadership to the local school districts, KDE, and the SFCC. Some of the recommendations require new funding, which may take funds from other programs.

Should the General Assembly adopt policies to improve the curriculum and instruction in science, technology, engineering, and mathematics (STEM), and to increase the number of students enrolled in these disciplines?

Background

In recent years, a great deal of national attention has been paid to the significant changes in technology and the global economy and the ways in which the current educational system leaves citizens of the United States underprepared to be competitive with workers in other countries. Other nations no longer only compete with the U.S. for low-wage, low-skill jobs; increasingly, nations with lower wage structures such as China and India are producing workers with the higher-level skills needed to meet the needs of corporations competing in the new economy driven by technological innovation (Committee on Prospering 1-7; Kirsh 3; National Commission 7).

Over the past 30 years, the U.S. has fallen from 3rd to 17th in the world in the proportion of college age science and engineering graduates it produces. Since the 1970s, science and engineering degrees have made up about one-third of U.S. bachelor's degrees, while some competitor countries had much higher corresponding percentages. For example, 59 percent of China's 2001 first university degrees were in science and engineering, as were 46 percent South Korea's degrees in 2000, and 66 percent of Japan's degrees in 2001 (National Science. 2004 2-36)

In response to calls for federal action, Congress passed the America Competes Act in August 2007. The Act provides significant federal resources to increase federal investment in basic scientific research; develop an innovation infrastructure within the

U.S.; and strengthen educational opportunities in science, technology, engineering, and mathematics, or STEM, areas from elementary through graduate school (EdNews).

Although the problems in STEM education are national in scope, Kentucky has more ground to make up than many other states. Kentucky ranks 49th in the nation for the percentage of all baccalaureate degrees conferred in mathematics and science (National Science. 2006 Table 8-14). And while Kentucky has increased annual baccalaureate degree production in science and technologies by 6 percent between 1994-1995 and 2004-2005, the percentage increase for the entire United States was 19.2 percent (Southern. *Fact Book*. Table 43).

Discussion

In November 2006, the Council on Postsecondary Education created the STEM Task Force that brought together more than 100 leaders from business and industry, P-12 education, postsecondary education, and government to “develop a statewide P-20 strategic action plan to accelerate Kentucky’s performance in the STEM disciplines” (Commonwealth. Council 3). The final report of the task force outlines six problems and sets forth eight recommendations to address those problems. Numerous task force recommendations correspond to policy recommendations offered in *Rising Above the Gathering Storm*, a recent influential and comprehensive study of the STEM challenge by the National Academy of Sciences (Committee on Prospering 5-20).

The STEM Task Force recommendations are below:

1. Energize and fund a statewide public awareness campaign.
2. Create incentives and a supportive environment for students, teachers, and institutions.
3. Implement international best practices in professional development programs.
4. Improve teacher preparation programs and encourage people with undergraduate and graduate STEM degrees to enter the teaching profession.
5. Implement a statewide research-based STEM curriculum that is aligned with global workforce and academic standards.
6. Engage business, industry, and civic leaders to improve STEM education and skills.
7. Develop an ongoing, coordinated, statewide STEM initiative.
8. Target energy sustainability problems and opportunities in Kentucky and the nation (Commonwealth. Council 22-27).

During the 2007 Regular Session of the General Assembly, three bills were introduced that addressed many of these recommendations. During the session, Senate Bills 1 and 2 and House Bill 306 were extensively debated and amended, though none ultimately passed.

Policy options discussed during the debate surrounding SB 1 included providing state funds for grants to high schools and middle schools to expand access to rigorous mathematics and science courses; using state funds to pay for advanced placement (AP) and international baccalaureate (IB) exams; providing monetary awards to teachers for student performance on AP and IB exams in mathematics and science; increasing teacher access to high-quality professional development in mathematics and science; and providing supplemental Kentucky Educational Excellence Scholarship, or KEES, awards, to low-income students based on AP or IB examination scores. Each of these policy options has a related cost, in some instances of significant magnitude, and legislators may wish to weigh the potential benefit of each in relation to its fiscal impact.

While many of the provisions of SB 1 appeared to receive wide support from legislators during the debate, the provision to provide monetary incentives for teachers based on student AP and IB test scores proved controversial. Supporters suggested that this could help make teaching a more attractive career option for highly trained individuals. They pointed to a similar program in Dallas, Texas, that saw dramatic increases in student participation and achievement on AP examinations, particularly among low-income and minority students (AP Strategies, Inc. 13-15). Opponents suggested that providing the opportunity to earn incentives only to mathematics and science teachers was unfair and that other strategies could be used to increase student participation and achievement on AP exams. In August 2007, Kentucky received a 6-year, \$13.2 million grant through the National Mathematics and Science Initiative that will be used to replicate the Dallas program in selected school districts in Kentucky (Commonwealth Governor's).

Senate Bill 2 would have provided salary supplements to teachers of mathematics, physics, and chemistry who met specific criteria. Proponents argue that salary supplements are needed to attract highly qualified individuals to teaching since teacher salaries are not competitive with those typical in the STEM professions. Detractors express concern that differential compensation based on

content area is unfair, inappropriately diminishes the value of other teachers, and could cause dissension among colleagues in a school.

House Bill 306 would have codified in statute the Academy of Mathematics and Science in Kentucky, which was funded in the 2006-2008 budget and opened in the fall of 2007 at Western Kentucky University. Because this bill did not pass, the academy was required to request waivers regarding teacher certification and high school graduation requirements from the Kentucky Board of Education. Legislative action is required if the General Assembly wishes to eliminate the need for future similar waivers.

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Elections, Constitutional Amendments, and Intergovernmental Affairs

Should the General Assembly require a voter-verified paper audit trail for direct recording electronic voting machines?

Background

The presidential election of 2000 highlighted flaws in election laws and procedures throughout the nation. In 2002, Congress responded by passing the Help America Vote Act (HAVA), which among other things provided federal funds for states to meet certain new voting system standards. To comply with HAVA, Kentucky counties purchased new electronic voting systems called direct recording electronic (DRE) voting machines for use in the 2006 primary. All counties except Jefferson County use some form of DRE. Jefferson County uses optical scan voting systems.

HAVA mandated that voting systems purchased with federal funds have the capacity to accommodate—not require—a voter-verified paper audit trail (VVPAT), which is a paper record that a voter can view after making ballot selections but before actually casting the electronic vote. The paper can be used at a later date for an election audit (Brennan Center). While Kentucky's DREs have that capacity, they do not have the special printer necessary to create the voter paper audit trail because the state did not require it. The paper is retained by the county clerk and if necessary is used for an independent audit of electronic vote totals. This is achieved by comparing the VVPAT ballots to the electronic votes recorded (Brennan Center).

Kentucky has been using electronic voting systems since the 1980s to decrease the potential for voter fraud. However, these earlier electronic voting systems were not accessible to persons with disabilities and therefore did not meet the new accessibility standards set by the Help America Vote Act.

Throughout the country, there have been questions about the accuracy and security of these new DRE voting systems and the potential for electronic tampering (Brennan Center 4; Drew 2). Currently, 25 states require the use of a paper audit, while five more states require that every vote be cast on paper. The use of paper audit trails provides a physical record that can be compared to the electronic totals. Of the 25 states requiring paper audit trails, 15 have specified that the VVPAT not the electronic record should be considered the official vote for recount purposes ("Recounts" 5).

Discussion

Since the adoption of the VVPAT, local election officials in some states have raised logistical issues regarding recounts. Voter-verified paper audit trails cannot be counted as quickly as electronic votes because they were designed for a voter to read and to use to verify the accuracy of the ballot. The experience of Clark County, Nevada, is an example of what might occur if a state required paper audit trails be used in a recount as the official vote. Though Nevada law requires that only electronic ballots be used in a recount, state regulation mandates a hand count of paper audit trails in 2 percent of the DREs used in less populous counties and in 3 percent of more populous counties (NRS 293.124; NAC 293.255). It took a team of four election officials about 4 hours, or 4 minutes per ballot, to complete an audit of 64 voter-verifiable paper ballots that were attached to one of the voting machines. An audit comparing the paper totals to the machine totals is different from a recount (“Recounts” 7).

Advocates for people with disabilities state that DRE voting systems allow voters with a disability the benefit of voting in private and that reverting to any form of paper ballot would negate the privacy provided by the DRE (“Recounts” 9). Additionally, without a paper audit trail, there is nothing available with which to compare the electronic totals on a DRE voting machine. Since DRE testing is only performed before an election, voters may question whether the voting totals accurately reflect the votes cast.

Congress may require all states to utilize paper audit trails. Two bills are pending in Congress to amend the ballot verification and mandatory paper record audit capacity provisions of HAVA (Grayson. Testimony June 26).

Kentucky counties may still use up to \$15 million HAVA funds to purchase more voting equipment. This money is adequate for the purchase of components that will make a paper audit trail available on the electronic voting systems used in the Commonwealth. Unless the General Assembly enacts legislation to direct the counties to make a specific purchase, local governments may spend the money on other election priorities (Grayson. Testimony June 26)

Should the General Assembly support the establishment of a rotating regional presidential primary?**Background**

States are proposing earlier dates on which to hold their presidential preference primary elections in order to have a greater impact on nominee selection. Presidential preference primaries and caucuses must be held according to rules established by the two largest national parties, and the parties can punish a noncompliant state by reducing the number of delegates accepted from that state (Democratic 18; Republican 4-3). For the 2008 presidential election, the rules require the states to hold primaries between February 5 and June 10. Twenty-three states have chosen to hold their primaries or caucuses on February 5, 2008, and seven are planning to hold them earlier (National Conference; Seelye). The Iowa caucus and the New Hampshire primary are not subject to the restrictions of the window and may hold their preference caucus and primary as early as December 2007 to preserve their status as the first to make selections for the presidential election (Democratic 18; Seelye).

The National Association of Secretaries of State has proposed a rotating regional presidential primary plan that would divide the United States into four regions. Each region would hold its presidential preference primary during the same month, beginning in March of the presidential election year and continuing over the next 3 months. For the first use of this plan, there would be a drawing to determine the regions' order for holding primaries and caucuses. The regions would then rotate in subsequent years. Over the course of four presidential elections, each region would go first, thereby increasing the importance of that region's primary choices.

Discussion

Advocates say that the rotating regional presidential primary is the best method to address the concerns that states have about earlier primaries. It would give both voters and the media more time to evaluate the candidates (Grayson. Testimony July 24). Advocates say that candidates would have to visit smaller states and discuss local issues, and this would be made easier by grouping states into regions. This process may allow lesser-known and underfunded candidates to compete because grassroots political organizing will be essential. The rotating regional presidential primary plan has been endorsed by the Commission on Federal Election Reform, which is organized by the American University Center for Democracy and Election Management (Grayson. "Rotating").

Opponents of the rotating regional presidential primary plan question whether Kentucky would actually reap benefits and

whether it would be worth the cost. Currently, Kentucky's primary is held on the first Tuesday after the third Monday in May. In 2008, the primary will be held on May 20 and will include local and state offices as well as the office of president (KRS 118.025). If Kentucky were to switch to the rotating plan, a special primary date would have to be established, and any special election would cost more than \$5 million. Because the regions would rotate through a different month every 4 years, Kentucky would have to hold a separate presidential primary three out of every four presidential election years (Grayson. Testimony July 24).

The Fayette County Clerk doubts whether the cost is worth a special date, noting that turnout was low when Kentucky participated in the special presidential primary "Super Tuesday" in 1988. He did not believe that that Kentucky received much attention from the candidates that year (Blevins). Voter turnout statistics show that 23.1 percent of eligible voters voted in that presidential primary, compared to 21.2 percent who voted in the normal primary that year. The turnout at the special presidential primary in 1988 was the second highest in any presidential primary since 1984 (Commonwealth).

Kentucky's Secretary of State said implementation of such a plan would require agreement by both major national political parties and the states. He also has suggested that the General Assembly pass a resolution during the 2008 Regular Session endorsing the National Association of Secretaries of State's rotating regional primary proposal. He further recommended that legislators lobby their respective parties to agree to this plan (Grayson. Testimony July 24).

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Energy

Should the General Assembly enact rules under which gas distribution utilities may adjust rates to reflect changes in their costs without a general rate proceeding before the Public Service Commission?

Background

Despite the addition of 15 million new residential customers of gas utilities in the United States from 1980 to 2005, the total consumption of gas by residential customers over that period rose only 0.1 percent. The reasons that the increase is less than some might expect are the construction of more-efficient homes and the use of more-efficient gas furnaces and water heaters. At the same time, declining sales to retail customers among some gas distribution utilities have resulted in a loss of cost recovery on fixed assets, including infrastructure, gas mains, and distribution pipes. Affected gas distribution utilities are concerned about the financial impact of these losses (Marple).

Rates charged by the five major gas distribution utilities that operate in Kentucky are regulated by the Public Service Commission (PSC) under KRS Chapter 278. KRS 278.030 requires that the commission determine such rates to be “fair, just, and reasonable” before allowing recovery of operating or investment costs. The principal regulatory mechanism for such determinations is through a general rate case proceeding of the PSC.

The five major gas distribution utilities in Kentucky comprise two that are combination gas-electric and three that are purely gas. A general rate case proceeding for a gas distribution utility can cost from \$300,000 to \$400,000 (Jennings). All three of the purely distribution gas utilities in Kentucky filed general rate cases with the PSC in 2007; the combined cost of these proceedings, which will exceed \$1 million, is passed on to the gas ratepayers (Hazelrigg).

Gas utilities have sought to minimize the frequency of general rate case proceedings and instead to rely in part on periodic interim rate adjustment filings with the PSC. Interim rate adjustments, some of which have been authorized by the PSC for many years under statutory authority, include wholesale gas purchase cost surcharges for natural gas utilities. They also have argued for automatic periodic rate adjustments, revenue decoupling tariffs, and flat monthly fees to offset the volatile nature of natural gas prices, risks of global climate change, and other difficult-to-predict costs (Marple).

Discussion

In the 2007 Regular Session of the General Assembly, House Bill 261 would have provided for quarterly interim rate adjustments for public utilities that provide natural gas distribution service and that

elect the option of quarterly adjustments. The adjustments of rates and charges were intended to reflect changes in expenses, revenues, investments, depreciation, and other indicators of utilities' financial condition.

HB 261 was closely modeled on legislation enacted by the South Carolina legislature and signed into law by that state's Governor in 2005 (State). Rate stabilization measures similar to those adopted in South Carolina for two utilities have been adopted or proposed through legislation or by administrative regulations affecting five utilities operating in other states: Alabama, Louisiana, Mississippi, Oklahoma, and Texas (Marple).

HB 261 proposed procedures for interested parties to challenge the interim rate adjustments and would have authorized additional staffing for the PSC to perform its duties. These would have been funded from assessments on natural gas utilities that elected the option of quarterly rate adjustments.

Proponents of HB 261 asserted that regulatory rate adjustments separating rates from regulated returns on investments are needed to make the utilities financially whole. Utilities should be allowed to collect revenues based on a PSC-determined revenue requirement, such as a per-customer basis. Revenues would be adjusted on a periodic basis to the predetermined revenue requirement using an automatic rate adjustment (National).

These types of rate adjustment mechanisms have been approved and adopted for 19 gas companies in 11 states and are presently pending for 15 gas companies in 8 states plus the District of Columbia (Marple).

Opponents of various approaches to newer rate designs have included consumer advocates, such as the Kentucky Attorney General's Office of Rate Intervention, and organizations involved in providing financial assistance for home heating to low-income citizens of the Commonwealth. Opponents have argued that HB 261 would undermine the public's opportunities for notification and input regarding rate adjustments by bypassing the PSC's regulatory oversight authority.

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Health and Welfare

Should the General Assembly change the process of filing birth and death certificates?

Background

Citizens of the Commonwealth may obtain copies of birth and death certificates under KRS Chapter 213 that details the procedures for filing and issuing the certificates in a timely manner. Many Kentucky citizens have experienced delays in obtaining copies of these vital statistics records. Delays in receiving copies of birth certificates have created problems with obtaining Social Security numbers. Delays in receiving copies of death certificates have resulted in problems obtaining life insurance benefits and probating estates. Some Kentucky funeral homes also experience problems with the processing of death certificates because incomplete certificates are processed improperly.

Discussion about birth certificates has alleged that hospitals or other health care personnel in charge of birthing delay submitting forms to the Office of Vital Statistics (OVS). Death certificates may be delayed because of pending laboratory results or because appropriate health care personnel do not sign the designated forms and send them to OVS within a timely manner. Some people have asserted that the office is not sufficiently staffed to respond to the requests for birth and death certificates that it receives.

The Colorado Office of the State Auditor has issued recommendations to improve complete and accurate documentation of records and timely registration of certificates. Louisiana has reminded physicians to complete and sign medical records in a timely manner. The Centers for Disease Control and Prevention has recommended that states improve their vital statistics systems by improving their technology resources and reengineering their systems for standardized data collection (Rothwell).

Discussion

Changes to the way certificates are issued and processed would affect OVS and the entities that file the certificates, notably hospitals for birth certificates and funeral directors for death certificates. During the 2007 Regular Session of the Kentucky General Assembly, the Funeral Director's Association of Kentucky expressed a desire to improve the process of filing death certificates and to provide accurate and timely certified copies of the certificates. The association's recommendations were included in Senate Bill 198 and House Bill 459.

Several bills related to death certificates were introduced but not enacted during the 2007 Regular Session of the General Assembly. Senate Bill 50 proposed that a request for a certified copy of a death certificate be mailed within 5 working days of the request. Senate Bill 198 and House Bill 459 would have streamlined the process by requiring an incomplete birth or death certificate to be returned to the funeral director, coroner, or health care provider and notifying the person requesting the certificate that it had been returned to the appropriate entity for more information. This would have addressed the lack of statutory procedures for correcting inaccurate or incomplete certificates.

Proponents of the bills may argue that specific time requirements for the issuance of death certificates following receipt of a request by the OVS would ensure prompt attention. Incomplete and inaccurate birth or death certificates would be identified and corrected according to specified guidelines.

Opponents may argue that additional time requirements would place an undue burden on OVS, which is already understaffed. Also, the proposed changes would not address the delays associated with obtaining appropriate information from health care providers who must sign vital records and from coroners and funeral directors who must complete and file the documents with the state.

Should the General Assembly restructure the system for legal representation of children and parents in child abuse and neglect cases?

Background

Children who are removed from their homes because of child abuse, neglect, or exploitation are entitled to attorney representation during subsequent court proceedings. The parents are also entitled to an attorney who they may hire or, if they are indigent, who will be appointed by the court. The court may appoint different attorneys for each parent (KRS 620.100). An attorney for the parents is often referred to as court-appointed counsel (CAC), and an attorney for the child is called a guardian *ad litem* (GAL).

Although procedures vary among Kentucky's courts, most judges or their clerks maintain a list of attorneys available to be appointed as GAL or CAC. The judge appoints an attorney from the list when a case is brought before the court. The GAL or CAC presents an affidavit to the judge for his or her services, and after signing the statement, the attorney submits the bill to the Finance and Administration Cabinet.

The Finance and Administration Cabinet issues payments to the GAL and CAC in amounts set by KRS 620.100. The case fees for both types of attorneys, established in 1986, are set at \$250 in District Court and \$500 in Circuit Court. The amount of state general funds expended for GALs and CACs has steadily increased each year since at least fiscal year 2001. In FY 2001, the cabinet spent approximately \$2.5 million; in FY 2004, expenditures were more than \$5.7 million; and in FY 2006, expenditures were more than \$8.4 million. Some people interpret the fees to be maximum fees that attorneys may receive in each case, while others believe that the fees are for each court appearance by attorneys. Others note that there is no provision to pay attorneys who appeal a judge's decision.

GALs and CACs in Jefferson County submitted court fee orders that, if paid, would result in payments in excess of the statutory limits. By July 1, 2006, the Finance and Administration Cabinet began routinely denying excess fee orders. Several GALs filed a motion that the cabinet be held in contempt for failing to pay the court order. In his findings, the Chief Judge of the Jefferson Family Court agreed with the cabinet's statutory fee limits but held the cabinet in contempt for failing to follow proper procedures. Currently, in Jefferson County, the cabinet contests a fee order in excess of the statutory fee limits. In other jurisdictions, the cabinet sends a letter to the judge and the attorney denying excess fees.

The *Lexington Herald-Leader*, the Office of Inspector General, and the Hardin County Grand Jury have reported on weaknesses in the child welfare and adoption system (Spears; Commonwealth. Cabinet. Office; Hardin). The Cabinet for Health and Family Services has responded by establishing the Blue Ribbon Panel on Adoption that includes community advocacy groups representatives, legislators, academics, and social service workers. The panel's deliberations have focused, among other things, on the use of GALs and CACs to increase accountability for the child welfare agency's actions. The panel's legislative recommendations for the 2008 General Assembly are expected by December 2007.

Different administrative structures for GAL and CAC programs exist among the states. Some have special divisions within the court systems; some establish yearly contracts with specific attorneys for services; some, like Kentucky, are handled completely at the county level; some contract with legal services agencies for representation; and some have established independent child advocacy agencies (University 43).

Some states have adopted GAL or CAC practice guidelines or include specific requirements and duties for the GAL in contract form. The American Bar Association, the National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children have all issued GAL guidelines and standards of practice (American Bar. Statewide; University 41). The American Bar Association has also issued CAC practice guidelines (Standards). The National Association of Counsel for Children offers specialty certification to attorneys who represent children, parents, and agencies in child abuse, neglect, and dependency cases. Modeled after physician board certification, the specialty certification requires that attorneys demonstrate experience and competency, complete continuing education, and pass a national child welfare law exam. Only four states—California, New Mexico, Michigan, and Tennessee—permit this area of attorney certification.

Discussion

In 2006, the Administrative Office of the Courts (AOC) contracted with the University of Kentucky College of Social Work to review prior studies and recommend changes to Kentucky's system for legal representation of children and parents in child abuse and neglect cases. It concluded that

- challenges reported by the state agencies and court jurisdictions relate to the inadequate structure of GAL programs;
- inequitable compensation for legal work involved is a cause of ineffective legal practice; and
- other states that have created a centralized organization for the practice of GALs with precise statutory duties and a system of accountability have noticed improvement in the functioning and practice of GALs (University).

First Star, Inc., a national nonprofit organization, analyzed each state's child representation laws and published a 2007 report card for each state. Kentucky, along with six other states, was given a D. Thirty states received grades higher than D, 5 states received an A, and 15 states received an F. The report recommended that Kentucky should require all attorneys to be independent and client directed, that the child be considered a party and entitled to notice and attendance for all proceedings, that continuity of counsel last throughout the appellate process and subsequent reviews, and that attorneys be required to have respectable training and multidisciplinary interaction (Frederick).

The federal Child Abuse Prevention and Treatment Act requires the appointment of a GAL to qualify for federal child abuse funds.

In 2003, the law was amended to require that the GAL receive training appropriate to the role prior to being appointed to represent the child in the proceeding. In 1996, the AOC's Court Improvement Project produced *A Best Practice Model for Dependency, Abuse, and Neglect Cases* that was updated in 2006. From 2000 to July 2007, AOC conducted 63 trainings with 2,319 participants. Currently, there is no Kentucky statute or Supreme Court rule that requires documentation of training prior to appointment as a GAL, although some District and Circuit Courts may have local rules that do so.

Senate Bill 141 of the 2007 Regular Session sought to amend statutes to address many of these issues, but it did not pass. SB 141 would have addressed the discrepancy that exists in payment amounts for representation in family courts and District Courts. Because family courts are considered Circuit Courts, fees for representation in family courts are limited to \$500, and fees for the same representation in District Courts are limited to \$250. SB 141 also authorized the Finance and Administration Cabinet to pay an attorney who had received specialized training or continuing legal education related to child abuse and neglect. It also would have required the Court of Justice to establish case management and time standards for the practice of these cases in District and Circuit Courts.

Proponents of these changes argue that competent and adequate representation of all parties is important to the effectiveness of the child welfare system and necessary to ensure that the rights of all involved parties are protected. They argue that many studies have made similar recommendations for improved efficiency, increased legal fees, and education of attorneys.

Opponents argue that increasing fees would have an impact on state general funds that are already strained. Increasing legal fees will not guarantee better representation. They also note that proposals such as those in SB 141 do not provide sufficient oversight and accountability for the use of these public funds and for the outcomes of the services provided.

Should the General Assembly allocate revenue to raise awareness of or treat problem gambling?

Background

The National Council on Problem Gambling estimates that 1 percent of the population can be classified as pathological gamblers, while 2 to 3 percent can be classified as problem gamblers. These estimates would place the current pathological gambler population in Kentucky at approximately 40,000 and the

current problem gambler population in Kentucky at approximately 80,000 to 120,000. For purposes of this issue paper, “problem gambling” includes the severe forms often referred to as pathological or compulsive gambling and the less severe intermittent problem gambling (American Psychiatric. Diagnostic; National. Council).

There are few professionals trained to treat persons with problem gambling in Kentucky. According to the Kentucky Council on Problem Gambling, there are 40 practitioners with at least some specialized training in the treatment of problem gambling and 12 certified compulsive gambling counselors in Kentucky. There are also 31 Gamblers Anonymous meetings available to problem gamblers each week throughout Kentucky.

Problem gambling is caused by a person’s inability to control gambling (National. Council). One study found that persons living in close proximity to state-approved gambling opportunities are twice as likely to be problem gamblers (Welte). Every state and the District of Columbia, with the exception of Utah and Hawaii, allow gambling in some form (Hale).

Kentucky’s current gambling activities amount to about \$2 billion per year, divided almost equally between pari-mutuel horse race wagering, Kentucky Lottery sales, and charitable gaming such as bingo and pull tabs. This creates approximately \$200 million annually in tax revenue for the state. Most recent estimates suggest that Kentuckians spend about \$500 million annually in casinos located outside Kentucky, with approximately \$352 million being spent at Ohio River casinos (Kentucky). Indiana has five casinos on its border with Kentucky and another within 60 miles of Louisville and will soon have as many as 2,000 slot machines at its Hoosier Park and Indiana Downs harness racing tracks (Hale). Illinois has one casino on its Ohio River border with Kentucky (American Gaming).

Most states and the District of Columbia appropriate public funds for the treatment of gambling-related problems. Funding is generally allocated for help lines, public awareness, research, counselor training, and prevention (Association). West Virginia has a state lottery, four racinos (horse race tracks with pari-mutuel wagering and video lottery terminals), and electronic gaming allowed outside of racinos. West Virginia appropriates \$1.5 million in public funds to treat gambling-related problems, or \$0.83 per capita, which is the fourth-highest per-capita amount of the 28 states that apportion public funds for this purpose (Kentucky).

Indiana has a state lottery and pari-mutuel wagering and operates 11 casinos (American Gaming). Indiana makes up to \$5.25 million per year available for problem gambling treatment and awareness activities. The Indiana Council on Problem Gambling notes that funding for gambling treatment comes from money generated by casino admission fees. Ohio and Tennessee both provide public funding for gambling-related problems through lottery receipts (Kentucky).

Kentucky does not provide public funding to raise awareness of or to treat problem gambling. The president and chief executive officer of Keeneland and the president and chief executive officer of the Kentucky Lottery have drafted letters in support of the creation of state funding mechanisms to assist problem gamblers and to raise awareness of problem gambling (Kentucky).

Most researchers agree that there are social costs involved with problem gambling, but most also stop short of applying an exact dollar amount to this cost due to research limitations that make this a difficult figure to quantify. A University of Illinois professor has estimated societal costs at up to \$10,330 for each problem gambler (Ruetter). Social problems include increased crime, decreased work productivity, bankruptcies, financial hardships on families of problem gamblers, and the psychiatric treatment of problems gamblers (Commonwealth. Legislative).

Discussion

The Kentucky Council on Problem Gambling has recommended a program known as the Gamblers Assistance Program, which would be funded by a percentage of the tax revenue received by any expanded forms of gaming in Kentucky (Commonwealth. Legislative). The group cites research from the University of Nevada that found that clients who participated in partially or fully funded state treatment programs for problem gambling showed a significant reduction in gambling behaviors. Researchers noted their surprise because those who typically seek treatment are the more severe problem gamblers (Berhard).

The 2007 General Assembly considered but did not pass House Bill 41, which would have created a state-run compulsive gamblers awareness and treatment fund. HB 41 would have provided more than \$1 million each year through 2011 for the fund, paid in part by lottery, horse racing, and charitable gaming tax proceeds. The funds would have been used to support “agencies, groups, organizations, and persons that provide education, treatment, and

counseling to persons and families experiencing difficulty as a result of problem or pathological gambling.”

Proponents of funding for problem gambling awareness and treatment state that additional measures are necessary, such as funds dedicated to increase the number of specially trained counselors, therapists, and mental health professionals.

Opponents argue that appropriating funds is not the answer. The Indiana Council on Problem Gambling reports that outcomes rely on the problem gambler following the treatment plan. Success rates may be approximately 50 percent.

The Oregon Gambling Treatment Addiction Foundation funds an annual evaluation of the state-funded treatment and awareness efforts. In 2003, the foundation reported strong indications that its problem gambling services system was successful with both encouraging problem gamblers to seek treatment and in effectively providing services. Costs per case averaged \$800 to \$1,600. The foundation said gambling treatment programs that are within 50 miles of a casino treat three times the proportion of casino gamblers than other programs treat (Moore).

Should the General Assembly expand government involvement in health insurance coverage for more Kentuckians?

Background

In 2006, there were approximately 47 million individuals, 15.8 percent of the population, in the U.S. without health insurance; of those, 564,000 Kentuckians, 13.8 percent of the state’s citizens, were without health insurance (De-Navas-Walt). Several factors have been cited for the increase in the rate of the uninsured in the U.S., including higher health care costs, fewer employers offering health insurance to their employees, and a publicly sponsored health insurance system that is unable to provide coverage for all of the newly uninsured (National Governors. “Improving”). Also, some researchers believe that Kentucky’s long-term trend toward lower household incomes and lower wage rates and high rates of poverty are associated with higher rates of uninsured (Smith-Mello).

In 2004, the cost of providing uncompensated health care totaled an estimated \$40.7 billion for the nation; and local, state, and federal governments combined paid for about \$36.6 billion, or 85 percent of those costs (National Governors. “Leading”). Those with health insurance also bear a portion of the cost, as some of their premium dollars go indirectly toward providing treatment for those who are uninsured (Greenblatt).

With the lack of movement on the federal level, a number of states have either passed or considered legislation aimed at providing health insurance coverage for their uninsured citizens. In 2003, Maine established the first such plan with a public/private partnership. Called Dirigo Health, the plan makes health insurance available to individuals and employers at rates subsidized by the state and employers. The state's Medicaid program also was expanded to cover people who could not afford the subsidized plan (National Conference. "2007").

In 2006, Massachusetts enacted a universal coverage plan that included a Medicaid expansion, tax incentives for businesses, low-cost plans for young people, and a broad mandate that all citizens purchase health insurance. Vermont passed House Bill 861 that sets co-payment costs for health insurance and caps out-of-pocket expenses at \$800 for individuals and \$1,600 for families. While individuals and employers are not required to purchase this insurance, employers with more than eight employees help subsidize the low-cost policies by paying \$1 each day for every uninsured employee. The law also waives deductibles and offers certain free services to enrollees with chronic illnesses.

Other states are considering proposals for either incremental health care reforms or broad-based universal health care coverage (National Conference. "2007"). Regardless of the approach, the reform efforts initiated by the states have followed a few basic strategies including public and private expansions, insurance market reforms, and improving the health care system (National Governors. "Leading").

Public program expansions have used Medicaid and the State Children's Health Insurance Program, or SCHIP, to provide coverage to individuals who would not be able to qualify otherwise—in particular children with higher family incomes—by increasing income and asset levels or expanding eligibility categories. States have attempted to increase access to private health insurance through incentives and subsidies for small businesses to assist in providing health insurance to their employees and through premium assistance programs to help low-income workers buy their employer-sponsored insurance (National Governors. "Leading"). States also have established and funded health savings accounts for individuals to purchase health insurance.

Some states have required participation from both individuals and employers. Employers are required to offer health insurance to

their employees or they will be assessed a fee by the state. And individuals are required to obtain health insurance coverage, if they can afford it, or face a penalty. The goal of individual mandates is to encourage full participation in the health care system to increase the pool of individuals and spread the risk across a larger group (National Governors. "Leading"). The individual mandates have been used with other mechanisms such as premium subsidies and employer mandates in an attempt to achieve universal coverage.

States also are also considering plans that require employers to deduct the cost of health insurance premiums from paychecks on a pretax basis, which is permitted by Section 125 of the Internal Revenue Code. This federal tax incentive provides savings to employees and employers. Employees realize savings because they are not taxed on money used for the premium, and employers realize savings because the money used for employee premium payments is not included in the employer's taxable revenue.

Another reform that focuses on the private insurance market is the connector or exchange model that links individuals or small businesses to insurance plans. In one variation, the connector is operated by the state and negotiates with insurers to offer a plan with a minimum standard of benefits within a certain range of premiums. The connector also serves to combine the risk among a larger group of persons and thus helps lower costs. Some proposals call for the state insurance commission to oversee rate setting and benefit levels, and the connector just provides insurance options for individuals and employers (National Governors. "Leading"). States are also using defined-benefit packages as a means to provide access to basic health services through private insurers.

Many states have implemented or proposed reforms to improve their health care systems along with reforms to expand health coverage. These states seek to achieve the full value of universal coverage and manage the costs of expansions by giving individuals access to efficient and high-quality health care (National Governors. "Leading"). To this end, states are instituting health care performance measures, payment incentives for high quality, and electronic databases that give information about doctors and hospitals to consumers. States are also focusing on prevention and wellness benefits by requiring that state defined-benefit plans include preventive benefits; allowing free or low-cost visits for preventive care; lowering the cost of insurance premiums if enrollees participate in wellness and prevention programs; and encouraging individuals to take on increased responsibility for their own health.

Discussion

Kentucky has implemented some small-business health insurance reforms with the Insurance Coverage Affordability and Relief to Small Employers, or ICARE, program and has a wellness initiative with the Get Healthy Kentucky program. ICARE, authorized by the General Assembly in 2006 and administered by the Office of Insurance, is a pilot program that helps employers pay premiums for their employees. Employers make a health care incentive payment of up to \$40 to \$60 per employee per month if the employer has not offered health insurance for the past 12 months, and the amount decreases over the life of the program. Employers must pay at least 50 percent of the health insurance cost, and the average annual salary of their employees may not exceed 300 percent of the federal poverty level. Get Healthy Kentucky promotes wellness by raising awareness and providing access to information about exercise, nutrition, and tobacco cessation.

In 2007, the General Assembly considered but did not pass a resolution directing a feasibility of universal health insurance coverage in Kentucky.

Proponents of more government involvement in expanded health insurance reform argue that the government is responsible for ensuring that all citizens have health care. They argue that the private insurance market would benefit from government subsidies as well as increased employer and individual payments.

Opponents argue that the types of universal coverage being considered are first steps toward nationalized health insurance and that the government is not capable of operating the system as efficiently as private companies. Whether the government should be fully involved or part of a public/private partnership is disputed.

Should the General Assembly require females to be immunized against human papillomavirus?

Background

Human papillomavirus (HPV) is the most common sexually transmitted infection. It is transmitted through genital contact and may occur without sexual intercourse. HPV affects nearly 20 million people in the United States, and approximately 6.2 million persons become infected every year (U.S. Dept. Centers. *Quadrivalent*). The prevalence of HPV is highest among women ages 20 to 24, and the prevalence increases each year from ages 14 to 24 (Dunne, et al. 819).

HPV types 16 and 18 are responsible for approximately 70 percent of cervical cancers in the United States. Cervical cancer is one of

the leading causes of cancer death worldwide. In the United States, cervical cancer affects approximately 10,000 women each year and accounts for the deaths of about 3,700 women yearly (Kaiser. “HPV, Cervical”). The mortality rate was 2.4 per 100,000 among Kentucky women in 2002 (Commonwealth. Cabinet. Dept.).

Clinical trials indicated that the drug Gardasil is highly effective in preventing HPV infection, lesions that lead to cervical and vaginal cancer, and genital warts (U.S. Dept. Centers. *Quadrivalent*). Gardasil was approved by the U.S. Food and Drug Administration for use among females ages 9 to 26.

The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (CDC) recommends HPV vaccination of girls between ages 11 and 12 before they become sexually active. This recommendation was based on the causes of HPV, data on the age at which sexual activity begins, and the probability of becoming infected with HPV within a few years after an individual becomes sexually active. Using 2002 data, the CDC reported that 24 percent of females in the United States were sexually active by age 15. The probability of becoming infected increases each year after becoming sexually active and increases as the number of sexual partners increases. Among sexually active females between the ages of 15 and 19, the median number of sexual partners was 1.4. Sexually active females who take Gardasil may benefit since they would not become infected with the types of HPV covered by the vaccine (U.S. Dept. Centers. *Quadrivalent*).

Forty-one states and the District of Columbia have introduced legislation either mandating HPV vaccination, funding programs to provide the vaccination at little or no cost, or requiring public education and awareness about the HPV vaccine. Seventeen states have passed some form of legislation relating to HPV vaccines. Virginia is the only state that requires girls to be vaccinated as a condition to attend school and permits parents to exempt their children from the requirement. The Texas legislature overrode an executive order from the governor that required the HPV vaccination (National. *HPV*). Legislation in Kentucky during the 2006 General Assembly would have required vaccination but permitted parents to exempt their children without requiring or documenting a reason. All states allow parents to exempt their children from all immunizations based on moral, religious, or medical reasons (Kaiser. *HPV Vaccine*).

Discussion

Proponents of mandatory HPV vaccination assert that the vaccine saves lives. It is almost 100 percent effective in preventing infection with the HPV types that account for 70 percent of all cervical cancer cases. Vaccination can also reduce the economic and emotional stress that women experience if they have an abnormal Pap smear (Kaiser. "HPV, Cervical"). Proponents also point out that condoms are not 100 percent effective for preventing HPV infection because the virus is transmitted by skin-to-skin contact (Hopson). Proponents of mandatory HPV vaccination also support increasing public awareness about the availability of the HPV vaccine. They note that gynecologists and physicians view the HPV vaccine as an effective tool to combat HPV and possible cervical cancer (Kaiser. "HPV, Cervical").

The debate surrounding HPV vaccination is often focused on whether to require the vaccine for girls between ages 11 and 12 as a condition of attending school. Some opponents of mandatory vaccination against HPV believe that it is the responsibility of health providers to educate patients about HPV and that decisions to receive the vaccine should be the responsibility of the family rather than of the government.

Religious beliefs and the promotion of sexual promiscuity are cited as reasons to oppose mandatory HPV vaccination. While some religious groups support vaccination against HPV, they oppose governmental mandates (Hopson).

Parents may oppose vaccination because they believe their children are at low risk or are not sexually active. Also, parents and health care providers may have difficulty explaining to 11-year-olds why they need a vaccination against a sexually transmitted disease (Dempsey S485).

Another concern is that women who have been vaccinated may stop having Pap smears, an important screening test for early detection of cervical cancer. Health care providers stress the importance of women continuing to receive Pap smears since not all types of cervical cancer are prevented by the HPV vaccine (Kaiser. "HPV, Cervical").

Other opponents are concerned that the vaccination is expensive; and some parents have fears about the safety and side effects of any vaccine (National. Exemptions).

Should the General Assembly require 30 minutes of physical activity in school everyday?**Background**

Kentucky youth have relatively lower levels of physical activity than youth in the United States. A 2005 survey of youth showed that 16 percent of Kentucky students reported that they did not participate in any vigorous or moderate physical activity during the past 7 days as compared to 10 percent of all students in the United States (U.S. Dept. Centers. Div.).

Obesity rates among children younger than age 19 in the United States have increased from 5 percent in 1980 to nearly 20 percent in 2004 (U.S. Dept. Centers. Div.). All states have been affected, but in 2003, Kentucky had the highest percentage of overweight or obese youth ages 10 to 17 at 38 percent (KIDS COUNT). This trend is likely to affect the long-term health of Kentucky's adult population.

The U.S. Surgeon General indicates that overweight youth are at increased risk for heart disease and Type II diabetes and have a 70 percent higher chance of being obese as an adult compared to youth with healthy weights. Some of the factors responsible for obesity include genetics, environment, and behavior. While genetic tendencies can be a factor in obesity, genetics alone do not account for the increase in obesity among children over time. The major causal factors in the increased rate of obesity are a combination of increased calorie intake and reduced physical activity.

The General Assembly and local school districts have taken initiatives to increase physical activity by children at school. In 2005, the General Assembly passed Senate Bill 172 that requires each school containing kindergarten through grade 5 to develop and implement a wellness policy that includes moderate to vigorous physical activity each day and encourages healthy food choices among students. KRS 160.345 permits but does not require up to 30 minutes per day or 150 minutes per week of physical activity to be considered part of the normal school day upon which the state bases its funding of schools.

Several local school districts have increased physical activity in schools. School initiatives include structured recess time, classroom-based opportunities for physical activity, and the development of walking paths and time to use them (Commonwealth. Dept.).

Most states require physical education in school but not physical activity. Kentucky requires one-half credit of physical education for high school graduation but does not require physical activity

for primary and secondary schools. In 2007, legislation was introduced but did not pass to require at least 30 minutes of physical activity each school day. Legislation that addressed physical activity requirements in schools was introduced in at least 23 states in 2006 and in at least 20 states in 2007. At least 11 states have recently enacted some requirement for physical activity in schools (National Conference. “Childhood”). Table 1 illustrates the variety of provisions for physical activity by school level, duration, and frequency for selected states.

Table 1
2007 Physical Activity Requirements: Selected States

State	School Level	Duration and Frequency
Arkansas	K-8	1 hour per week
California	K-6	200 minutes per 10 days
	7-12	400 minutes per 10 days
Indiana	Elementary	Daily, no duration
Louisiana	K-6	30 minutes per day
Oregon (effective 2017)	K-5	75 minutes per week
	6-8	112 minutes per week
Tennessee	K-12	90 minutes per week
West Virginia	Elementary	90 minutes per week

Source: National Conference. “Childhood.”

Discussion

While the general health and mental benefits of physical activity have been consistently demonstrated, the evidence for physical education requirements as an antiobesity initiative is inconclusive. One review of research found that school-based physical education is effective in increasing levels of physical activity and improving physical fitness (Kahn). However, another national study found that physical education has no significant impact on student weight (Cawley).

The research on the effectiveness of school physical activity programs in improving school performance shows mixed results. One review of the research found that there is evidence of short-term benefits of physical activity at school for academic performance (Taras). Other studies claim a consistent, positive relationship between overall fitness and academic achievement (Coe; Grissom).

In part, the variability in the effectiveness of physical activity programs may be due to the duration and intensity of the activity.

The National Association for Sport and Physical Education and the American Heart Association recommend that all states set minimum requirements for physical activity in all grades. They also recommend that school-age youths have at least 60 minutes of moderate to vigorous physical activity every day. They propose that this level of activity could be met by developing physical activity programs that may include elementary school recess, after-school activities, class-based activities, and walk- or bike-to-school programs. They propose that physical activity could be incorporated into the school day at little or no cost and that flexibility in the implementation of physical activity for local school districts could be retained.

When considering physical activity requirements, schools may be concerned about funding and finding time for them in the school day. Since the federal No Child Left Behind Act passed in 2001, the core academic requirements set by the state and federal governments have increased (National Association for Sport). In some cases, physical activities have been cut from school curricula to focus funding and time on required academic courses. This may be one reason that some states have declined to require a specific amount of time for physical activity in schools. Also, many states permit local school districts to determine requirements for meeting state and federal standards, including physical education requirements.

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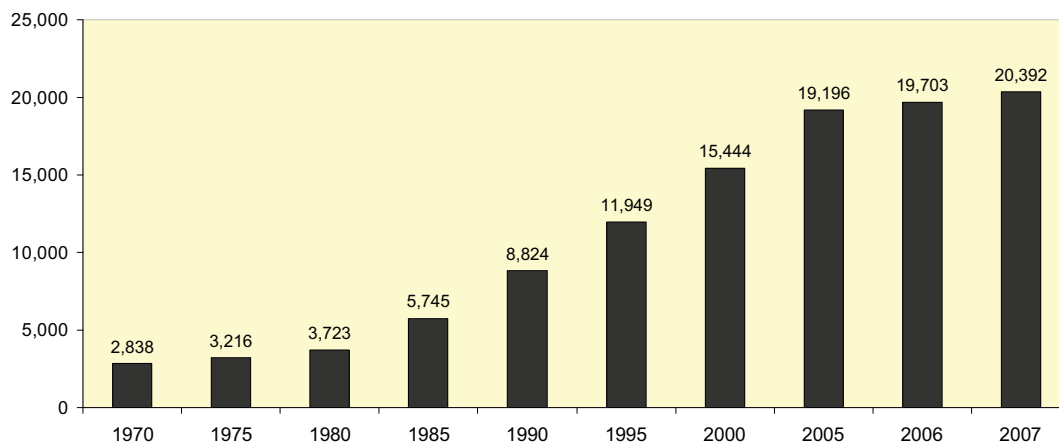
Judiciary

Should the General Assembly restructure the state's felony sentencing laws in light of the growth in the state's felony inmate population?

Background

Felony inmate populations have been increasing across the United States, and Kentucky is no exception. In 1970, Kentucky's felony inmate population was 2,838 (Lawson. "Difficult" 325). By 2005, it had grown to 19,196, and the numbers continue to increase. The felony inmate population grew to 19,703 by 2006 and to 20,392 by May 2007 (Commonwealth. Dept.). These numbers represent a growth of 634 percent between 1975 and 2007, while Kentucky's population increased by 30 percent from 1970 to 2006 (Kentucky State Data; United States).

Felony Inmate Population



Sources: Lawson. "Difficult" 325; Commonwealth. Dept.

The state has managed the increased volume of inmates through new prison construction; the use of private prisons; and by housing certain inmates, specifically those convicted of lower-risk felony offenses, in county jails. Like the felony inmate population in state prisons, the number of felony offenders housed in jails has also generally increased throughout the years. In 2000, the state housed 3,639 felons in jails (Lawson. "Difficult" 329). In 2007, that number expanded to 6,590 (Commonwealth. Dept.).

The continued growth of the felony inmate population in both prisons and jails has been accompanied by an increase in the budgetary needs of the Department of Corrections. The 2008 corrections budget for the state is \$392.7 million, while the 1970 corrections budget was \$7 million (Lawson. "Difficult" 331). Adjusted for inflation, this 1970 amount would be \$37 million in 2007 (Federal Reserve).

The increase in Kentucky's felony inmate population was preceded by several years of legislation that changed the criminal sentencing laws in Kentucky. During that time, the General Assembly increased penalties for persistent felony offenders by modifying what is commonly referred to as the "three strikes" law. More recently, legislation was passed that increased the penalties for certain drug offenses. The General Assembly also modified its violent offender statute to increase the number of offenders who qualify as violent offenders (for example, certain sex offenders), and the minimum sentence required to be served by violent offenders was increased from 50 percent to 85 percent (KRS 439.3401).

Discussion

There is debate over to what extent the increase in Kentucky's felony inmate population is due to enhanced sentencing laws and whether these laws need reform. Proponents of reforming the laws believe that the state's tough stance on crime and increased law enforcement efforts, particularly against drug offenses, have not resulted in a decrease in crime. They cite studies showing the lack of empirical evidence that the three-strikes laws work to incapacitate or deter career criminals (Lawson. "Difficult" 341-342).

Advocates for a new approach to sentencing maintain that the persistent felony offender statute in Kentucky, KRS 532.080, is inconsistent with most states' laws because Kentucky does not limit three-strikes laws to convictions for violent felonies (Lawson. "Difficult" 343). They maintain that, because a prior "strike" is defined as any felony offense and is not limited to violent offenses, a person could trigger the three-strikes penalty without being convicted of a violent felony. Proponents also argue that the problem is compounded by Kentucky's two-strikes law, which triggers the persistent felony offender penalty after only two felony offenses. Proponents for reform contend that a major consequence of these laws is to deny true rehabilitation for nonviolent persons convicted of repeat felony drug offenses (344-345). This group believes that intensive treatment, counseling, job training, and other programs offered by the Kentucky Drug Court Program would be more effective and cost-efficient than prison for nonviolent offenders with substance abuse problems. Proponents argue that these programs will, in time, rehabilitate many offenders, reduce the number of people returning to prison, and reduce the need to build new prisons, thereby freeing up funds for treatment programs and facilities.

Proponents of sentencing reform cite the increased costs associated with housing increasing numbers of criminals for longer periods of time. They believe the financial strain could worsen (Lawson, “Difficult” 332-333). They further argue that incarcerating felons for longer periods of time will result in more medical costs for an increasingly aged inmate population (Southern 1-3). They support reducing or repealing certain penalties under the current felony sentencing laws to control the costs of housing criminals who are unlikely to be a serious danger to the public.

Proponents of sentencing reform would point out that, in addition to the modification of the persistent felony offender law, the General Assembly has also modified other statutes or created new laws that may also be a contributing factor in the increase of the felony inmate population. One example is Kentucky’s violent offender statute. This will have the effect of increasing the number of persons classified as violent offenders in prison and prolonging the amount of time served before they are eligible for parole. The long-term effects of these changes on the felony inmate population have yet to be determined.

Opponents of reforming the sentencing laws assert that increased law enforcement efforts and increased inmate populations are results of increased crime, especially drug offenses. They believe that longer sentences for habitual offenders are justified and necessary to protect the public (Stumbo 1).

Opponents further argue that longer sentences for drug-related crimes are justified because drugs are destructive to “modern society, and...that simply slashing sentences without providing appropriate rehabilitation may well make this problem worse” (Stumbo 2). They argue that there is no funding source for new rehabilitative programs, and it is still uncertain how the state will keep the public safe from offenders while they are in rehabilitation (6).

Opponents state that increased incarceration costs are appropriate and represent less than 5 percent of the state budget (Stumbo 2). They advocate the use of reform alternatives that would save taxpayers money while keeping the most dangerous felons in prison. Virginia uses “risk assessment scorecards” to identify which offenders should be considered nonviolent offenders and eligible for diversionary programs or alternative supervision (2). Another recommendation is to increase the felony threshold for theft to \$1,000, thereby resulting in a significant savings for the corrections budget (4).

Should the General Assembly provide for state operation of county jails or expand funding for all or part of the costs of the operation of county jails?

Background

Many jails are under continued and increasing operating pressure, with the strain directly impacting county budgets. With jail operations consuming an increasing amount of county funds, some county governments are being forced to reallocate money from other county activities to jails. Having the state assume full or partial control of the operations or financing of county jails has been offered as a means of alleviating these costs.

Not all counties are in financial difficulty due to jail costs. Some counties operate their jails at a profit, returning money to the county's general fund. Daily incarceration costs among the local detention facilities range from \$19 per prisoner per day in one county to \$84.44 in another (Commonwealth. Auditor 1-2).

Responsibility for the housing of prisoners in Kentucky is split between local and state government. County government is responsible for housing all persons between arrest and sentencing. After sentencing, persons convicted of misdemeanor offenses are the responsibility of county government, while the responsibility for housing felons is the responsibility of state government. County government does not typically receive any outside funding for the housing of prisoners that are the county's responsibility. However, counties may voluntarily contract with the state to hold two classes of state prisoners in exchange for payment from the state.

The first group of state prisoners for which a county may be paid are newly sentenced felons awaiting transfer to a state facility. The state Department of Corrections prefers to use a controlled intake policy, admitting prisoners only as space becomes available. Under the Kentucky Constitution, as interpreted in *Kentucky County Judge/Executive Assoc. v. Com., Justice Cabinet, and Dept. of Corrections* (1996), the state's financial responsibility for inmates begins at felony sentencing. While a county jail may demand immediate transfer, many jails agree to hold the prisoner between sentencing and the time when a slot opens up for the prisoner in the state system, in return for a per diem payment for that inmate from the state. If the jail can house the inmate for less than the per diem, the jail can use that revenue to offset its other operating costs.

The second group of state prisoners for which a county may be paid are low-level offenders who are serving their sentences in the county jail. These offenders include Class D felons (the lowest level of felony classification under Kentucky's Penal Code) and lower-risk Class C felons. Like felons awaiting transfer, any excess

in per diem revenue may be used to fund the jail's other operating costs.

Generally, the number of nonstate prisoners for whom the counties are financially completely responsible is increasing (Lawson. "Turning" 6). Costs associated with these prisoners, particularly medical costs, have also increased (Turner). While the housing of state prisoners may, in some cases, offset some of the costs, county jails must either absorb medical and other nonreimbursed costs through increased operating efficiencies or increased budgetary allocations.

Discussion

One response to the counties' jail funding problems is a state takeover and funding of local jail operation. Kentucky is already proceeding with, and has largely completed, the takeover of local detention responsibilities relating to juveniles.

A variation on takeover would allow a local jailer some role in running the facility, similar to the means by which a local property valuation administrator performs work for the state (Commonwealth. Auditor 3). Another variation would require counties to contribute some of the funding for state-run facilities. This might involve an assessment based on county population or a per diem charge for each prisoner convicted from the county.

Proponents of state takeover believe the state would be more efficient in running the facilities since it could utilize the state's greater purchasing power for goods and services. The state may also be able to draw upon its general corrections managerial expertise to more efficiently manage the local detention system. Finally, proponents believe that a state-funded system would free up the portion of county tax dollars presently dedicated to the running of the county jail and allow them to be reallocated to other needs in the county.

Opponents of takeover believe that local official accountability is to the governmental structure. An unelected bureaucracy may be unresponsive to local needs and concerns. Opponents also note that counties can achieve greater purchasing power through consolidation of facilities, such as is already done with regional jails, and joint purchasing agreements. Finally, while acknowledging the benefit of more county tax dollars assuming that the state does not impose partial county funding requirements, opponents contend that additional state tax dollars would be

necessary, thereby placing a financial strain on the overall state budget.

A second response would seek to replicate the advantage of a state system while maintaining local operation and control. This option would pool resources, purchasing power, and expertise among counties or would shift at least some limited costs to the state. Individual counties would negotiate together to reach agreements to purchase some goods or services. Cooperation already allows some counties to close their jails and send prisoners to other counties in exchange for payment of fees. Regional jails have also been created to help offset costs to individual counties.

The passage of House Bill 191 in 2007 allowed local jails to use in some circumstances the medical, dental, and pharmacy plans used by the state prison system. HB 191 also permits the state to provide medical care for county prisoners in state facilities and at state expense.

An additional proposal would require state approval prior to new jail construction or expansion, similar to the certificate of need system used to regulate the construction or addition of new medical facilities (Commonwealth Auditor 4). Proponents believe that state expertise in a review mechanism would prevent projects that were not economically viable. Opponents argue that counties already have the ability to ask for and access information and expertise from the state if it is needed.

The timing of state payments for persons convicted of a felony has also received interest. The state pays nothing toward a felon's pretrial and presentencing incarceration costs. In most cases, the felon will receive sentence credit for pretrial time spent incarcerated in the jail, and some will ultimately receive a probated sentence and never transfer to state custodial responsibility. Some county officials argue that, since felony punishment is a state responsibility, the state should provide for some of the cost for any detention that counts toward a prisoner's felony punishment. Many judge/executives argue that the state should pay for pretrial incarceration costs for felony offenders where the incarceration is converted at sentencing into time served as part of their sentence (Turner).

A final idea for maintaining local control in some counties is the physical expansion of the jail's inmate capacity (Commonwealth Auditor 2). Counties would use the extra capacity to hold those inmates for which the state will pay a per diem and to generate

excess revenue. Proponents argue that local incarceration allows inmates to maintain critical personal and family ties to the community into which they will be released. These inmates can be used to provide a low-cost source of labor for public improvement and services. Opponents argue that physical and programmatic differences between a county jail and a state prison would work against the inmates' well-being and rehabilitation success. A jail funded in this way may be tempted to overcrowd its facilities to obtain the highest possible number of per diem payments (Lawson, "Turning").

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Licensing and Occupations

Should the General Assembly modify the current licensure or education requirements for anesthesiologist assistants?

Background

Senate Bill 175 of the 2006 General Assembly directed a study of anesthesiologist assistants (AAs), allied health professionals who work under the direction and supervision of licensed anesthesiologists to develop and implement anesthesia care plans. The bill directed comparative research of AAs and other anesthesia care providers. Also, SB 175 required an examination of how Kentucky and other states regulate the various anesthesia care providers.

AAs are authorized to practice in Kentucky, along with 15 other states and the District of Columbia. Kentucky is among the 11 jurisdictions that allow practice under direct licensure. The other six jurisdictions allow practice under the principle of physician delegation: the AA may only perform duties within his or her scope of practice if those duties have been directly delegated by the AA's supervising physician. Three of Kentucky's border states authorize AA practice: Ohio and Missouri under direct licensure and West Virginia under physician delegation.

There are about 700 AAs practicing nationwide: 2 of whom currently practice in Kentucky (American Academy). After July 15, 2002, any new AA license applicants in Kentucky must have graduated from both an AA program and a 4-year physician assistant program. Both of Kentucky's AAs were already practicing and were exempted when the current law was enacted requiring AAs to also be physician assistants. The Kentucky physician assistant education requirement is unique among those jurisdictions that allow practice by AAs.

Currently, there are five accredited AA training programs in the U.S. (Commission). All the programs require passing either the Graduate Record Examination or the Medical College Admission Test and attaining a bachelor's degree with course work in science and math (American Society). Every jurisdiction governs AA practice through its medical board, which requires that each AA attain initial and ongoing certification from a national certification body. There have been no major studies comparing patient safety or care when anesthesia care is provided in an environment including AAs as opposed to other anesthesia care environments.

Discussion

Most parties interviewed for the SB 175 study felt that more anesthesia care providers are needed in Kentucky, where almost all anesthesia care is provided by either anesthesiologists or nurse anesthetists. Kentucky's requirement that AAs graduate from a 4-year physician assistant program is unique. While scope of practice, prescriptive authority, and physician supervision ratios are part of the overall AA issue in Kentucky, the physician assistant education requirement is the main focus of the debate. With only five accredited schools and 700 practitioners nationally, the AA profession is small compared to other medical professions. Some people believe that Kentucky would not see a substantial change in the number of AA practitioners even if the General Assembly eliminates the physician assistant education requirement (Commonwealth).

Proponents of change to the Kentucky AA statutes argue that the current requirements are too stringent, setting Kentucky apart from all other states. They feel it prevents the licensing of new AAs in Kentucky, and they indicate that the state is experiencing a shortage of anesthesia care providers. Opponents argue that the education requirement is necessary to ensure patient safety and competent care. They also believe that the state's need for anesthesia care providers should be filled with more anesthesiologists and nurse anesthetists (Commonwealth).

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Seniors, Veterans, Military Affairs, and Public Protection

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

Background

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

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

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

Discussion

Forty-nine states grant some type of veterans preference. With regard to preference points added to examination scores, 41 states require that an individual pass the examination before points are added. Utilizing a 100-point grading scheme, most states add 5 points to a nondisabled veteran’s examination score, while eight states add 10 points. Ohio adds 20 percent of the score to the final score. In most states, disabled veterans receive an additional 5 to 19 preference points (Veterans).

There are various other approaches to the veterans preference:

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

The Kentucky General Assembly has considered but not passed three bills in recent years to extend the veterans preference. In 2000, House Bill 713 would have required a hiring state agency to offer a job interview to a state government employee who is seeking another job in state government and who qualifies for veterans preference points under KRS 18A.150.

In 2006, House Bill 24 would have 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. The bill further required a hiring state agency to offer a job interview to these veterans and family members. Amendments ultimately reduced the number of individuals to be offered an interview from 10 to 3.

In 2007, the House of Representatives passed House Bill 63, that would have required that 5 or 10 preference points be added to the test score of military-connected state job applicants and permitted the total score to exceed 100. It further required that all veterans be identified on employment registers and that job interviews be granted to as many as five veterans. The Senate passed HB 63 with an unrelated amendment to the bill that was not considered further by the House.

The United States Supreme Court has held that the veterans preference does not violate the Equal Protection Clause of the United States Constitution's 14th Amendment. In *Personnel Administrator of Mass. v. Feeney* (1979), the court upheld a lifetime veterans preference that Massachusetts offered to veterans applying for state merit employment. The majority opinion accepted the state's argument that the preference encouraged patriotic service in the military, eased the transition back to civilian

life, and attracted loyal applicants to civil service occupations. The court acknowledged that some people viewed such preferences as undemocratic, contrary to the premise that merit alone should apply to government employment, and unfair by allowing veterans to invoke the advantage repeatedly and long after the date of discharge.

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State Government

Should the General Assembly extend the retirement window for state and county employees?

Background

Retirement benefits for employees participating in the Kentucky Employees Retirement System (KERS) and the County Employees Retirement System (CERS) are based on a formula established by state law. This formula provides a percentage of the employee's average salary at retirement for each year of service attained.

In past legislative sessions, two separate "retirement windows" have been created to provide enhanced benefits for certain nonhazardous employees participating in KERS and CERS. The first window, established in 1998 for KERS employees, increased the retirement benefit for each year of service from 2.0 percent to 2.2 percent of the retiring employee's average salary. To be eligible for this window, the employee must meet certain service requirements and retire by January 1, 2009. The second window, established in 2001 for both KERS and CERS employees, reduces the average salary calculation for retirement benefits from the employee's highest 5 years of salary to the highest 3 years. To be eligible for the second window benefit, the employee must meet certain age and service requirements and retire on or before January 1, 2009 (Kentucky. Summary). Employees who are eligible for one or both of the windows have a financial incentive to retire before the windows sunset in 2009.

As of June 30, 2006, the total number of employees in KERS and CERS was 46,707 and 83,694, respectively (Kentucky. Comprehensive). According to Kentucky Retirement Systems, there are 5,253 KERS employees who could retire between July 1, 2007, and January 1, 2009, and receive a retirement benefit of 2.2 percent for each year of service. Within this group of employees, 2,674 are also eligible to receive a retirement benefit based on the average of the highest 3 years of salary rather than the highest 5 years. Within CERS, Kentucky Retirement Systems estimates there are 2,000 employees eligible to receive a retirement benefit based on the average of the employee's highest 3 years of salary rather than the highest 5.

Discussion

The 2007 General Assembly considered but did not pass House Bill 418 that would have extended the two retirement windows for state and county employees. As introduced, HB 418 would have allowed KERS and CERS employees eligible to retire and receive the enhanced benefits to continue receiving those benefits after the windows expired. According to the analysis provided by the

retirement systems' consulting actuary, extending the window only for those employees already eligible for the benefits as of January 1, 2009, would produce a slight savings to the plan through a reduced employer contribution rate over the long term (Cavanaugh & MacDonald).

Proponents argue that state and local governments will lose large numbers of experienced employees by 2009 if the windows are not extended. They contend that if a window extension is limited to employees who are already eligible for the enhanced benefits, then no additional liabilities will be created for the retirement systems because any additional benefit costs would be offset by delaying and forgoing benefit payments.

Proponents note that other retirement costs, including payment of leave balances owed to employees when they retire, could be spread over multiple budget cycles if the window is extended.

Opponents assert that extending the windows provides a further benefit enhancement beyond what the current law provides and may not result in any savings to the retirement systems. They also believe extending the windows would only temporarily delay the loss of experienced employees in state and local governments.

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Transportation

Should the General Assembly change child passenger restraint laws to include the use of booster seats?

Background

According to the Centers for Disease Control and Prevention, motor vehicle accidents are the leading cause of death among children in the United States. For children ages 4 to 7, it is estimated that traffic accidents are responsible for 350 fatalities and 50,000 injuries each year (Thomas). Traffic safety experts are especially concerned about children ages 4 to 8 who have outgrown their child safety seats but are too small to be restrained appropriately and safely by adult seat belts (Advocates. “Congress”). Booster seats are designed to lift these children by several inches to allow the vehicle’s seat belt to fit properly.

Kentucky’s current child restraint law requires any motor vehicle driver who transports a child of 40 inches in height or less to properly restrain the child in a restraint system meeting federal motor vehicle safety standards (KRS 189.125). In 2002, Congress passed Public Law 107-381, better known as Anton’s Law, that directed the National Highway Traffic Safety Administration (NHTSA) to improve the federal motor vehicle safety standards and performance requirements for child restraint systems.

Advocates for Highway and Auto Safety is a nationally reputed alliance of consumer, health, and safety groups, as well as some from the insurance industry concerned with road safety. The group states that the “optimal” booster seat law would require children ages 4 to 8 to be properly restrained in a forward-facing, internally harnessed or belt-positioning booster seat (“Congress”).

During the 2007 Regular Session, the Kentucky General Assembly considered but did not pass House Bill 53, a booster seat measure that the Advocates for Highway and Auto Safety would consider to be optimal. House Bill 53 would have required children under age 8 who are between 40 and 57 inches tall and weigh less than 80 pounds to be secured in a booster seat when traveling in a motor vehicle. Sixteen states and the District of Columbia have passed optimal booster seat laws, and 22 states have other variations of booster seat laws.

The current trend for states is to improve current child restraint laws to meet the optimal law recommended by the Advocates for Highway and Auto Safety. In 2006, Hawaii, Kansas, Missouri, and Wisconsin passed optimal booster seat laws (Bronrott). Table 1 shows which states have booster seat laws.

Table 1
State Booster Seat Laws

Status	States
Optimal booster seat law	DC, HI, IL, IN, KS, ME, MO, NJ, NC, PA, TN, VT, VA, WA, WV, WS, WY
Some version of booster seat law	AL, AR, CA, CO, CT, DE, GA, ID, IA, MD, LA, MT, NE, NV, NH, NM, NY, ND, OK, OR, RI, SC
No booster seat law	AK, AZ, FL, KY, MA, MI, MN, MS, OH, SD, TX, UT

Source: Advocates for Highway and Auto Safety. "State."

In 2007, 19 states have proposed legislation relating to booster seats (National Highway). The changes proposed range from increases in age, weight, and height requirements to increases in fines for violation of child restraint laws.

Discussion

Many experts consider booster seat use as the most effective means to prevent serious injuries and reduce fatalities. The use of a booster seat with a seat belt, as opposed to an adult seat belt alone, reduces the risk of injury by 59 percent (Partners 3). The injuries most common to young children using adult seat belts are head and face, abdominal, and spinal injuries (Jermakian 1).

While nationally child restraint use for infants and toddlers is estimated at 90 percent, the same is not true for booster-seat-aged children ("National Child"). The Partners for Child Passenger Safety March 2007 *Issue Report* shows usage for 4-year-olds to be less than 50 percent and approximately 6 percent for children ages 5 through 8 (3). A 2006 NHTSA survey estimated that three out of five children who should ride in booster seats do not do so (Thomas).

Booster seat legislation is proving to be effective at increasing usage rates for booster seats. A study of car crash data published in the Archives of Pediatric Adolescent Medicine shows that children aged 4 to 7 in states with booster seat laws were 39 percent more likely to be reported as appropriately restrained as opposed to children in states without booster seat laws (Winston et al. 1).

Opposition to booster seat legislation often centers around parental decision making being affected by the imposition of a mandate. Some opponents believe that parents and pediatricians should be

educated about booster seats to allow the parents to make a reasonable choice for the safety of their children. Others view driver inattention as the primary cause for collisions and believe that booster seats cause driver inattention by making children cranky and irritated (Ridgeway). Opponents also express concern that since booster seat laws do not contain exceptions, a person whose motor vehicle does not have a booster seat would violate the law for transporting a child during an emergency.

Should the General Assembly restrict the use of cell phones by drivers?

Background

A 2007 survey from Nationwide Mutual Insurance Company estimated that 73 percent of drivers use cell phones while driving. The effect of this technology on the safety of the motoring public has been a major topic of discussion in state legislatures over the past several years.

A study at the University of Utah found that all drivers using cell phones while operating motor vehicles, regardless of age, were 18 percent slower applying their brakes, took 17 percent longer to regain speed lost after braking, and had impairment comparable to the impairment of a driver under the influence of alcohol. In the case of young drivers, using cell phones reduced their response time when seeing brake lights ahead of them to that of 65-74-year-old drivers (Sundeen 5).

Most of the evidence regarding the safety of cell phone use while driving is anecdotal. In 2002, Kentucky began including a category on motor vehicle accident reports identifying cell phones as a contributing factor to a traffic accident. Table 2 shows that, over the past 3 years, cell phone use is listed as a contributing factor in less than 1 percent of both total accidents and fatal accidents.

Table 2
Kentucky Incidence of Cell Phone Use As a Contributing Factor to Traffic Accidents
2003-2005

Accident Type	2003	2004	2005
Total All Accidents	154,075	157,232	152,925
Number of accidents where cell phone use was factor	615	791	876
Total Fatal Accidents	615	978	999
Number of fatal accidents where cell phone use was factor	2	1	7

Source: Kentucky Transportation. Collision Facts 2003-2005

The leading contributing factor for all accidents in Kentucky for the 2003-2005 period was driver inattention, cited in just over 40 percent of all accidents during this period. For fatal accidents, the leading contributing factor was inability to maintain proper control, followed by alcohol involvement, which tied inattention in 2005 (Kentucky Transportation. Collision Facts 2003-2005). On the national level, a 2006 study by the National Highway Traffic Safety Administration and the Virginia Tech Transportation Institute estimated that nearly 80 percent of crashes and 65 percent of near crashes involved some form of driver inattention (Sundeen 1).

Obtaining statistical data on the incidence of cell phone usage as a contributing factor in accidents has been difficult. Evidence of wireless phone use as the cause of an accident relies on self-reporting by drivers involved in accidents. Unlike alcohol-related accidents, phones leave no physical indicators at the scene (Sundeen 3).

Discussion

Legislation passed by other states regarding the use of cell phones in motor vehicles has taken several forms. Connecticut, New York, and New Jersey prohibit the use of hand-held phones while driving. New Jersey's law is limited, however, in that it is only enforceable as a secondary offense. Other states have limited bans on bus drivers and permit holders and have placed some restrictions on hands-free listening devices. In 2006, legislators in 33 states proposed 133 acts of legislation related to cellular telephone use (Sundeen).

During the 2003 Regular Session, the Kentucky General Assembly passed House Bill 154 that bars local governments from adopting ordinances restricting the use of mobile telephones in a motor vehicle. During the 2007 Regular Session, the Kentucky General Assembly passed House Bill 230 that prohibits the use of cellular telephones by school bus drivers and established a fine of \$50 for the first violation and a 6-month suspension of bus-driving privileges and a \$100 fine for subsequent violations. House Bill 301, that would have prohibited the use of a cellular telephone by an operator of a motor vehicle, was also introduced in the 2007 Regular Session. Similar bans have been considered by the General Assembly since 2000. Generally speaking, the bills have made exceptions for emergency personnel and citizens reporting emergency situations.

Proponents of a ban on using cellular phones while driving argue that cell phones distract drivers. Research shows that drivers who

use cell phones while driving are four times more likely to be involved in a traffic accident serious enough to require hospital care than drivers who do not use cell phones. In 2003, the Harvard Center for Risk estimated that 2,600 deaths, 330,000 moderate critical injuries, and 1.5 million instances of property damages in the U.S. occur annually as a result of cell phone use by persons operating motor vehicles (Cohen 13).

Opponents of cell phone ban legislation, such as the Cellular Telecommunications and Internet Association, believe that education is a better choice than legislation. They feel that the larger issue is distracted driving, which includes cell phone use and other actions that take driver attention off the act of driving. Some opponents see legislation restricting cell phone use by drivers as worthless because it will not eliminate cell phone use by drivers.

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