Issues Confronting the 2009 Kentucky General Assembly

An Update of Informational Bulletin No. 224 (2008)

Informational Bulletin No. 227

Legislative Research Commission
Frankfort, Kentucky

Kentucky Legislative Research Commission

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Robert Sherman, Director

The Kentucky Legislative Research Commission is a 16-member committee comprised of the majority and minority leadership of the Kentucky Senate and House of Representatives. Under Chapter 7 of the Kentucky Revised Statutes, the Commission constitutes the administrative office for the Kentucky General Assembly. Its director serves as chief administrative officer of the legislature when it is not in session. The Commission and its staff, by law and by practice, perform numerous fact-finding and service functions for members of the General Assembly. The Commission provides professional, clerical, and other employees required by legislators when the General Assembly is in session and during the interim period between sessions. These employees, in turn, assist committees and individual members in preparing legislation. Other services include conducting studies and investigations, organizing and staffing committee meetings and public hearings, maintaining official legislative records and other reference materials, furnishing information about the legislature to the public, compiling and publishing administrative regulations, administering a legislative intern program, conducting a presession orientation conference for legislators, and publishing a daily index of legislative activity during sessions of the General Assembly.

The Commission also is responsible for statute revision; publication and distribution of the *Acts* and *Journals* following sessions of the General Assembly; and 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.

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Prepared by

Members of the
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Foreword

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

This publication contains a summary of issues that may face the 2009 General Assembly in the upcoming short legislative session. It is formatted as an update of the more extensive publication that was produced by LRC staff for the 2008 Regular Session (Informational Bulletin No. 224). Production of the detailed issues publication for even-year sessions, followed by an update for odd-year sessions, was chosen as a reflection of the intended functions of both the long and short legislative sessions of the General Assembly. It should be noted that this publication also contains summaries of new issues that have emerged since adjournment of the last legislative session.

Those who follow the activities of the General Assembly recognize that important issues must often be considered by successive sessions of the legislature before resolution is achieved. Therefore, an indicated lack of enactment of legislation pertaining to a particular issue in 2008 does not alone diminish the relevance of the issue for the upcoming 2009 General Assembly; and legislative action taken does not necessarily indicate that an issue has been fully resolved.

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

Robert Sherman
Director

Legislative Research Commission
Frankfort, Kentucky
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Contents

Agriculture and Natural Resources

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

Background

The harvesting and sale of wild American ginseng root can be a valuable enterprise in rural parts of Kentucky, particularly the Appalachian mountain region. The harvested root generates an estimated $5 million to $8 million annually in Kentucky, according to the United States Fish and Wildlife Service (USFWS). But the state must continue to monitor the harvest and sale of ginseng or face the possibility of restrictions on or the banning of its export because ginseng is protected by federal USFWS laws and the Convention on International Trade in Endangered Species of Wild Fauna and Flora treaty. The Fish and Wildlife Service is responsible for ensuring that exported wild ginseng is harvested both legally and in a way that is not detrimental to the survival of the species (American Herbal).

Ginseng root is used as a medicinal herb, mostly in Asian cultures, to reportedly cure ailments from headaches to heart problems. Kentucky is the largest supplier of wild ginseng in the U.S. The Kentucky Department of Agriculture reported that 11,345 pounds of wild American ginseng root was harvested in Kentucky in 2007. The harvested dried root can sell for about $900 per pound (Stone). This would equate to a value of approximately $10 million for 2007.

Federal law requires a state to regulate ginseng before exportation (U.S. Fish). KRS 246.660 authorizes the department to implement and regulate the ginseng program in Kentucky. State regulation requires ginseng dealers to register with the department and to comply with recordkeeping and reporting guidelines. Dealers have not always been compliant, as evidenced by a USFWS undercover operation that culminated in 2006 with 16 search warrants being served by federal and state investigators. The investigation resulted in the seizure of 437 pounds of unlawfully acquired ginseng (U.S. Fish). Those charged were ultimately fined more than $130,500.

Update

The 2008 General Assembly considered but did not pass House Bill 630 that would have allowed conservation officers and other peace officers to help enforce ginseng laws. It would have established a "ginseng fund" to help pay for enforcement. The bill also would have set out licensing and certification requirements and would have established a set of administrative violations and civil penalties.

Following the 2008 Regular Session, Kentucky Department of Agriculture officials began working with ginseng dealers and eventually reached an agreement that would have dealers paying a $75 licensing fee and $1 per pound to the department on ginseng certified for export. These funds would generate an estimated $17,000-$18,000 annually. The agreement cannot go into effect until completing the administrative regulation process. The funds would be used for enforcement and administration and to help fund the University of Kentucky's monitoring of the wild ginseng crop. The department may seek legislation to enhance enforcement of ginseng regulation (Stone).

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

Background

Generally speaking, federal law preempts state law unless the law allows a state to enact different standards. Under the Clean Air Act of 1990, the federal government has the exclusive authority to establish emissions standards for motor vehicles. California is the only state under the Act that may apply to the Environmental Protection Agency (EPA) for a waiver from federal preemption to enact its own stricter vehicle emissions standards. If the EPA grants a waiver to California, states may choose to enact either the federal emissions standards or the stricter California standards.

In December 2005, the California Air Resources Board applied to the EPA for a waiver to implement new vehicle emissions standards for greenhouse gases. The proposed California standards were more stringent than the federal standards because no federal standards had been adopted. Over the next 2 years, 16 other states adopted the new California vehicle emissions standards for greenhouse gases or announced their intention to do so. However, none of the new standards could be put into effect until the EPA granted California its preemption waiver (Maynard).

The EPA refused to rule on the waiver request on the grounds that it did not have the authority to regulate greenhouses gases. However, in April 2007, the United States Supreme Court ruled in *Massachusetts v. EPA* that greenhouse gases were pollutants under the Clean Air Act and that the EPA had the authority and the duty to regulate them (*Massachusetts*).

In 2005, Kentucky ranked 13th among the states in emissions of carbon dioxide, which is the most prevalent greenhouse gas (U.S. Environmental). Kentucky relies heavily on coal-fired power plants to satisfy its electric energy consumption needs, which contributes to Kentucky's relatively high carbon dioxide emission rate (U.S. Energy). Therefore, if legislation were to be enacted that raised the cost of carbon dioxide emission, such as carbon tax legislation, Kentucky would have a particular interest in curbing carbon dioxide emissions from other sources, including motor vehicles.

Update

On December 19, 2007, the EPA Administrator announced he was denying California's waiver request to implement its greenhouse gas emission standards for new vehicles. The denial came as a surprise to many observers, given the Supreme Court's *Massachusetts* decision and the EPA's 30-year record of approving about 50 of California's waiver requests without a single denial (Egelko). In a statement, the EPA Administrator stressed the importance of having one national standard for greenhouse gas emissions from motor vehicles. He stated that the recently enacted Energy Independence and Security Act, which mandates a national increase in fuel economy standards, was better suited to address the issue of greenhouse gas emissions from motor vehicles (Johnson).

In response to the waiver denial, the California Governor stated that the fuel economy improvements mandated by the Energy Independence and Security Act would be insufficient to achieve the reduction in greenhouse gas emissions that California and the 16 other states sought. California's petition for review of the EPA's decision is pending in federal court (Schwarzenegger).

Unless overturned in federal court, the EPA's denial of the waiver request prevents California, and thus other states, from implementing greenhouse gas emissions standards for motor vehicles. Although currently there are no federal greenhouse gas emissions standards, on July 30, 2008, the EPA issued an Advanced Notice of Proposed Rulemaking for the regulation of

greenhouse gas emissions under the Clean Air Act. The EPA will use the public input received during the 120-day comment period to consider the specific effects of climate change and the potential regulation of greenhouse gas emissions from both stationary and mobile sources (Regulating).

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Appropriations and Revenue

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

Background

Kentucky currently taxes military pay unless the type of payment meets specific guidelines. Pay earned while in a combat zone is exempt from federal and Kentucky taxes (Internal Revenue Service). Taxable military pay and all other income earned by Kentucky residents in the military is taxable by Kentucky regardless of where the recipient is stationed (KRS 141.010). 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). Ten states, including four that are contiguous to Kentucky, exempt all active-duty military compensation of some or all persons serving in the military. Some only exempt reservists and National Guard members who have been activated; others exempt all military persons. Kentucky does not exempt any military pay beyond the exemption allowed on the federal return (State Income Tax).

Military retirement benefits are generally not taxable in Kentucky. Retirement pay for service prior to January 1, 1998, is fully excluded. Retirement pay for service on or after January 1, 1998, is excluded up to $41,110 per year per individual, the same as for any public pension (KRS 141.010).

Proponents argue this measure is a way to honor Kentucky's military members. Opponents say the military is adequately compensated, and the exemption will not provide significant relief or help to military members and families.

Update

Legislation was introduced and passed out of committee in both chambers of the 2008 Regular Session that would have excluded military pay from Kentucky income tax. Neither bill passed the second chamber.

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 Kentucky receipts from income taxes would decrease by $18 million annually if all active-duty military pay is exempted from income tax (United States).

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

Background

The goal of any business tax system is to fairly and accurately measure the income earned within a state so that the income can be appropriately taxed by that state. The ability of a business enterprise to create several corporations in multiple states that operate together throughout the nation makes it difficult for a state to determine the appropriate amount of taxable income for any single corporation within the enterprise. To address this problem, some states have developed different ways to group corporations into one report in an attempt to assess corporate taxes on the group instead of upon each separate corporation. One of the ways that has been discussed in Kentucky is the concept of combined reporting, which requires multiple corporations to report their income by filing one return based upon the way the corporations are operated rather than simply on common stock ownership.

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).

Opponents of combined reporting state that combined reporting creates too much uncertainty because determining which corporations are included in the group is based on the facts and circumstances of how the corporations operate. The Kentucky Department of Revenue notes that an additional administrative burden would be placed on its compliance staff to determine the correct composition of the group included in the combined report.

Kentucky legislatively and statutorily targets particular tax-avoidance strategies instead of using a broader-based approach like combined reporting that seeks to eliminate tax-avoidance practices.

Update

The nation recently has seen a resurgence of states enacting combined reporting. In 2008, Massachusetts adopted combined reporting, bringing the total number to 22 states that have enacted it out of the 45 states that impose a corporate income tax.

Kentucky data are not available to determine the number of business entities that would be impacted or the fiscal impact if combined reporting were enacted. Studies explain that switching to combined reporting can decrease, increase, or leave state tax collections unchanged depending on the complex economic relationships among corporations included in the combined report (Cline). However, Maryland and Massachusetts recently enacted combined reporting provisions and report that additional revenue of $25 million and $331 million, respectively, is expected (Maryland; TOFIAS).

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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)). Most insurers use an "insurance score" along with other risk 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 by reviewing outstanding debt, length of credit history, new applications for credit, types of credit in use, and credit performance (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). 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).

Some states require insurance companies to file the credit scoring models they use to calculate insurance scores with their state's insurance regulatory agency, although the models are not public information. Some states also require insurers to notify consumers when using their credit history in the underwriting process. In 2007, Maine passed legislation requiring an insurer to obtain an updated credit report within 30 days of a request from an insured, recalculate the insured's insurance score, and underwrite and rate the insured using the new score. Also in 2007, Nevada's legislature required that a notice explaining the reasons for adverse actions, such as premium increases and nonrenewal of polices, based on a credit report be provided in a form approved by the commissioner of insurance (National Conference).

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 and this is reflected in credit reports, insurance scores using that information benefit most persons. Therefore, restrictions on use of credit history will result in decreased availability of coverage or increased costs for some insureds. A 2004 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). Opponents also contend that 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.

Update

In the 2008 Regular Session of the General Assembly, two bills were introduced but not enacted relating to the use of credit scores as a risk factor for property and casualty insurance. House Bill 191 would have required insurers using credit as a risk factor for property and casualty contracts for personal risks to include in any denial of coverage and in a notice of renewal or nonrenewal the key factors that adversely affected the insurance score of the applicant or insured. House Bill 238 would have prohibited an insurer from using credit history or lack of credit history for any purpose relating to automobile insurance or personal motorcycle liability insurance policies.

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Economic Development and Tourism

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

Background

In contracting for goods and services, nearly all states grant some sort of preference to in-state firms (State of Texas). These preferences can take various forms, but several are fairly common. Many states grant preferences only in the case of a tie bid. Others grant a 5 percent advantage to in-state firms, thereby rewarding in-state companies even when bids are up to 5 percent higher than those of nonresident firms. Some states have "reciprocal preferences" that apply against nonresident businesses to the extent that they receive preference in their home state (State of Texas).

All the states surrounding Kentucky have resident business preferences. Ohio, for example, has a 5 percent preference that applies only to supply and service contracts. Tennessee has a tie-bid preference on public contracts and a preference for Tennessee meat products. 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. All surrounding states have reciprocal preferences (State of Texas).

Kentucky does not have preferences that apply to all categories of business but instead uses preferences for limited categories of business with the state. Kentucky has several resident business preferences that target particular business circumstances. All state agencies are required to purchase Kentucky-grown agricultural products if the products meet price and quality requirements (KRS 45A.645). All government agencies and political subdivisions are required to give preference first to products made by the Division of Prison Industries and then to Kentucky's industries for the blind, as long as the products are offered at market prices (KRS 45A.470). Additionally, Kentucky has both a reciprocal preference and a tie-bid preference for attorneys providing legal counsel to bond-issuing agencies (KRS 45A.873).

Proponents of expanding preferences to other products and services argue that the policy helps in-state businesses and the state's economy by improving economic opportunities and increasing tax revenue (Civic Economics 27). They also assert that preferences are necessary to offset disadvantages that Kentucky businesses face in surrounding states with in-state preferences. Some proponents argue that preferences could contribute to a flexible economic development strategy to target specific industries or types of businesses, such as small or minority-owned businesses.

Opponents of expanding preferences argue that these laws increase costs to the taxpayer by basing purchasing decisions on factors other than the best value. Moreover, they say preferences could amount to a state subsidy of less-than-competitive businesses and thereby would be detrimental to the economy. They also claim it could penalize Kentucky businesses operating in other states with reciprocal preferences. Another objection is the possible increased costs associated with implementing and monitoring the preferences.

Nationally, associations representing state purchasing officials have enacted resolutions opposing resident bidder preferences. These officials contend that preferences interfere with free trade and open competition and ultimately increase government costs (Natl. Association 7).

Update

In 2008, the General Assembly passed House Bill 484, which encourages colleges and universities to give preference to Kentucky agricultural products in the same manner currently used by other state agencies.

The General Assembly also passed House Bill 626. This bill, while not actually expanding preferences, strengthened the Department of Agriculture's Kentucky Proud program to help encourage and facilitate the purchase of Kentucky agricultural products.

The General Assembly considered but did not pass House Bill 21, which encouraged and enhanced government purchase of products and services provided by resident nonprofit agencies and work centers serving the blind or severely disabled. It would have given preference to these products and services in place of those provided by Kentucky industries for the blind.

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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

Kentucky policy makers have long recognized the high correlation between the educational levels of its citizens and the ability of the state to foster economic growth and a high quality of life. To that end, the General Assembly enacted significant education reform legislation affecting elementary and secondary education in 1990, postsecondary education in 1997, and adult education in 2000.

Still, Kentucky continues to remain below the national average for educational attainment on several measures, with less than 20 percent of adults with a bachelor's degree and more than 700,000 Kentuckians 18 or older who do not have a high school diploma (U.S. Census).

According to the Council on Postsecondary Education's interpretation of the U.S. Census, Kentucky will need nearly 800,000 working-age adults with a bachelor's degree or higher to match the projected national average by 2020. In 2000, Kentucky had slightly more than 400,000. Therefore, the council launched its "Double the Numbers" campaign to increase enrollments in college programs (Commonwealth).

In its efforts to double the numbers, the council has identified the need to increase the college participation of adult students between the ages of 18 and 49 and particularly adults 24 and older. If these students enroll, many will have to enroll part time due to family and financial constraints. For adult students to successfully complete programs, many will need financial assistance, counseling, remediation, and tutoring to address their lack of adequate academic preparation, confidence, and financial limitations (Hawker; Pusser et al).

Update

The Kentucky Higher Education Assistance Authority (KHEAA), in cooperation with the Council on Postsecondary Education and postsecondary education institutions in Kentucky, has launched a tutorial and mentoring program for adults, available at GoHigherKy.com, to help adults learn how they can access and pay for college programs.

In the 2007-2008 academic year, KHEAA established needs-based Go Higher grants for students 24 and older and who enroll in college less than half time because federal and existing state

student financial aid programs are limited to students enrolled half time or more. More than 300 students applied; 130 qualified and 84 accepted a grant. Seventy-six of the 2007-2008 grant recipients, or 90.5 percent, filed a Free Application for Federal Student Aid for the 2008-2009 academic year and indicated an intent to enroll further in postsecondary education. For the 2008-2009 year, 368 grant applications were received, and offers have been made to the 267 students who qualified (Ellis).

While this approach appears to have promise for helping more nontraditional students access and afford postsecondary education, the amount of a Go Higher grant is limited to $1,000 and 1 year of eligibility due to the lack of funds.

Nontraditional students who have been accessing college courses through the Kentucky Telecommunications Consortium, managed by Kentucky Educational Television, will no longer be able to do so starting with the 2009 spring semester. To date, more than 140,000 adults have earned college credits through this avenue. Funding was eliminated by the Council on Postsecondary Education as it realigned fund distributions that it manages due to state budget cuts (Kentucky).

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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 for a productive, satisfying adult life. The levels of literacy needed by all students and for adults to succeed in a knowledge-based, technology-driven society have increased. During the past 10 years, the Kentucky General Assembly has initiated and funded programs to improve literacy, with most resources directed to early elementary.

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. Kentucky Education Facts). Surveys of high school dropouts indicated that 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 15).

The Kentucky Adolescent Literacy Task Force, through its review of Kentucky assessment data from multiple sources, found that at least 70 percent of Kentucky secondary students will not be college-ready because they cannot read and understand higher-level materials—and are not on track to do so (Commonwealth. Department. Adolescent 5).

In the U.S. Department of Education's 2003 National Survey of Literacy of adults, it was estimated that 40 percent of the 2.4 million working-age adults in Kentucky function at the two lowest levels of literacy (Commonwealth. Council. Adult).

During the 2005 Regular Session, the General Assembly enacted legislation focused on the improvement of students' literacy levels.

- Senate Bill 19 emphasized reading diagnostic and intervention services for primary school students.
- House Bill 93 required the development of the Adolescent Literacy Coaching Project to provide instruction in reading techniques and interventions for teachers in grades 4 through 12.

Funding was provided for these initiatives, and until the 2008 Regular Session, the General Assembly was able to increase the funds in support of expanded literacy efforts.

Update

Two bills directed to adults and adolescents were introduced but not enacted in the 2008 Regular Session.

- House Bill 664 would have required all persons enrolled in teacher education programs, as a condition for initial certification, to complete a minimum of 3 credit hours in

reading courses to include strategies for teaching reading, assessing reading skills, and diagnosing and remediating students' reading difficulties.
- Senate Joint Resolution 166 would have required the Kentucky Department of Education to develop a comprehensive statewide literacy plan, paying specific attention to the improvement of adolescent literacy.

During the 2008 Regular Session, House Bill 406 was enacted and provided approximately $22.5 million for each year of the 2008-2010 biennium for a continuation of the Early Reading Incentive Grants and Read to Achieve programs. After completing a budget analysis, staff at the Kentucky Department of Education noted this appropriation is $1 million less than the amount needed for level funding for existing programs (Commonwealth. Department. Budget Analysis).

In fiscal year 2002, Kentucky was awarded an initial federal grant in the amount of $13.7 million to distribute to schools to implement Reading First programs. This federal grant award increased annually until 2008, when it was decreased to $6.2 million. The status of future funding for Reading First programs is in doubt (Hawkins).

The Kentucky Adolescent Literacy Task Force, under the direction of the Kentucky Department of Education, has adopted recommendations relating to a coordinated state policy, teacher certification programs, and teacher professional development that, if accepted, would require legislative action (Commonwealth. Department. Adolescent).

Funding for adult education programs for the 2008-2010 biennium was cut 6 percent.

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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. In its ongoing effort to improve the system and to respond to criticisms that the funding formula is not equitable for all districts, 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).

The Legislative Research Commission has published recent research reports relating to school facilities planning, construction, and funding. Several recommendations for programmatic, regulatory, and statutory changes were contained in the Office of Education Accountability's report *A Review of the School Facilities Construction Commission (SFCC)* and the Program Review and Investigative Committee's report *Planning for School Facilities Can Be Improved to Better Serve the Needs of All Students.*

The 2006 General Assembly enacted House Bill 380—the biennial budget bill—directing the Kentucky Department of Education, in partnership with the SFCC, to conduct a comprehensive evaluation of the processes used for facilities planning; categorizing schools for planning and funding purposes; planning for major plant maintenance; and determining unmet school facility needs. The agencies also were required to study equity in the distribution of state capital funds.

House Bill 380 also required the establishment of an Urgent Needs Trust Fund Advisory Committee to develop guidelines for the distribution of funds and to advise the SFCC. The committee developed the guidelines as directed.

The Kentucky Department of Education established the School Facilities Evaluation Task Force in 2006. The task force made several recommendations, many of which overlap with the recommendations in the two legislative reports (Koch).

Update

Many of the recommendations from the studies could be implemented by the Kentucky Department of Education or the SFCC through the administrative regulation process. In April 2008, the Kentucky Board of Education amended 702 KAR 4:180 relating to planning, including a revision of the Kentucky School Facilities Planning Manual, which is incorporated into the regulation by reference. These amendments, in response to recommendations from the OEA report, establish a stricter process that requires every district to prepare a District Facility Plan that contains an assessment of the school district's attributes and operations including the district profile, educational program, demographic information, facility conditions, transportation information, and the cost of delivery of services. The amendments also require the composition of the Local Planning Council to reflect local demographics and ethnicity.

The General Assembly enacted HB 704 in the 2008 Regular Session that allowed the continuance of the tax levies, commonly called growth nickels, without the benefit of voter recall in districts that had previously levied them, but required any future growth levy to be subject to a recall provision.

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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

There is broad recognition of the importance to Kentucky of a skilled workforce in science, technology, engineering, and mathematics (STEM) to be able to compete in a global economy. Kentucky lags behind the majority of states in producing degrees in mathematics, science, and engineering. In 2006, Kentucky ranked 49th in the nation for the percentage of all baccalaureate degrees conferred in mathematics and science (National Science 8-14).

While Kentucky increased the annual number of baccalaureate degrees conferred 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 Table 43).

Policy makers and policy groups have taken several steps within the past 2 years to address this problem.

Update

Based on the findings of the Council on Postsecondary Education STEM Task Force, the General Assembly enacted Senate Bill 2 during the 2008 Regular Session. This bill codified the STEM Initiative Task Force recommendations and created a framework for implementation of the task force's recommendations (Commonwealth. Council 22-27).

Senate Bill 2 established the science and mathematics advancement fund and required the Kentucky Board of Education to promulgate regulations for the administration of the fund. The fund was to provide

1. reimbursement of exam fee costs for students enrolled in advanced placement and international baccalaureate courses.
2. scholarships for students to take advanced science and mathematics courses through the Kentucky Virtual High School if such courses are unavailable in their home schools.
3. grants to districts for
   a. middle schools to develop accelerated learning in science and mathematics.
   b. high schools for the start-up of advanced science and mathematics courses or online training to support students enrolled in STEM courses through the Kentucky Virtual High School.
   c. professional development to deepen elementary school teachers content knowledge to develop and implement an energy technology engineering track (Commonwealth. Kentucky).

No funds were appropriated to the science and mathematics advancement fund in the 2008-2010 biennial budget.

Senate Bill 2 also required, beginning with the 2008-2009 school year, the Kentucky Higher Education Assistance Authority to provide Kentucky Educational Excellence Scholarship (KEES) supplemental awards for specified levels of achievement on examinations for advanced placement or international baccalaureate programs to students whose families are eligible for free or reduced-price lunch. This supplement will be provided from existing KEES funds.

Senate Bill 2 also codified in statute the Gatton Academy of Mathematics and Science at Western Kentucky University, which enrolled its first students for the 2007-2008 academic year. Funding was included within the university's operating budget.

In 2007, the National Math and Science Initiative entered a 6-year partnership with the Kentucky Science and Technology Corporation to launch AdvanceKentucky with a financial commitment of $13.2 million. Twelve Kentucky high schools have been selected to implement the program. AdvanceKentucky promotes access to a rigorous advanced placement curriculum in math, science, and English; supports mentoring for students and training for teachers; and includes financial assistance and incentives (Lang).

The framework for comprehensive statewide STEM initiative improvement is in place, but funding has not been provided.

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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 federal Help America Vote Act, passed by Congress in 2002, mandated that voting systems have the capacity to accommodate a voter-verified paper audit trail (VVPAT). Jefferson County uses an optical scan voting system, and all other counties use some form of direct recording electronic (DRE) voting machines. Both systems are acceptable under the Act. The DREs, purchased with federal funds, were in place for the 2006 primary, but they did not have VVPAT ability.

The VVPAT issues a slip of paper that a voter can view only after making ballot selections but before actually casting the electronic ballot. The paper is retained by the county clerk and if necessary used for an independent audit of electronic vote totals. This is achieved by comparing the VVPAT ballots to the electronic votes recorded (Brennan Center). A voter-verified paper audit trail machine is attached to a DRE voting machine so that there is both the electronic and paper ballot of the same vote. Kentucky does not require a voter-verified paper audit trail for its DREs.

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 ("Recounts" 7).

Advocates for people with disabilities state that DRE voting systems allow a voter with a disability the benefit of voting in private, and that reverting to any form of paper ballot would negate the privacy that the DRE is meant to provide ("Recounts" 9). Voters who are blind have direct access to the ballot with optional audio via headphones that includes directions on how to use a keypad, or a Braille keyboard may be used to cast a ballot. These systems are also fitted with switches that can be manipulated with head movements or sip-and-puff features for voters with neurological disabilities (United States. Government). Adjustments in the height of DREs may also be made for a person in a wheelchair (Wired). On the other hand, without a paper audit trail, there is nothing available with which to compare the electronic totals on a DRE. Voters may question whether the voting totals accurately reflect the votes cast because the only testing is done before an election and not on the day when votes are cast.

Update

As of September 2008, Kentucky had $19 million in Help America Vote Act funds remaining from the original federal disbursement. Of that amount, $15.8 million was available to be divided among Kentucky counties to purchase more voting equipment. This money should be adequate for the purchase of components for VVPATs. The funds are also dedicated funds, so if they are not spent by the counties before the expiration of the memoranda of agreement, new agreements must be executed to make future purchases (Johnson).

There were no bills filed during the 2008 Session of the General Assembly to require the addition of VVPAT to DRE voting systems. Though dozens of bills have been filed in Congress since 2005 to require such additions, none of the bills has been brought to the floor of either chamber for a vote (United States. Library).

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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.

The National Association of Secretaries of State has proposed a rotating regional primary plan that would divide the United States into four regions. Each region would hold its presidential preference primary during specified months, beginning in March of the presidential election year and continuing over the next 3 months. For the first year, 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.

Advocates say that the rotating regional presidential primary is the best method to address the concerns that states have about earlier primaries. For one thing, it would give voters and the media more time to evaluate the candidates (Grayson). For another, candidates would be more likely to visit smaller states and discuss local issues, and this would be easier by grouping states into regions. And finally, this process may allow lesser-known and underfunded candidates to compete because grassroots political organizing will be essential. The rotating presidential primary plan has been endorsed by the National Association of Secretaries of State and by the National Lieutenant Governors Association (National 1).

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 was held on May 20, and it included 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. It is estimated that 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 in 3 out of every 4 presidential election years (Grayson). A spokesperson for the state's county clerks doubts whether the cost is worth a special date, noting that turnout was low when Kentucky participated in the special presidential Super Tuesday primary in 1988 (Blevins).

Update

The 2008 General Assembly took no action to endorse or reject the rotating regional primary.

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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 residential consumption of gas over that period rose only 0.1 percent as a result of the construction of more-efficient homes, use of more-efficient gas furnaces and water heaters, and rising gas prices. Meanwhile, declining sales to retail customers for 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, including the cost of capital. The principal regulatory mechanism for such determinations is through a general rate case proceeding of the PSC.

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 case proceedings with the PSC in 2007; their combined costs, exceeding $1 million, is passed on to gas ratepayers (Hazelrigg).

Gas utilities have sought to minimize the frequency of general rate case proceedings in favor of relying 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 surcharges for gas utilities. The utilities also have argued for automatic periodic rate adjustments, revenue decoupling tariffs, and flat monthly fees to offset the volatile nature of natural gas prices, the risks of global climate change, and other difficult-to-predict costs (Marple).

The 2007 General Assembly considered but did not pass House Bill 261, which 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 would have reflected changes in

expenses, revenues, investments, depreciation, and other financial indicators.

HB 261 was modeled on legislation enacted and signed into law by South Carolina 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 (Marple).

Proponents of HB 261 asserted that regulatory rate mechanisms 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 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 limit the public's opportunities for notification and input regarding rate adjustments by bypassing the PSC's regulatory authority.

Update

In 2008, a gas industry consultant and former state public service commissioner identified under-recovery of natural gas distribution utilities' fixed costs as the root of the problem. Over time, such under-recovery adversely affects a utility's financial ability to continue to make capital investments to improve and extend its system. Separating the recovery of fixed costs from regulated rates would align the interests of gas distribution utilities with the interests of customers. Such alignment of interests could be accomplished by shifting a larger share of the fixed costs that are currently collected through a gas commodity charge to the monthly customer service charge and reducing the commodity charge accordingly, or by collecting all of a distribution utility's fixed costs through the customer charge. Similar rate stabilization and

equalization mechanisms have been adopted by legislation in 10 states and by utility regulatory authorities in five states (Blake).

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Health and Welfare

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

Background

KRS Chapter 213 outlines the procedures for filing and issuing birth and death certificates, also known as vital statistics records, and for obtaining copies of them. The Office of Vital Statistics reports that in 2004 there were 55,780 live births and 38,646 deaths reported in Kentucky (Commonwealth). While Kentucky citizens have reported delays in obtaining copies of vital statistics records, the number of delays is unknown. The failure to receive birth certificates in a timely manner has resulted in the failure to receive Social Security numbers. Similar failure to receive death certificates has resulted in the failure to receive life insurance benefits and problems probating estates.

Delays in receiving copies of birth certificates have been attributed to the lack of priority that hospitals place on processing and submitting the forms. Delays in receiving copies of death certificates have been attributed, in part, to the failure of health care personnel to answer certain questions relating to cause of death and to the failure to receive pending laboratory data necessary to complete the forms. Other delays with obtaining copies of these records have been attributed to improper processing of vital statistics, which can sometimes happen because the certificates were signed in blue ink instead of the required black ink (Commonwealth).

Update

The 2008 General Assembly enacted House Bill 36, requiring that birth and death certificates be signed in black or blue ink. This allows the certificates to be processed more efficiently rather than being rejected because of the blue ink, which caused delays in completing the certificates. HB 36 also establishes that funeral directors are not to be held responsible for incomplete or incorrect entries on death certificates for which the funeral director did not provide the information. This change will help to ensure that death certificates requiring follow up will be sent to the appropriate entities for action and, therefore, will facilitate the timely processing of all certificates. Finally, the bill removed direct questions regarding diabetes from the death certificate. The Kentucky Department for Public Health recommended this change because a high number of the incorrect certificates filed had errors relating to the direct questions on diabetes. This action, according to the department, may help reduce the number of incomplete

death certificates being filed and promote timely death certificate processing.

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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 who will be appointed by the court if the parents are indigent. 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).

The state issues payments to the GAL and CAC in amounts set by KRS 620.100. The case fees for both types of attorneys, $250 in District Court and $500 in Circuit Court, are the same as when they were first set in 1986. The amount of state general funds expended for GALs and CACs has increased from approximately $2.5 million in fiscal year 2001 to $8.4 million in fiscal year 2006.

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; Hardin). The Cabinet for Health and Family Services has responded by establishing a panel to study the use of GALs and CACs to increase accountability for the child welfare agency's actions.

States have used different tactics to improve GAL and CAC programs:

- Special divisions within the court systems
- Yearly contracts with specific attorneys or legal services agencies for services
- Handling of cases at the county level
- Independent child advocacy agencies
- Practice guidelines or including specific requirements and duties for the GAL in contract form

- Specialty certification to attorneys who represent children, parents, and agencies in child abuse, neglect, and dependency cases (American Bar; University)

Several organizations have recommended that Kentucky increase GAL and CAC payments to encourage improved legal practice in cases, centralize the structure of the programs, and establish minimum standards (University; Frederick). As a prerequisite for state funding, federal law requires states to train GALs. Although such training is conducted in Kentucky, there is no state law that requires it.

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 and often do not result in sufficient oversight and accountability for the use of these public funds and for the outcomes of the services provided.

Update

In the 2008 Regular Session, several bills were introduced that related to GALs and CACs, but none of them passed. House Bill 151 would have required the Chief Justice to establish rules and standards for attorneys in child protection cases. It also would have changed the fee structure to an hourly, rather than case, basis. House Bill 421 would have authorized the Chief Justice to create a pilot project to open to the public certain court proceedings relating to child protection issues. House Concurrent Resolution 97 would have encouraged the Chief Justice to provide basic and in-service training for GALs.

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

Background

National estimates 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 (National).

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). One study found that persons living in close proximity to state-approved gambling opportunities are twice as likely to be problem gamblers (Welte).

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).

Most states and the District of Columbia appropriate public funds for the treatment of gambling-related problems. Kentucky does not. Funding in the other jurisdictions is generally allocated for help lines, public awareness, research, counselor training, and prevention (Association).

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).

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.

Update

Many bills relating to problem gambling were filed during the 2008 Regular Session, but none of them passed. House Bill 137 and Senate Bill 38 would have created a compulsive gamblers awareness and treatment fund with money appropriated from a portion of the excise tax on horse racing wagers and from a percentage of gross revenue from the lottery and charitable gaming. House Bill 537 would have created a compulsive gamblers assistance account, funded from gaming revenues, to promote awareness and pay costs of problem gambling.

Finally, House Bill 550 would have proposed an amendment to the Kentucky Constitution to authorize casino gaming, with a portion of the tax revenues allocated for gambling addiction programs.

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

Background

In 2007, there were approximately 45.7 million individuals, or 15.3 percent of the population, in the U.S. without health insurance. From 2006 to 2007, the number of Kentuckians without health insurance increased from 13.8 percent to 14.6 percent, an average of 569,000 individuals for the 2-year period (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 have been 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 because some of their premium dollars go indirectly toward providing treatment for those who are uninsured (Greenblatt). With the lack of action on the federal level, Massachusetts, Vermont, Iowa, and New Jersey have passed legislation aimed at providing health insurance coverage for their uninsured citizens.

Update

The 2008 General Assembly passed House Bill 440, which allows individuals enrolled in a group health insurance plan to continue to cover their unmarried dependents until age 25. Young adults have a high rate of being uninsured. In 2007, nationwide, 29.1 percent of those ages 18 to 24 reported having no health insurance (U.S. Dept. Centers. National Center...Nationwide). In Kentucky, 31.4 percent of those in the same age group reported being uninsured (U.S. Dept. Centers. National Center...Kentucky-2007).

Also in 2008, House Bill 345 and Senate Bill 126 were filed but did not pass. These bills would have simplified the enrollment process for the Kentucky Children's Health Insurance Program (KCHIP) by eliminating face-to-face interviews for enrollment; providing a presumptive eligibility period for children applying for the program; providing continuous enrollment; and allowing electronic submission of applications and renewals.

On September 3, 2008, the Governor announced that, effective November 1, 2008, the application process for KCHIP will be

simplified by eliminating the face-to-face interview requirement for enrollment; shortening the application form; amending the denial process; and allowing a 30-day grace period to complete the renewal process.

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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. At least 50 percent of sexually active men and women acquire HPV at some point in their lives (U.S. Dept. Centers. Genital). 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).

There are many types of HPV, but four 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. Clinical trials indicate 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. Genital). The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (CDC) recommends the vaccination for girls between ages 11 and 12 before they become sexually active.

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 decisions to receive the vaccine should be the responsibility of the family rather than of the government. An additional concern is related to some reports of adverse reactions to the vaccine. The CDC indicates that the risk of serious adverse reaction to the HPV vaccine is small and continues to recommend the vaccine (U.S. Dept. Centers. *HPV Vaccine: What*).

The cost of the HPV vaccine is also a concern. The retail price of Gardasil is $125 per dose, or about $375 for the recommended three doses. Most, but not all, health insurance plans cover recommended vaccines (U.S. Dept. Centers. *HPV Vaccine Information*). The Kentucky Children's Health Insurance Program covers the cost of the vaccine for eligible girls.

Update

Legislation requiring girls to be vaccinated was introduced but did not pass in the 2007 and 2008 Regular Sessions. House Bill 345 and House Bill 396 required vaccination but permitted parents to exempt their children without requiring or documenting a reason. The National Conference of State Legislatures reports that in 2007-2008, while several state legislatures considered a mandate for the HPV vaccination, only Virginia and the District of Columbia passed the school vaccination requirement. Virginia is currently considering a bill that would delay the October 1, 2008, effective date. The District of Columbia law became effective May 4, 2007. Several states passed bills relating to but not mandating the HPV vaccination. California and Iowa required insurance companies to cover the HPV vaccination. Colorado, Indiana, Michigan, and Washington required schools to provide HPV information to students and parents.

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Should the General Assembly require 30 minutes of physical activity in school every day?

Background

Nationally, about 14 percent of children ages 2 through 5 and 19 percent of children ages 6 through 11 are obese. About 17 percent of adolescents are obese (National Conference. Childhood). In Kentucky, more than 20 percent of children are considered obese, making Kentucky children some of the most overweight in the nation (U.S. Dept.). This potentially presents both physiological and economic problems. Hospital costs alone for treating childhood obesity in the U.S. are estimated at $127 million annually (Johnson). Obese adolescents are likely to carry their obesity into adulthood, eventually causing more health problems. Obese individuals are more likely to suffer from Type 2 diabetes, hypertension, and strokes (U.S. Dept.).

Physical activity, along with proper nutrition, can be used to reduce obesity. It is suggested that children ages 5 through 12 exercise for at least 1 hour on most days of the week (National Association). Opposition to increasing mandated physical education requirements arises from concerns about the inability of schools to fund physical activity programs and to find time in the regular school day for physical activity.

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).

Kentucky law encourages schools with students in kindergarten through 5th grade to implement wellness plans that focus on diet and exercise and allows schools to authorize 30 minutes per day, or up to 2.5 hours per week, of exercise as part of the regular school day (KRS 160.345). Kentucky requires one-half credit of physical education for high school graduation.

Update

Several states introduced school exercise-related legislation in 2008. Florida, New Mexico, Oklahoma, and Virginia passed bills mandating physical activity in schools (National Conference. Physical). During the 2008 General Assembly, House Bill 34, House Bill 632, and Senate Bill 17, mandating physical education in schools, were introduced but did not pass.

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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

While most states experienced a growth in prison population in 2007, Kentucky's felony inmate population experienced the largest growth in the nation, with an increase of 12 percent (Pew 7). Over the last 30 years in Kentucky, the felony inmate population climbed from 2,838 in 1970 to 20,462 in 2008 (Lawson 325; Thompson, Ruth Sept. 10). Many believe that this continual growth is a result of policy choices that incarcerated more people for longer periods of time and did nothing to reduce recidivism. Advocates for sentencing reform cite the persistent felony offender laws and other sentencing enhancements as being responsible for much of the increase in the felony inmate population. This group believes that using alternative options, such as intensive treatment, counseling, and job training, to rehabilitate nonviolent offenders with substance abuse problems will decrease the inmate population and recidivism rates. These options may also result in savings to the corrections budget. However, opponents of reforming the laws assert that an increased inmate population is a result of increased crime, especially drug offenses, and that longer sentences for habitual offenders are necessary to maintain public safety (Stumbo 1).

Update

The 2008 Regular Session of the General Assembly included several provisions in House Bill 406, the Executive Branch Budget, designed to alleviate some of the problems associated with an increasing inmate population and its impact on the criminal justice system. Included in the bill are provisions that

- increase the volume of cases reviewed by the Parole Board;
- decrease the amount of time a nonviolent offender convicted of a Class D felony must serve before review by the Parole Board;
- increase the good time credit for completing an educational or drug treatment program;
- appropriate funds for substance abuse treatment programs;
- require periods of successful parole to be applied toward a parolee's or prisoner's remaining unexpired sentence;
- require a final discharge of sentence for a prisoner who has been paroled long enough to qualify for the minimum expiration of sentence had the parolee not been paroled; and
- permit the increased use of home incarceration and monitoring devices for lower-risk nonviolent, nonsexual offenders.

While these provisions did not specifically address the state's felony sentencing structure, they may produce the effect of

decreasing the number of incarcerated low-risk offenders while providing some offenders educational and treatment options to prevent recidivism. However, these measures are temporary because the executive budget bill will expire after 2 years.

As a result of the parole credit and home incarceration provisions, 1,415 inmates have been released with parole credit, 2,007 offenders have been released from parole supervision, and 185 offenders are participating in the Home Incarceration Program (Thompson, Ruth Sept. 12; McCowan). The total combined savings from fiscal years 2008-2010 for the release of inmates who have been discharged with parole credits is estimated to be $12.5 million (Thompson, LaDonna).

These provisions of House Bill 406 have recently been challenged in two separate lawsuits. In one judicial circuit, a restraining order has been issued to prevent parole credits from being applied for the purpose of discharge to inmates and parolees that were sentenced in that circuit (*Montgomery*). Also, the Office of the Attorney General is seeking statewide injunctive relief to prevent the Department of Corrections from releasing prisoners and parolees due to what the Attorney General claims is an "illegal retroactive application" of the budget bill's provisions (*Commonwealth*).

To discover what policies may be causing the increase in incarceration, the 2008 General Assembly also passed Senate Joint Resolution 80. This resolution created a subcommittee of the Interim Joint Committee on Judiciary to review Kentucky's and other states' penal codes and controlled substance offenses and make recommendations. Also, the Governor requested that the Kentucky Criminal Justice Council study the penal code and sentencing laws and make recommendations regarding criminal justice reform (Commonwealth. Justice). These studies would be a comprehensive approach to criminal justice reform and would possibly include a review of the felony sentencing laws.

Senate Bill 72, which was proposed but did not pass, would have made secured substance abuse recovery programs more available to offenders seeking pretrial diversion and would have permitted credit for time served in treatment facilities. While not specifically targeted to the felony sentencing laws, this bill could have increased the number of low-risk offenders with substance abuse problems who receive treatment, reduced recidivism, and decreased the number of these offenders who are incarcerated.

Other states have not limited their reforms to felony sentencing laws when creating ways to decrease their prison populations

safely. These states have crafted programs that have decreased their prison populations and decreased recidivism. Texas used research findings and recommendations from a study of its system to change its policies dramatically and has employed what is called a "justice reinvestment" strategy. The changes, implemented in 2007, expanded the use of treatment and diversion programs for offenders with substance abuse and mental health issues. The reforms also included the expansion of drug courts and changes in parole and probation practices. These policy changes are expected to save the state $210.5 million for the 2008-2009 fiscal biennium, with even greater savings if no additional prisons are constructed (Council 1 and 6). Some states have increased the use of diversion programs that expand community corrections options, such as drug courts. Other states have focused their attention on lower-risk offenders who commit technical violations while on probation or parole. Instead of reincarcerating these individuals, some states are increasingly using alternative punishments for technical violators, such as increased reporting requirements, monitoring devices, or community service (National).

Congress has passed the Second Chance Act that addresses the issue of successful prisoner reentry into the community. This legislation attempts to reduce recidivism, increase public safety, and decrease the amount of tax dollars spent on corrections by providing necessary services to offenders who are reentering society after being released from jail or prison. The Act provides grants to states and local governments to fund treatment programs, education, employment services, and housing to offenders who have entered or will reenter their communities. The Act also provides mentoring grants to nonprofit organizations that offer transitional services to help reintegrate offenders. However, funding for the Act is still being negotiated by Congress in its 2009 appropriations bill.

Because the issues responsible for a growing felony inmate population are complex and numerous, restructuring the state's felony sentencing laws may only be part of the possible solution. The subcommittee created by the General Assembly to study the reform of the penal code and the controlled substances laws will be studying what changes, if any, are necessary.

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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 of the state's jails, and the counties that fund them, continue to remain under financial pressure. Counties are fully responsible for the pretrial and post-conviction incarceration costs for misdemeanants. They also are responsible for the pretrial incarceration costs for persons charged with a felony, with the state assuming responsibility for those persons after sentencing. In exchange for state per-diem payments, a jail has the option to hold newly convicted felons after sentencing, either as the prisoner awaits transfer to a state prison or with the jail serving as the place of imprisonment for Class D felons and low-risk Class C felons. Jails that are able to hold these two types of state prisoners for less than the amount of the state per-diem may use the excess revenue to cover the jail's other operating costs. A few counties are able to cover those costs entirely.

Update

The issue of county jail costs generated considerable discussion and proposed legislation during the 2008 Regular Session of the General Assembly, with a few of the proposals passing into law.

The broadest enactments may have been in the Executive Branch Budget, House Bill 406, which established a number of mechanisms designed to relieve some of the fiscal pressure on the criminal justice system as a whole. These provisions

- increased the number of parole board members to increase the board's caseload capacity;
- reduced from 20 percent to 15 percent of the amount of a penal sentence a nonviolent prisoner must serve before being authorized to apply for parole;
- increased time credits for completing educational and substance abuse treatment programs;
- allowed time spent on parole to serve as incarceration time when calculating sentences; and
- increased the use of home incarceration.

These provisions will expire on July 1, 2010, when the budget itself expires.

Also, the General Assembly, through the enactment of Senate Joint Resolution 80, created a special subcommittee of the Interim Joint Committee on Judiciary to undertake a comprehensive review of the state's penal code and controlled substances laws. The Governor followed a similar path, charging the Criminal Justice Council with the responsibility of undertaking a similar study (Commonwealth). A possible outcome of these initiatives is a reduction in sentences for certain types of crimes; this reduction could result in lesser incarceration costs.

The enactment of Senate Bill 92 in 2008 allows the adoption of a uniform schedule of bail for nonviolent Class D felonies, which currently exists for misdemeanors. This should allow an earlier release on bail for qualifying prisoners and, thus, lessen the pretrial detention costs borne by counties. As more qualifying prisoners are released on bail, counties will have less pretrial detention costs.

Except for the provisions of SB 92, county advocates may point out that the budget provisions and the studies undertaken are not generally written to address that portion of an inmate's jail time for which the county is solely fiscally responsible. Counties may feel increasing fiscal pressure as a result of the budget provisions because those provisions may actually reduce the number of state

prisoners in county jails, resulting in a loss of per-diem revenue (Turner).

Other bills were considered but not passed, with the proposals contained in those bills retaining the potential for reintroduction in 2009. Those proposals included

- reducing the amount of jail time imposed for misdemeanor offenses;
- creating various task forces to study a state takeover of county jails;
- authorizing use of state prison canteen profits to pay for local pretrial detention costs;
- making the state responsible for prisoner costs after the entry of a verdict of guilt instead of at sentencing; and
- making the state responsible for all felony pretrial detention costs.

Finally, as a direct result of the continuing fiscal pressure, the Kentucky County Judge/Executive Association voted to enter into litigation against the Commonwealth regarding pretrial incarceration costs. The basis of the suit would relate to felony sentencing credit for pretrial incarceration. Frequently, a person charged with a felony will spend all or a portion of the time awaiting trial in the county jail, at the county's expense. If the person is convicted and sentenced, the court will often give the person credit for this pretrial jail time. The view of the counties is that if this counts toward a person's felony sentence (for which the state is financially responsible), then the state should reimburse the counties for the portion of the prisoner's pretrial incarceration cost that is being converted into state sentencing time (Lang).

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Licensing and Occupations

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

Background

Anesthesiologist assistants (AAs) are authorized to practice in Kentucky, along with 16 other states and the District of Columbia. Kentucky is among the 11 jurisdictions that allow practice under direct licensure. The other seven 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 (Commonwealth).

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.

While scope of practice, prescriptive authority, and physician supervision ratios are part of the overall AA issue in Kentucky, the primary focus has been on the physician assistant education requirement. There are only five accredited AA training programs in the U.S. (Commission). Given that and the 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).

Update

No bills on this issue were filed during the 2008 Regular Session of the General Assembly.

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Should the General Assembly provide explicit criteria to distinguish between independent contractors and employees?

Background

Frequently, very similar tasks may be completed by an employee or an independent contractor. The Internal Revenue Service distinguishes between employees and contractors based on the amount of control employers can exert over the tasks to be done. Employers have the right to control the details of how a service is performed by an employee. However, employers control or direct only the result of the work and not the means and methods of accomplishing that work if it is performed by an independent contractor. A number of states have added additional criteria to provide more specificity in determining the nature of the relationship. For example, New Hampshire's criteria examine whether independent contractors provide their own tools, hire their own assistants, and apply for federal employer identification numbers (State of New Hampshire).

The distinction between employee and independent contractor is important because intentionally misclassifying employees as independent contractors deprives the government of payments due, creates an unfair competitive advantage for firms that misclassify their employees, and denies misclassified employees legal protections and benefits that are due them.

Discussion

Employers do not typically withhold unemployment insurance payments, workers' compensation insurance payments, or the Federal Insurance Contribution Act taxes for independent contractors. Independent contractors make corresponding payments to these government programs on their own behalf. However, employees who are misclassified as independent

contractors may not recognize that they should be making such payments.

While detailed studies about Kentucky have not been conducted, other states have identified substantial underpayments due to employee misclassification. For example, a recent study by Cornell University estimated that $175.7 million dollars was underreported to the New York unemployment insurance fund during a period from 2002-2005 (Donahue). Similarly, Maryland's Secretary of Labor, Licensing and Regulation reported that, based on unemployment insurance audits in his state, employee misclassification accounted for between $15 million to $25 million unpaid to the Unemployment Insurance Trust Fund each year (Perez).

Speaking before the Joint Interim Committee on Licensing and Occupations in August 2008, the director for the Kentucky State Building and Construction Trades Council estimated that firms misclassifying employees could save up to 30 percent in associated payroll costs (Roberts). A representative for general contractors in the state told the committee that the reduction in payroll costs achieved by those who misclassify employees places them at an unfair advantage by allowing them to underbid other firms that accurately characterize their employees (Vincent).

Misclassified employees may also lose key workplace protections. The U. S. Government Accountability Office has stated:

> When employees are misclassified as independent contractors, they may be excluded from coverage under key laws designed to protect workers and may not have access to employer-provided health insurance coverage and pension plans.

The report goes on to identify some of these key laws protecting employees:

- The Fair Labor Standards Act, which establishes minimum wage, overtime, and child labor standards
- The Family Medical Leave Act
- The Occupational Safety and Health Act
- The National Labor Relations Act, which guarantees the right of employees to organize and bargain collectively

Some have proposed revising Kentucky statutes to provide a more precise definition of "employee" and "independent contractor," and to add additional penalties for intentionally misclassifying an employee as an independent contractor. Others say that no change

in statutes is necessary, arguing that state agencies should cooperate and share information to more effectively enforce existing laws.

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Should the General Assembly regulate the equine industry to achieve greater equine safety?

Background

Equine safety has always been an important issue within the Kentucky horse racing industry. Recently, interested parties have discussed improving safety for all racing breeds by reviewing several aspects of the sport, including how horses are affected by riding crops, horseshoe toe grabs, and steroids and other drugs. Riding crop concerns usually focus on the approved use and design of the crop. There also have been numerous recommendations to ban the use of toe grabs and other traction devices on a racehorse's front shoes (Curran). Steroid use in horses is potentially widespread and is viewed by many as a performance-enhancing

drug. A 2003 study in Pennsylvania found that more than 60 percent of the horses racing in the state at that time were competing while using at least one anabolic steroid (Soma). Some stakeholders have advocated for a national system to track and report injuries. This system could ultimately reduce injuries because it would analyze injuries under the conditions in which they occurred (Marzelli).

In addition to determining which actions should be taken to improve equine safety, another concern is determining who should take the actions. Some interested parties feel that the industry should regulate itself, while others believe that government should intervene.

Both the federal and state governments have contemplated action. In recent months, issues of equine safety have been reviewed by both the Kentucky Racing Commission and the U.S. Congress. The Kentucky Racing Commission has taken initial steps toward banning steroids and toe grabs in racehorses through administrative regulations (810 KAR 1:012 and 1:018). Also, a congressional committee has held a highly publicized hearing on equine safety (U.S. House).

Discussion

Proponents of state legislative action believe that reforms should be placed in statute to allow the General Assembly to maintain direct control over the equine industry. Some proponents feel that federal oversight would damage the industry and diminish Kentucky's control over what some call its signature industry. While a variety of legislative actions could be taken, some have proposed increased funding to state racing commissions to improve enforcement and uniformity (LaMarra).

Many opponents of Kentucky legislative action believe that the executive branch, through the Racing Commission, can regulate the issue best within its authority. Other opponents feel that the federal government should regulate the horse racing industry to create a unified approach. Alternatively, some opponents to legislative action argue that this unity could be achieved by adopting model rules or through other formalized agreements among the various state racing commissions (Hall). An independent national racing commission, created jointly by all racing jurisdictions, has been proposed for the purpose of adopting uniform racing rules (Shapiro).

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Local Government

Should the General Assembly draft a constitutional amendment proposing the extension of sovereign immunity to fire departments and firefighters?

Background

As of the fall of 2008, there were 766 volunteer fire departments and 20,070 volunteer firefighters in the Kentucky (Day).

Municipal fire departments, fire protection district fire departments, volunteer fire departments, and the personnel of these departments have historically relied on Kentucky codified law for a certain degree of sovereign immunity (KRS 75.070). The law also confers immunity to cities for damages caused outside their corporate limits (KRS 95.830(2)).

The Kentucky Court of Appeals in 2007 declared KRS 75.070 and KRS 95.830(2) unconstitutional to the extent they bestow immunity on volunteer fire departments and their volunteer firefighters. In the 2007 case, *Green's Motorcycle Salvage, Inc. v. Caneyville Volunteer Fire Department*, the court affirmed a qualified immunity for firefighters.

The Court of Appeals decision is not final. The Kentucky Supreme Court in August 2008 heard oral arguments for the appeal, but a final decision is not expected until December 2008 or later.

Discussion

The Commission on Fire Protection Personnel Standards and Education believes that the Court of Appeals decision in the *Green's Motorcycle* case may deter volunteer firefighters from serving and may jeopardize the ability for volunteer departments to fight fires. Because each such department must have a certain number of personnel to receive $8,250 in funding from the Kentucky Firefighter Foundation Program, fewer firefighters would also mean less funding (Kurtsinger).

The Kentucky Justice Association supports abolishing the immunity principal on the notion of fairness. The association believes that any party demonstrating negligent behavior should be held accountable for that behavior. Abolishing immunity would hold parties accountable because they would be subject to civil liability in court (Johnson).

The association also believes that individual firefighters would still be covered under qualified official immunity. While they still may be subject to a personal lawsuit, a person bringing such a claim would prefer to bring the claim against a person in an official

capacity because of the increased likelihood of appropriate insurance coverage through the government entity (Johnson).

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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 prevents 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). Until May 2008, when the Kentucky Personnel Cabinet eliminated the testing selection method, the preference came into play when an examination was a part of state hiring. The scoring system was mainly based on how applicants fared on an aptitude and skills test administered by the Personnel Cabinet. Five points were added to the score of a veteran or National Guard member who passed the examination. Ten points were 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 passed the examination (KRS 18A.150).

Veterans' preference points were added only if the applicant passed the examination without benefit of the points (KRS 18A.150). After the preference points were added to the examination score, the Personnel Cabinet referred the five highest-scoring candidates to the state hiring agency for interviews. A beneficiary of the veterans' preference who did not have one of the five highest scores was not interviewed (Roberts).

Opponents to a veterans' preference would argue that a preference could prevent more-qualified persons from being considered for a job.

Update

The 2008 Kentucky General Assembly considered but did not pass House Bill 57 and Senate Bill 181, either of which would have established a veterans' preference for the filling of all merit job vacancies. Both bills would have required that 5 or 10 preference points be added to the test score of military-connected state job applicants and would have permitted the total score to exceed 100. The bills further required that the register certificate of finalists for a merit job identify all veterans and family members on the certificate who qualified for veterans' preference points under

KRS 18A.150. A key difference between the bills was the number of individuals with veterans' preference points to be offered interviews by a hiring state agency. Similar bills were proposed in prior legislative sessions.

In July 2008, the Personnel Board filed an emergency administration regulation, 101 KAR 2:066E, to restore veterans' preference in hiring for merit jobs in all state agencies (Commonwealth). Under the new regulation, all individuals who qualify for veterans' preference are to be clearly identified on certified registers, a practice the Personnel Cabinet has been doing unofficially since November 2005 (Barnes). Employing agencies also are required to offer an interview to no fewer than five individuals identified on a register certificate as being entitled to veterans' preference, and to all entitled applicants when that number is less than five. The regulation also applies to individuals qualifying for veterans' preference currently employed by the state who apply for another classified position within state government.

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State Government

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

Background

In past legislative sessions, two separate "retirement windows" were created to provide enhanced benefits for certain nonhazardous employees participating in the Kentucky Employees retirement System (KERS) and the County Employees Retirement System (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 on or before 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 (Commonwealth. Kentucky. Summary). Employees who are eligible for one or both of the windows have a financial incentive to retire before the windows close in 2009.

In the past two sessions of the General Assembly, bills have been introduced to extend the two retirement windows before the January 1, 2009, expiration date. Proponents have argued that extending the window would help retain experienced employees and would not create additional liabilities for the retirement systems. Opponents have contended that extending the window would not produce savings to the retirement systems and would only temporarily delay the loss of experienced employees.

Update

In the 2008 Regular Session of the General Assembly, House Bill 53, which would have extended the two retirement windows for state and county employees, was introduced but did not pass. Employees eligible for one or both of the retirement windows must retire on or before January 1, 2009, in order to receive the enhanced benefits.

According to fiscal-year-ended data from Kentucky Retirement Systems, the number of employees eligible for the retirement window has continued to decrease as eligible employees have retired over the recent fiscal year. The table below provides information on the number of employees eligible to retire on or before January 1, 2009, and received the enhanced benefits

reported by the systems as of June 30, 2007, and June 30, 2008 (Commonwealth. Kentucky. Comprehensive).

KERS* Employees Eligible To Retire On or Before 1/1/2009 With	As of 6/30/2007	As of 6/30/2008
2.2% Benefit Factor Only	5,253	2,351
2.2% Benefit Factor & High-3 Final Compensation	2,674	1,458
Total Employees Eligible for Window	7,927	3,809

CERS* Employees Eligible To Retire On or Before 1/1/2009 With	As of 6/30/2007	As of 6/30/2008
High-3 Final Compensation	2,000	1,196

Source: Compiled by Legislative Research Commission staff from information provided by the Kentucky Retirement Systems.

*Values reflect the number of employees eligible to retire under the retirement windows and do not indicate the total number of employees eligible to retire.

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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 U.S. Centers for Disease Control and Prevention, motor vehicle accidents are the leading cause of death among children in the United States. 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 properly by adult seat belts (Advocates). 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.) Proponents of booster seat legislation see booster seats as the most effective means to prevent serious injuries and reduce fatalities. Opposition to booster seat legislation often centers on parental decision making being affected by the imposition of a mandate.

Update

In the 2008 Regular Session, the General Assembly passed Senate Bill 120, which requires any driver of a motor vehicle, when transporting children under the age of 7 and between 40 and 50 inches in height, to secure the child with a booster seat. The law includes a grace period through June 30, 2009, when courtesy warnings will be issued. On or after July 1, 2009, a $30 penalty will be assessed for the offense. A first-time offender may purchase a booster seat at his or her own expense in lieu of paying the fine.

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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. Obtaining statistical data on the incidence of cell phone use as a contributing factor in accidents has been difficult. Evidence of cell phone use as the cause of an accident relies on self-reporting by drivers. However, studies show that cell phone use by drivers is a distraction and impairs driver response time (Sundeen). Driver inattention has been the leading contributing factor for traffic accidents in recent years in Kentucky (Kentucky Transportation 2003-2007). According to the Governors Highway Safety Association, five states and the District of Columbia prohibit the use of hand-held cell phones while driving, while others have limited restrictions.

Proponents of a ban on using cellular phones while driving argue that cell phones distract drivers. Opponents of cell phone ban legislation believe that education is a better choice than legislation. They feel that the larger issue is distracted driving, which includes cell phone use as well as other actions that take driver attention off the act of driving.

Kentucky currently has a preemptive law prohibiting local governments from adopting ordinances restricting the use of cell phones in motor vehicles (KRS 65.873) and a law prohibiting the use of a cell phone by a school bus driver (KRS 281A.205). Legislative measures prohibiting the use of a cell phone by an operator of a motor vehicle have been considered but not passed during previous sessions.

Update

In the 2008 Regular Session, there were three bills introduced that pertained to cell phones and driving, none of which passed. House Bill 56 prohibited the use of a wireless device by an operator of a motor vehicle; House Bill 125 restricted persons with an instructional permit from cell phone use while driving; and Senate Bill 116 prohibited reading, writing, and sending text messages while driving. Although cell phone-related traffic collisions have risen in the Commonwealth, cell phone use is still cited as a contributing factor in less than 1 percent of all traffic-related collisions (Kentucky Transportation 2003-2007).

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