Issues Confronting The 2014 Kentucky General Assembly

Informational Bulletin No. 242

Legislative Research Commission
Frankfort, Kentucky

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Prepared by

Members of the
Legislative Research Commission Staff

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Foreword

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

This publication is a compilation of major issues confronting the 2014 General Assembly. It is by no means an exhaustive list; new issues will arise with the needs of Kentucky's citizens.

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

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

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

Marcia Ford Seiler
Acting Director

Legislative Research Commission
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Contents

Bedbugs

Prepared by Kelly Ludwig

Should the General Assembly regulate the treatment of bedbug infestations in residential rental properties?

Background

Prior to World War II, bedbug infestations were common in the United States. During the 1940s and 1950s, bedbugs vanished as a result of improvements in hygiene and the use of the insecticide DDT. The federal government banned the use of DDT in 1972. Soon after, the US began to see cases of bedbugs resurface. The National Pest Management Association reported a 71 percent increase in bedbug cases between 2000 and 2005. It cites four primary reasons for the rise in bedbug infestations: increased travel, lack of pesticide products that effectively control bedbugs, deficiency in precise pesticide application techniques, and the insect's resistance to current pesticides on the market. In the last 2 years, evidence of the increase in bedbugs in Kentucky has become apparent. In La Grange, parents were notified of an infestation of a school and asked to monitor their children and homes. A Fayette County health department official reported the organization receives approximately 30 complaints per month related to bedbugs.

The pesticide Propoxur has proven successful in treating bedbugs in the past. However, in 2006, the Environmental Protection Agency took the product off the market because of claimed health risks to residents. In 2009, the Ohio Department of Agriculture submitted an emergency request to the Environmental Protection Agency seeking approval for the limited use of Propoxur products in controlling bedbugs found in single- or multiple-unit dwellings, apartments, hotels, office buildings, modes of transportation, and commercial industrial buildings. The Environmental Protection Agency denied the request. Those treating bedbug infestations argue that because of the ban on Propoxur, new and effective products must be allowed into the marketplace to decrease the number of bedbug cases. Products currently on the market to treat bedbugs are not always effective.

Kentucky statutes do not specifically address bedbug infestations. KRS 383.595 states: "A landlord shall make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition; and keep all common areas of the premises in a clean and safe condition." KRS 383.605 states: "A tenant shall keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit."

In an effort to eradicate bedbug populations, some state legislatures are defining responsibilities of landlords and tenants with respect to bedbug control and eradication and costs of furniture replacement.

Discussion

Tenants and landlords often dispute responsibility for expensive treatment costs and replacing possessions lost to bedbug infestations. Maine, Arizona, and Illinois have enacted legislation to outline those responsibilities. Alabama, New Jersey, New York, Ohio, and Pennsylvania are considering legislation in an effort to reduce the number of bedbug cases and settle disputes.

Landlords argue tenants should take responsibility in eradication efforts because it is the tenant who brings the bedbugs into the rental property. Economically, bedbug infestations pose a burden on tenants and those living on a fixed income. Treatment of bedbugs can cost between $400 and $6,000. Bedbug control often requires multiple treatments by a licensed pest control agent using heat, liquid, or fumigation options. Bedbugs quickly adapt to new insecticides and can develop a resistance to new pesticides within a year. Due to the lack of effective treatment products, multiple treatments are frequently applied to gain control of the infestation. Because of costs, tenants often resort to over-the-counter treatments or may use pesticides at a greater application rate than recommended by the label to avoid multiple treatments. These methods prove ineffective and can be dangerous. In Carlisle, a tenant started a fire in an effort to rid a couch of bedbugs, leaving approximately 30 apartment complex residents without homes.

Maine places responsibility on the landlord to maintain a habitable home. The landlord must inspect a unit for bedbugs within 5 days of being notified by a tenant of an infestation. The landlord is then required to contact a pest control professional and comply with the professional's recommended treatment. The landlord is also required to disclose to a prospective tenant if an adjacent unit is infested with or being treated for bedbugs and cannot rent a unit that is suspected of being or known to be infested with bedbugs. The tenant must notify the landlord of the bedbug infestation, grant the landlord and pest control agent access to the unit, and comply with measures to eliminate the infestation. The tenant may be held financially responsible for all pest control treatments of the unit if he or she did not notify the landlord. In New York City, landlords are required to inform incoming tenants of the property's infestation history for the past year. New Jersey requires specific sanitation procedures for household items infested with bedbugs. For example, persons who transport, store, or sell secondhand mattresses must encase the mattresses with protective materials.

In Kentucky, with no sanitation laws specific to bedbugs, cities and counties work on the local level to control the problem. Maysville city officials are in the process of approving an ordinance that will impose fines on tenants who place infested household items on the curb for trash pickup, because of the number of sanitation vehicles that routinely become infested with bedbugs. The ordinance makes it the tenant's responsibility to treat the items prior to disposal or risk being fined $100 per day plus court costs for furniture or bedding that remains on the curb for 3 or more days. The tenant will be required to file paperwork with the city and health department proving the property has been treated for bedbugs.

Food Policy Council

Prepared by Lowell Atchley

Should the General Assembly establish a food policy council to focus on the state's food systems and food policy issues?

Background

Food policy councils, and related food advisory councils or coalitions, support, analyze, or advise citizens and officials in developing policies and programs to improve regional, state, or local food systems. Food policy councils can bring together people and government agencies that typically do not work directly with each other. For example, food policy councils in different parts of the country have helped establish delivery systems of fresh produce to local food pantries, convened meetings to hear from producers about barriers and opportunities to expand markets, worked to improve the quality of food served to public school students by including locally sourced ingredients, created urban agriculture and gardening programs on vacant or underused publicly owned properties, and worked with state agencies to take the administrative action needed to allow citizens to process low-risk commercial foods in home kitchens.

Food and food policies have emerged as issues in the General Assembly in recent years:

- Legislation in 2003 establishing a home-based food processing and microprocessing program
- Action in 2008 sanctioning the Kentucky Proud Program to promote the sale of Kentucky agricultural products
- Creation of the Surplus Agricultural Commodities Advisory Committee (commonly called Farms to Food Banks Committee) in 2009
- Creation of requirements in KRS Chapter 45A that state agencies purchase Kentucky-grown products, provided that quality standards and pricing requirements are met
- Creation of the 2011 Task Force on Childhood Obesity

Legislatures and interest groups have formed food policy councils in more than 20 states.[1] The Community Farm Alliance, based in Frankfort, is planning for a Kentucky Food Policy Network, which would be the same as a food policy council, through the use of a United States Department of Agriculture Community Food Projects Competitive Grant Program award. The alliance intends to use grant funds to assess the need for a statewide food policy network, the potential structure, and food-related assets in the state. A food policy council existed for a time in Louisville, but currently food policy issues are dealt with under the "healthy eating" segment of the municipality's Healthy Hometown program.

Food policy councils can be composed of persons from various segments of a food system and are typically sanctioned through government action by executive order, public act, or joint resolution, although councils also are formed through grassroots efforts and operate without official government sanctions.

Discussion

By design, food policy councils foster public accountability and legitimacy, enable access to governmental agency staff, help in coordination among various departments, and involve many advocacy groups. Considerations for establishing government-linked food policy councils include the creation of another board or commission and the resulting budgetary and staffing needs, and continuity of mission when many advocacy groups are involved.

[1] Markwinne.com. CFSC List of Food Policy Councils in North America. May 2012. Web. Oct. 22, 2013.

Poultry Laws

Prepared by Lowell Atchley

Should the General Assembly update the poultry laws to address the current issues in the poultry industry?

Background

Some of Kentucky's poultry laws have not been updated since they were adopted in the mid- to late-1940s. In some cases, requirements in the statutes, found in KRS 257.320-257.470, do not reflect current practices of the Department of Agriculture, such as no longer issuing permits for small-scale sellers of chicks at auctions, sales barns, or community sales events. Instead of a pre-sales permit for the smaller transactions, officials have indicated a need to record or keep records of poultry sales. The General Assembly amended the statutes in 2005 to recognize the state's participation in the National Poultry Improvement Plan (NPIP), a cooperative federal, state, and industry program developed to prevent or control certain egg-transmitted, hatchery-disseminated poultry diseases. One of the main concerns in the poultry industry is the danger of salmonella infections spread from flocks, as well as potential avian influenza outbreaks among the birds.

The 2013 General Assembly considered, but did not pass, a bill to amend the poultry statutes. The legislation, House Bill 408, required retailers to register and retain records from baby poultry sales; thus registration and sales records retention would create a record for trace-back purposes should a poultry disease outbreak occur. The bill also amended the poultry statutes regarding poultry importation into the state, labeling of imported poultry, and state quarantine powers.

Discussion

Proponents of updating the poultry laws argue that the poultry statutes need to be updated generally to account for procedures that are no longer in use and to account for the added provisions or changes that have been made to the NPIP. Proponents point out that the statutes also should include registration requirements to improve poultry disease traceability potential with regard to the sale or movement of small lots of chickens. Opponents contend that any additional registration and record-keeping requirements placed on retailers would be time consuming and costly. They also argue that additional registration and records requirements could impede smaller, informal sales of chicks from one person to another.

Limited Liability Entity Tax—Cost Of Goods Sold

Prepared by Jennifer C. Hays

Should the General Assembly clarify the calculation of "cost of goods sold" for purposes of the limited liability entity tax?

Background

The limited liability entity tax (LLET) is assessed for taxable years beginning on and after January 1, 2007, on various types of business entities and is paid in addition to the income tax. Receipts from the income tax on businesses fluctuate widely based on the profitability of a business in any given year. However, the LLET is based on a business's gross receipts or gross profits, rather than its actual profit. Basically, the income tax allows the deduction of a broad range of business expenses, while the LLET does not. The LLET was designed to stabilize overall tax receipts and grow as the economy grows. To date, receipts from the LLET have steadily grown from approximately $98 million in fiscal year 2008 to more than $246 million in FY 2013.

The amount of LLET payable to the commonwealth is based on Kentucky gross receipts or Kentucky gross profits. Businesses subject to the LLET calculate both and pay whichever is less. The gross receipts method, which has a broader base and lower tax rate, includes all receipts generated by business activities in Kentucky and is assessed at 9.5 cents per $100 of Kentucky gross receipts. The gross profits method, which has a narrower base and a higher tax rate, begins with all receipts generated by business activities in Kentucky. These gross receipts are then reduced by returns and allowances and, for qualifying businesses, the cost of goods sold attributable to those Kentucky receipts. The tax rate for this second calculation is 75 cents per $100 of Kentucky gross profits.

This issue paper addresses the second calculation, the gross profits method, and the definition of cost of goods sold.

Discussion

"Cost of goods sold" is used in calculating both the LLET and the income tax (both Kentucky and federal). However, the term is defined differently for the LLET than for the income tax. This difference has created uncertainty regarding taxpayer compliance with the LLET. Some taxpayers are receiving audit assessments for the LLET because their interpretation of the definition of cost of goods sold is different from the Kentucky Department of Revenue's interpretation.

To claim a cost of goods sold deduction under the LLET, a business must be involved in manufacturing, producing, reselling, retailing, or wholesaling a tangible product. For these businesses, the cost of goods sold calculation includes only costs directly incurred in acquiring or producing the tangible product. For any activity other than manufacturing, producing, reselling, retailing, or wholesaling, no costs are included in the calculation, and the only deduction allowed for the gross profits method is a deduction for returns and allowances.

Important aspects related to the LLET definition of cost of goods sold include the following:

- Any amounts that are allowable pursuant to the Internal Revenue Code and any guidelines issued by the Internal Revenue Service relating to the federal income tax deduction for cost of goods sold are also allowable for the LLET, unless the Kentucky statute provides for a specific difference.
- All costs must be incurred in acquiring or producing a tangible product that generates Kentucky gross receipts, and only those costs directly incurred are allowed.
- Labor costs are limited to direct labor costs. “Direct labor” means labor that is incorporated into the tangible product sold or that is an integral part of the manufacturing process.
- Bulk delivery costs may be included. “Bulk delivery costs” means the cost of delivering the product to the consumer if
    - the tangible product is delivered in bulk and requires specialized equipment that generally precludes commercial shipping, and
    - the tangible product is taxable as a motor fuel.
- Costs related to the capitalization of inventory are allowed only to the extent that the costs are incurred in acquiring or producing the tangible product generating the Kentucky gross receipts, except that indirect labor costs related to inventory, which are generally allowable for federal income tax purposes, are not allowed (KRS 141.0401(1)(d)).

There are at least two areas where taxpayers disagree with the Department of Revenue’s interpretation of the costs of goods sold definition.

The first area of disagreement is related to labor costs, specifically the differences between direct labor costs that may be deducted and indirect labor costs that may not be deducted. In a recent publication of the *Kentucky Tax Alert,* the department provided, as an example of labor costs, compensation paid to an assembly line worker as deductible direct labor, while compensation paid to an administrative assistant in human resources or an engineer in quality control as indirect labor, which is not deductible. In continuing the example, the department provided that direct labor costs consist of basic compensation, overtime, vacation and holiday pay, sick leave pay, shift differential, payroll taxes, and payments to supplemental unemployment benefit plans relating to direct labor. Direct labor costs do not include pension/profit sharing, workers’ compensation, life insurance, health insurance, membership dues, or union dues, even if relating to direct labor. [1]

Some taxpayers have broadly interpreted the definition of costs of goods sold as including other types of labor and indirect labor because the definition allows a deduction for labor that is an integral part of the manufacturing process. These taxpayers are relying on federal guidelines stating that indirect labor costs are the amounts paid to employees who perform a general factory function, that do not have any immediate or direct connection with making the salable product, but whose services are a necessary part of the manufacturing process. These taxpayers argue that some indirect labor costs must be included within the deduction since the indirect labor is an integral (or necessary) part of producing the product.

The second area in dispute is related to overhead costs. The department's interpretation states that allowable overhead costs include only the costs of direct material. "Direct material" includes only material that is incorporated into the tangible product sold or manufactured. The test used by the department related to allowable overhead costs is whether the cost is direct or indirect, rather than whether the cost is necessary. There may be both direct and indirect costs that are necessary for production. The department does not allow the deduction of the following items that it classifies as indirect costs: utilities, repairs and maintenance, depreciation, insurance, quality control, and rent.[2]

Some taxpayers argue that, because the statute does not define direct overhead costs incurred in acquiring or producing the product, the IRS publication *Tax Guide for Small Business* must be used for guidance. That publication states that overhead expenses include expenses such as rent, heat, light, power, insurance, depreciation, taxes, maintenance, labor, and supervision. That publication also provides that the overhead expenses that are direct and necessary expenses of the manufacturing operation are included in the taxpayer's cost of goods sold.[3] Therefore, some taxpayers have concluded that overhead expenses for manufacturing activities should include any necessary expenses as part of the cost of goods sold calculation for the LLET.

The department cites the statute's use of "direct labor" and "directly incurred in acquiring or producing the tangible product" to support its interpretation, while some taxpayers maintain that the federal guidance allows costs that are necessary in the production of a tangible product and, without specific prohibitions in Kentucky's statute, those costs should be deducted.

The department argues that the expansion of the definition of cost of goods sold, that some taxpayers advocate, would defeat the purpose of the LLET and would make the tax just another form of the income tax based primarily on profit rather than gross receipts. Under the taxpayers' interpretation, the stability of the LLET could be compromised and General Fund receipts could decline by several million dollars. Those parties supporting the broad interpretation of the definition of cost of goods sold argue that the LLET should not be paid by businesses that are not making a profit and that economic development will be hampered by companies leaving the commonwealth to avoid the LLET burden. Alternatively, the claim could be made that all businesses benefit from government services and should pay some tax regardless of profit.

If the General Assembly does not take action to resolve these differences of interpretation, litigation in this area may be expected. Some taxpayers have already received audit assessments, and those wishing to pursue the issue will protest those assessments.

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[1] *Kentucky Tax Alert*. September 2013, Vol. 32, No. 5. Web. Sept. 6, 2013.
[2] Ibid.
[3] *Tax Guide for Small Business*. Department of the Treasury. Internal Revenue Service. Publication 334, Catalog No. 11063P. Web. Sept. 6, 2013.

Local Occupational License Taxes

Prepared by Pam Thomas and John Ryan

Should the General Assembly amend the local occupational license tax statutes so that counties with populations of more than 30,000 are treated the same as other counties and cities?

Background

Occupational license taxes are one of the largest revenue sources for counties and cities. Over the years, there has been controversy surrounding the imposition of local occupational license taxes and how separate levies imposed by counties and cities within those counties interact. The controversies relate primarily to the special limitations and restrictions placed on levies imposed by some counties with populations of 30,000 or more that do not apply to other cities and counties.

Cities were first granted broad authority to levy occupational taxes, followed by a more limited levy for counties with populations of more than 300,000 (Jefferson County). Many years later, the General Assembly enacted legislation allowing counties of more than 50,000 to impose an occupational tax of up to 1 percent, if approved by a vote of the people. This statute was subsequently amended to reduce the county population requirement from 50,000 to 30,000 and to delete the vote requirement. Thus, as originally enacted, the statutory provisions that now limit the levy of occupational taxes by counties with populations of more than 30,000 were an affirmative grant of taxing authority that allowed larger counties to levy a tax that smaller counties could not levy.

A few years later, the General Assembly enacted broad-based home rule authority for all counties. Home rule authority allows counties to exercise any power and perform any function that is not in conflict with the constitution or other statutes. Kentucky’s highest court subsequently interpreted that authority as allowing counties with populations of less than 30,000 to levy occupational license taxes because there was no prohibition of the levy in the constitution or statutes. Further, the court held that the statutory conditions and limitations included for counties of more than 30,000 would not apply to counties of less than 30,000.

In 1986, the General Assembly further restricted counties with populations of more than 30,000 by amending the statute to require any county with a population of more than 30,000 that imposed an occupational tax after that date to provide credit of occupational taxes levied by any city in the county against the county tax.

Because the requirements for levying occupational license taxes are different for counties depending on whether the population of a county is less than or more than 30,000, when and how the population of a county is determined became important. The law was also unclear regarding what should happen when a county that had a population of less than 30,000 grows to more than

30,000. Several lawsuits were filed relating to these and other issues, prompting the General Assembly to enact additional statutory provisions to address the issues raised in the lawsuits. As a result, there are now special statutory provisions that relate only to counties of more than 30,000 that adopted an occupational license tax by vote of the people, and others that apply only to counties that grow to more than 30,000 after an occupational license tax has already been imposed. In addition, the General Assembly has twice enacted temporary statutes freezing the "status quo" with regard to the credit provisions for counties with populations of more than 30,000 to provide time for outstanding issues created by the population threshold and credit provisions to be resolved legislatively. The latest of these provisions expires July 1, 2014.

There are five sets of requirements that apply to the imposition of occupational license taxes by cities and counties, depending on the population of the county or the class of the city. These are reflected in the chart below:[a]

Levying Entity	Rate Restrictions?	Credit Required?
Cities of the 1st – 5th Classes	No	No
Cities of the 6th Class	Yes—may only levy at a flat rate	No
Counties under 30,000 population	No	No
Counties over 30,000 and under 300,000 population	Yes—1% upper rate limit	Some counties are required to provide a credit for city taxes paid. Other counties were grandfathered when the credit requirements were enacted or granted specific statutory exemptions so a credit was not required.
Counties over 300,000 population	Yes—1.75% upper rate limit	Required for cities of the 1st class, optional for other cities

There are 32 counties in Kentucky with populations of more than 30,000, excluding Jefferson and Fayette Counties, which are merged governments and thus have different requirements for the levy of occupational license taxes. Twenty of those counties levy an occupational license tax. Of those 20 counties:

- 9 provide a city credit against the county tax (taxpayers who live in both the county and the city are permitted to reduce the county tax paid by the amount paid to the city);
- 7 provide some form of revenue sharing with at least one city within the county (either the city or county collects the revenue from the tax, and agrees to share the proceeds); and
- 3 impose a tax that "stacks" with a comparable city tax, meaning residents of the city and county pay both taxes with no credit for city taxes paid.[1]

[a] It should be noted that school districts are also authorized to levy occupational license taxes, which are paid in addition to any taxes levied by the city or county in which the school district is located. Currently eight school districts levy an occupational license tax.

Discussion

The primary issues relating to the local occupational license tax are

- That the current statutory requirements are more restrictive for some counties of more than 30,000 than for cities and smaller counties; and
- That counties of more than 30,000 are not treated uniformly within the class, as there are exceptions in the law that exempt some counties of more than 30,000 from the rate limitations or the credit requirements, depending on when the county ordinance was adopted or when the population of the county surpassed 30,000.

The question these issues raise is whether there are special conditions that apply to counties with populations of more than 30,000 that warrant the continued disparate treatment of these counties with regard to occupational license taxes.

The reason the mandatory credit provision is so controversial is that in counties of more than 30,000 that adopted an occupational license tax after July 15, 1986, a city within the county can subsequently adopt its own occupational license tax, at which time the county is required to provide a credit against the county license tax for amounts paid to the city. Because most commercial and employment activity occurs in cities, the reduction in revenues for the county caused by providing the mandatory credit for taxes paid to the city can be quite substantial.

In addition, there is some concern that the multiple exceptions and special provisions that apply to counties with populations of more than 30,000 could be challenged successfully under Section 171 of the Kentucky Constitution. That section requires that "taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax." The Kentucky Supreme Court noted this possibility in *Preston v. Johnson County,* stating that:

> The absence of uniformity perceived by the Appellant in this case arises from the fact that he is being taxed for the same privilege by two different taxing authorities pursuant to two different enabling statutes. That does not mean that either taxing authority is acting arbitrarily. Each is simply imposing an occupational license fee which has been authorized by statute to impose. Nor does the Johnson Fiscal Court's refusal to allow Appellant to credit his city fee against his county fee constitute arbitrariness. **To allow such a credit would mean that those paying the city fee would pay a lesser county fee (or no county fee at all) than is being paid by other citizens of Johnson County. Thus viewed, the credit, itself, might violate the uniformity requirement of Section 171** (emphasis added).[2]

Possible legislative solutions to address the disparate treatment of counties with population more than 30,000 include the following:

- Treat all cities and counties the same under the law by repealing limitations on counties of more than 30,000 (including limitations on counties over 300,000);
- Repeal the city credit provision but retain the 1 percent upper limit;
- Repeal the 1 percent upper limit for counties of more than 30,000 but retain the city credit; or
- Extend the date of provision enacted in 2012 that expires on July 1, 2014, to freeze the status quo for 2 more years.

Proponents of uniform treatment may argue that the combination of a 1 percent county occupational license rate limit, the mandatory city credit against county taxes, and the ability of cities to annex territory to increase the area within the county that would be subject to the credit of city taxes against county taxes could negatively affect the ability of counties with populations of more than 30,000 to generate sufficient revenue. In addition, proponents of uniform treatment may note that uniform treatment would likely prevent possible litigation that could be costly and damaging to local governments.

Opponents of amending the statutes may claim that modification or repeal of the city credit provisions constitutes double taxation because the city and county taxes would both fully apply and would stack on each other. Although taxing the same base at multiple layers of government is common, repealing the city credit would increase the taxes paid by residents of cities that currently receive a credit when paying their county occupational taxes, assuming no changes were made by the county.

Removal of occupational license tax limitations and restrictions on counties of more than 30,000 may level the playing field and lead to enhanced coordination among governmental units, resulting in lower costs and greater efficiencies by local governments. Through negotiation and interlocal agreements, some cities and counties have embraced collaboration and are already working together using existing statutes by establishing revenue-, service-, and cost-sharing agreements. Most have not.

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[1] Kentucky League of Cities from survey responses. September 2013.
[2] *John David Preston v. Johnson County Fiscal Court,* 27 S.W. 3d 790 (Ky. 2000).

Property Tax On Older Motor Vehicles

Prepared by Eric C. Kennedy

Should the General Assembly establish a standard value, or a standard method of assessment, for certain older motor vehicles for property tax purposes?

Background

Section 172 of the Kentucky Constitution requires that all property, not exempted from taxation by the constitution or statute, be assessed for taxation at its fair cash value, which is estimated at the price the property would bring at a fair voluntary sale. Because of this, motor vehicles are subject to this tax at both the state and local levels, unless a specific exemption applies. The duty of assessing a motor vehicle's fair cash value lies with the local property valuation administrator (PVA), working under the direction, instruction, and supervision of the state Department of Revenue (KRS 132.487(5)). To enhance efficient and equal assessments, the department provides PVAs with standard valuation guidelines and prescribes the standard valuation manuals to be used to estimate a vehicle's fair cash value.

Discussion

Unless the owner or person registering a motor vehicle appears before the PVA for an actual inspection, or there is other information available to warrant otherwise, a vehicle's estimated fair cash value is the standard value listed in the prescribed industry manual for that particular vehicle's make, model, and year (KRS 132.485(1)(a)). The standard manuals prescribed by the department for automobiles and light trucks aged 1 to 19 years are the National Automobile Dealers Association (NADA) *Official Used Car Guide* (for vehicles up to 7 years old), and the *Official Older Used Car Guide* (for vehicles aged 7 through 19 years). In most cases, this value is automatically uploaded from these manuals to the automated vehicle information system (AVIS), for use by the PVA and the department in assessing a vehicle's value and preparing the tax bill.

Vehicles that are 20 years old or older are no longer included in these manuals. At that point, the only NADA manual containing information on these vehicles is the *Classic, Collectible, Exotic and Muscle Car Appraisal Guide and Directory*, and the department has prescribed this guide as the standard manual to be used in assessing vehicles of this age. While there is no single widely accepted definition of what constitutes a classic or collectible car, these terms are typically applied to vehicles that are for some reason distinctive and as a result begin to increase in value beyond a certain age, typically 20-30 years, rather than decrease in value as is generally the case for most common vehicles. Because the AVIS is currently not capable of automatically uploading data from this manual, the department has long advised PVAs to consult the hard copy of this classic car guide to assess vehicles aged 20 years or older. However, this has not been done uniformly statewide.

In late 2014, a new AVIS system is expected to come online that will be able to automatically use data from the classic car guide to establish the standard fair cash value for all vehicles aged 20 years or older. Approximately 760,000 vehicles aged 20 years or older are currently titled in Kentucky. In many cases, where the classic car guide has not been used to assess a particular vehicle in past years, a substantial increase in value may occur when the new AVIS uploads this data for the vehicle for the first time.

To address this situation, the General Assembly may consider establishing some new approach, be it an alternative standard value or a new method of assessment, specifically for vehicles aged 20 years or older that currently appear only in the NADA classic car guide. Any alternative method of assessment would need to accurately estimate the fair cash value of these vehicles, as constitutionally required, but may be structured in a way as to prevent potentially widespread sudden increases in assessed values.

Those opposed to the development of an alternative approach for vehicles aged 20 years or older may point to the NADA classic car guide as the best available option for an authoritative, fair, and uniform assessment of these vehicles statewide. Furthermore, supporters of the current system argue that in all cases, if a taxpayer believes the assessment of a motor vehicle is too high, he or she may appeal that assessment. The PVA may adjust the assessed value if circumstances, such as high mileage or damage, support that action.

Proponents of a new approach for this class of vehicles argue that many of them have not been maintained in good condition or have high mileage, and, therefore, the classic car guide may not provide an accurate estimate of fair cash value, despite its being the only NADA manual available that covers vehicles of this age. Also, in light of the number of older vehicles currently titled in Kentucky, the automatic use of the classic car guide for these vehicles through the new AVIS may lead to a sudden and substantial influx of appeals and increased burdens on both taxpayers and PVAs. Proponents claim that these burdens may be avoided through use of a new assessment approach for these vehicles.

All-Payer Claims Database

Prepared by Sean Donaldson

Should the General Assembly establish an all-payer claims database?

Background

An all-payer claims database (APCD) is a collection of medical, pharmaceutical, and dental eligibility and claims information. The database collects from private and public payers information on cost, use, and quality, including charges and payments, provider information, clinical diagnoses and procedures, and patient demographics. Payers include insurance providers, third-party administrators, Medicaid, Medicare, and others. Payers submit data to an organization charged with implementing and maintaining the database. With one exception, in all states where APCDs have been implemented, the submission of data is mandatory, and the penalties for failure to do so range from $100 per day in Tennessee to up to $10,000 per day in Utah.

There is no fee to submit data; however, businesses, consumers, and providers can request access to the data, usually for a fee. The data can be used to provide detailed answers about what hospitals and facilities have the highest prices, what percentage of individuals over 65 are given recommended preventive care, or how far consumers have to travel for services. In Massachusetts, the fee for a business seeking information for its own use ranges from $2,025 to $13,500, depending on the type of information requested and whether the business is in state or out of state. The range of fees for individuals and small organizations starts at $45 and increases for more restricted information or if the requester is an out-of-state entity.

Nine states have established databases to collect, organize, and disseminate health care data that can be used by providers, consumers, and legislators. An additional seven states are implementing these databases.

Discussion

An APCD could provide benefits for businesses, consumers, and policy makers. Insurance providers could use the demographic data as a resource for determining rates in a specific geographic area, or they could request cost data for specific services or procedures to determine how their plans compare to those of other insurance providers, both in price and coverage. Private businesses could compare their current or potential insurance coverage costs and included services.

Maine has built a website that allows the consumer to access average cost information on 29 frequently preformed procedures and to compare charges from different providers. This information is provided at no cost to the consumer. New Hampshire has a website that provides general information on the number of claims generated in different categories. The data allow for more detailed analysis of where services are lacking, distance to the nearest hospital that performs a particular service, the effectiveness of certain treatments, whether the treatment had to be repeated, and general quality of care offered by health care providers and facilities.

Data could also be used to more generally monitor the cost of health care. New Hampshire has compared differences in child health between state Children's Health Insurance Program participants and commercial insurance members. Maine has used its APCD to identify the needs of, use by, and cost for chronically ill patients, the need for and use of mental health medications by children, and geographical variation and costs in emergency department use across the state. Utah used APCD data in the creation of its health exchange in 2008. Some state insurance regulators have used the data as a component for insurance rate reviews. Other states have used the data to monitor specific communities' health care costs, learn from successful community programs dealing with health care costs, monitor Medicaid expenditures, and help formulate future health care reform policy.

Costs to implement and maintain the database have been a major concern. Oregon's Office for Health Policy and Research estimated an initial cost for implementation at approximately $1 million. After the start-up, the ongoing maintenance costs tend to be significantly less. States that have already adopted APCDs have used different mechanisms to fund the annual maintenance. In Maine, the funds come mostly from annual provider fees. These fees are variable percentages based on the total amount needed to fund the organization in charge of the APCD and are assessed to all payers and providers. The minimum fee assessed to payers and providers is $100. Other states generate the funds from general appropriations from the legislature and from fees from data sales. Because the information regarding health care costs is not gathered until after implementation of an APCD and the accompanying fees, there is little data to show the effect fees have on health care costs. The National Conference of State Legislatures has stated that it is still too early to determine whether these databases offer any direct costs savings by themselves.

Proponents of establishing these databases contend that data collected helps consumers to make informed decisions.

Opponents of APCDs are concerned about individuals' privacy and the government gathering data about a private transaction. In most cases, APCDs collect information every time a provider sees an insured individual and creates a claim. Included in this personal information are Social Security number, age, gender, and residence. In some states where APCDs have been implemented, concerns have been raised about the collection of this sensitive information and the fact that the information is available to the public, even though sensitive identifiers are encrypted to protect patient identity. In addition, the security of sensitive information stored on servers has also raised privacy concerns.

The Kentucky Employee Health Plan started a voluntary program in 2013 called Compass Choice Rewards that shares limited features with an APCD. When a doctor prescribes certain preventive procedures, the employee can receive cost information on certain providers in the area by calling the program number. If the program participant chooses a cost-effective location he or she will receive a reward check in the mail. The rewards range from $50 to $500.

The General Assembly may want to consider enacting legislation to create an APCD as a way of monitoring the quality and costs of health care and as a source of information for future health care policy decision making.

Credit Reports

Prepared by Sean Donaldson

Should the General Assembly prohibit the use of credit reports by employers in employment background screening?

Background

Employers and volunteer organizations often conduct background checks on potential applicants to verify information provided by the applicant and to conduct due diligence. Most often, these background checks consist of a criminal records history. However, some employers and organizations will also check an applicant's credit history during the hiring process. According to the Society for Human Resource Management, the rate of preemployment credit checks rose from 19 percent in 1996 to 47 percent in 2010.

The Equal Employment Opportunity Commission has filed lawsuits in the past several years stating that using credit reports had a disparate impact on minorities and that using them in preemployment screening process violated Title VII of the Civil Rights Act. California, Connecticut, Hawaii, Illinois, Maryland, Oregon, Vermont, and Washington limit the use of credit information in employment decisions, and, as of 2012, 17 states and the District of Columbia had legislation pending regarding restrictions on the use of credit reports and information in employment decisions. Additionally HR 645, the Equal Employment for All Act, has been introduced in the United State House of Representatives. This bill would also prohibit a current or prospective employer from using a credit report in the hiring process under certain circumstances.

A credit report provided to an employer does not contain a credit score. The report does list the source and type of credit listed, such as a store name or loan issuer, but does not list the account number. It does not contain a birth year or age. The report does show outstanding loans, delinquencies, and bankruptcies.

Under the Fair Credit Reporting Act, before an employer can request a copy of an applicant's credit report, it must provide notice to the applicants that the report might be used in the hiring decision process and get the applicant's authorization. If an employer uses the information obtained in the credit report to take adverse action, such as denying an application, the employer must notify the applicant. The applicant has the right to dispute the accuracy or completeness of information in the report and may obtain a copy of the report for free from the reporting agency within 60 days. There are legal consequences if an employer does not comply.

Discussion

Critics of the use of credit reports raise several concerns with the practice, including accuracy of reports, predictive value of reports, discriminatory impact, and current economic instability. Critics contend that credit reports often contain errors or incomplete information, making any predictive value less reliable. These inaccuracies can occur due to identity theft, incomplete reporting information, clerical error, or simple misidentification of the individual. However, credit reporting agencies strongly disagree about the frequency of errors in credit reports.

Opponents of using credit checks in the hiring process argue that these types of background checks disproportionately affect racial minorities because of disparities caused by unemployment and differences in pay. Reports showing lower credit scores increase during times of economic instability, where credit scores can be hurt by foreclosures, periods of unemployment, difficulty in paying back medical bills, or a family crisis. When employers use credit reports in hiring decisions, opponents argue, this creates a catch-22, where a person has a poor credit report but cannot improve it because the person is unable to secure a job or promotion.

Proponents argue that credit checks help protect employers and organizations by ensuring accurate information in hiring and in making informed decisions about hiring employees. They assert that credit reports are important tools when filling positions that involve fiduciary duties or sensitive information and that their use reduces an employer's liability for negligent hiring. Credit reports are used to judge the responsibility and financial stability of an applicant. Proponents also argue that these reports are requested only after employers have narrowed the field of candidates to those highly qualified for the position. They note that the employer's inquiry does not affect a person's credit score, as it might when a report is generated in the application for credit or a loan.

The General Assembly may choose to prohibit the use of credit reports in the hiring process or may limit their use to those positions or fields of employment where it feels they may be warranted. The General Assembly may also choose to take no action and leave the decision up to individual employers and organizations.

Pharmacy Benefit Managers

Prepared by Rhonda Franklin

Should the General Assembly expand regulation of pharmacy benefit managers to increase transparency?

Background

Pharmacy benefit managers (PBMs) are entities that contract with health plan sponsors to manage the costs and benefits of drugs and negotiate contracts with drug manufacturers and pharmacies. KRS 304.17A-161 (3) defines "pharmacy benefit manager" as "an entity that contracts with pharmacies on behalf of a health benefit plan, state agency, insurer, managed care organization, or other third-party payor to provide pharmacy health benefit services or administration." PBMs are licensed as administrators by the Department of Insurance pursuant to KRS 304.9-052 and KRS 304.17A-161 to 304.17A-165.

PBMs currently administer prescription drug benefits for approximately 95 percent of insured Americans with prescription drug coverage. The PBMs' role in the health care market has expanded to include some or all of the following:

- Developing, establishing, and monitoring the health plan's drug formulary which is the approved list of prescription drugs covered under a health plan
- Developing and managing the pharmacy network, including reimbursement rates and mail-order dispensary availability
- Negotiating price contracts with drug manufacturers for inclusion in the insurer's drug formulary
- Negotiating reimbursement contracts with pharmacies for inclusion in the insurer's provider network
- Processing pharmacy claims
- Assessing the substitution of less expensive or generic drugs when appropriate
- Providing support services and education to health care providers and beneficiaries
- Operating online pharmacies

Although the number and volume of services performed by PBMs has expanded, the number of PBMs has declined as a result of mergers. Six PBMs now control pharmacy benefits for 60 percent of insured Americans with prescription drug coverage.

PBMs are subject to numerous federal laws, including Health Insurance Portability and Accountability Act privacy protections, controlled substance laws, Employee Retirement Income Security Act self-insured plan protections, and antitrust and antikickback laws. In addition to the administrator licensure requirement, Kentucky law requires that PBMs comply with the following statutory requirements:

- Any willing provider, which prohibits discrimination against any provider willing to provide services at the negotiated contract rate (KRS 304.17A-270);

- Prompt pay, which requires prompt payment of health benefit claims (KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123); and
- Pharmacy audits (KRS 304.17A-740 through 304.17A-747) .

Many states and the federal government have attempted to increase transparency of PBM transactions and negotiations because of lawsuits against PBMs alleging antitrust violations, unfair and deceptive trade practices, and false claims violations.

Discussion

There are two major factors to consider when evaluating the business practices of PBMs:
- quality of care and
- cost considerations.

Whether increased transparency of PBMs' business practices would help assess quality of care and cost considerations is subject to discussion.

Quality Of Care

Proponents of PBMs' business practices assert that they design benefit structures, the list of medications that can be prescribed (known as the formulary), mail-service incentives, disease management programs, and clinical pharmacy services to ensure quality of care. They contend that PBMs assist program sponsors to reduce unwarranted prescription use, require members to first use more cost-efficient therapies, and provide program analysis and prior authorization services so that members use the medications best suited to them.

Opponents of PBMs' management of quality of care include local pharmacists, not affiliated with national chains, who contend that locally owned pharmacies provide face-to-face interaction with patients, resulting in the best care and improved outcomes for individuals.

Cost Considerations

Proponents of PBMs' business practices contend they are already regulated at the state level as licensed, certified, or registered entities. PBMs also contend that further regulation would adversely affect confidential and proprietary information. PBMs deny allegations of wrongdoing and argue that competition, rather than regulation, will produce efficiencies and reduce drug costs for health plan sponsors and consumers. Further, PBMs contend that additional regulation will reduce benefits, increase costs, and potentially harm consumers.

Opponents of PBMs' business practices assert that increased regulation of PBMs is necessary to mitigate the lack of transparency. They also argue that it is a conflict of interest that PBMs require mail-order prescriptions from the very mail-order pharmacies they own. They note that in many rural areas, there are no national pharmacy chains, and residents are reluctant to have medications delivered to their mailboxes due to the potential for theft and the adverse effects of extreme temperatures. Community pharmacists argue that they operate at a disadvantage because they cannot purchase drugs at the same volume discounts as the PBMs. Independent community pharmacists assert that residents are now forced by their location and the PBM network to rely on the PBMs' mail-order pharmacy because of the PBMs' requirements.

The General Assembly could require greater transparency in PBM contracts, similar to transparency requirements for Medicare and Health Benefit Exchange PBM contracts under the Affordable Care Act. Regulatory oversight could require PBMs to detail disclosure and financial reporting to the Department of Insurance and to require disclosure of information relating to details of contracts with drug manufacturers involving rebates and other incentives to health plan sponsors.

Angel Investor Tax Credit

Prepared by Louis DiBiase

Should the General Assembly amend the Kentucky Investment Fund Act to allow individual angel investor tax credits?

Background

Angel investors are individuals who invest in high-risk start-up companies, such as science and technology firms. They provide early or "seed-stage" funding in expectation of high yields down the road. In addition to funding, they often provide expertise, guidance, and connections to help the start-up get established. Angel investments can fill the gap between a company's initial efforts to raise capital and the kinds of financing available to more mature firms.

The Kentucky Investment Fund Act (KIFA) provides tax credits for angel investments made through investment funds but not for those made directly by individual investors. In 2011, 2012, and 2013, bills were introduced to expand KIFA to include these individual investors. The Governor, in his 2012 Blue Ribbon Commission on Tax Reform, endorsed the idea of expanding the credit. The issue could come up in 2014 as part of an effort for tax reform.

Discussion

Proponents of an individual angel investor tax credit argue that it would create jobs by encouraging greater investment in new science and technology firms, which they claim are the types of businesses that generate most job growth. They contend that these businesses struggle to find adequate financing at critical stages of their development and that KIFA, as currently structured, does not sufficiently incentivize the investments needed to keep them viable. Proponents also argue that the cost of an expanded credit would be more than offset by the increased income tax revenues from the jobs created, and that the credit would keep Kentucky competitive with states like Ohio, where angel investment credits have been used, they say, successfully.

Opponents of expanding KIFA to provide an individual angel investor credit argue mainly that it is not fiscally responsible. While the actual cost of the credit is unpredictable in that it would depend on how many credits are taken, they argue it could impact the state budget by millions of dollars in a given year. Opponents also claim that the credit's supposed economic benefits are uncertain. They note that investor credits are generally part of a larger economic development strategy, so that the success of states like Ohio could be due to other economic factors and would not necessarily translate to Kentucky.

Billboards On Federal Interstates

Prepared by John Buckner

Should the General Assembly allow a greater number of billboards along federal interstate corridors?

Background

Congress passed the Federal Highway Aid Act to create uniform guidelines to regulate the use of billboards. States that agreed to regulate billboards using these guidelines as minimum standards were eligible to receive “bonus money” of an additional one-half of 1 percent of the total cost of constructing an interstate highway segment within their borders.

The Federal Highway Aid Act contained three major components. First, to be eligible for bonus money, states must adopt legislation that would prohibit billboards within 660 feet of the edge of an interstate highway right-of-way that was acquired after July 1, 1956. Second, exceptions were granted for official directional signage, signs advertising the sale or lease of property on which the sign was located, and signs erected pursuant to state law that were not inconsistent with federal law that provide information to travelers. Third, all signs must conform to federal standards regarding size, lighting, and construction.

Two key amendments to the Federal Highway Aid Act allowed for exceptions to the complete prohibition of billboards. The Cotton Amendment allowed billboards to be erected adjacent to an interstate highway right-of-way that was acquired prior to July 1, 1956. The choice of whether to adopt the provisions of the Cotton Amendment was left to each state. If a state created “Cotton areas,” the bonus money for the construction of the highway in that area would be forfeited. The Kerr Amendment allowed for billboards to be erected in urban areas or in areas zoned for commercial and industrial use. As with the Cotton Amendment, if a state decided to adopt the Kerr provisions, those sections of the interstate would not be eligible for bonus payments. Kentucky did not adopt the Cotton Amendment, but it did adopt the Kerr Amendment.

In 1960, the Kentucky General Assembly passed the Billboard Control Act, which paralleled the requirements of the Federal Highway Aid Act. Kentucky’s legislation created exceptions for official signage and maintenance guidelines for existing billboards, allowed advertising devices that comply with applicable local zoning ordinances for industrial and commercial areas, and authorized the commissioner of highways to enter into an agreement with the US secretary of commerce to carry out federal policies to protect and enhance commerce on federal interstates.

In 1961, Kentucky joined 25 other states by signing what is known as a “bonus agreement” to carry out provisions of the Federal Highway Aid Act. The agreement stipulated that the Federal Highway Administrator must approve Kentucky’s plan to control billboards and that Kentucky may place greater restrictions on billboards than what is required by federal law. Regarding payment of bonus agreement money to Kentucky, the agreement stated that money shall be paid only when Congress appropriates funds for this purpose regardless of whether Kentucky fulfills the terms of the agreement. Finally, the agreement stipulated that if Kentucky receives funds through the bonus agreement and later fails to perform its obligations with any project governed by the agreement, then Kentucky shall return all payments received. If the state fails to return the money, Kentucky authorized the Federal Highway Administrator to withhold an equal amount from any funds that are due or may become due. It should be noted that a 1985 study by the General Accounting Office of federal regulations governing billboards on interstate highways found that the penalty placed upon states for noncompliance with a bonus agreement was so excessive as to be unenforceable.

The last major piece of federal legislation regarding billboards was the 1965 Highway Beautification Act, which was less restrictive than the Federal Highway Aid Act. In an effort to balance demands to allow travel-related businesses to develop in rural areas while protecting the scenic beauty of interstate corridors, the Highway Beautification Act allowed billboards to be erected in a commercial or industrial area regardless of its formal zoning designation. States that had signed the Federal Highway Aid Act bonus agreement were allowed to return bonus money received in exchange for withdrawing from their agreements. Kentucky chose to remain under its bonus agreement.

Kentucky statutes governing highway signage are largely drawn from the Federal Highway Aid Act and its bonus agreement. Kentucky's Scenic Highways and Byways Program contains the 660-foot ban and the Kerr Amendment provisions allowing billboards in municipal areas that are zoned commercial or industrial. These statutes also give the commissioner of the Department of Highways the authority to promulgate administrative regulations.

Discussion

Some argue that the unchecked proliferation of billboards would be a detriment to Kentucky's scenic landscape. Proponents of current policies argue that while the construction of signs can be regulated, numerous court rulings have stated that the messages placed on billboards cannot, and there is no guarantee that new billboards will advertise travel-related businesses. Proponents argue that travel-related businesses in rural areas may advertise at information kiosks and by brochures distributed at rest areas, or on official tourist-oriented directional signs. They also argue that Kentucky's bonus agreement is still in place and that the state cannot afford the monetary penalties if the agreement were to be abandoned.

Opponents to Kentucky's existing policies argue that while some may see billboards as a blight on public roadways, others appreciate the information on signs, particularly travelers who are unfamiliar with an area and are searching for gas, food, lodging, and attractions. Kentucky is considered a pass-through state by travelers on their way to Florida, and signs are cost effective and efficient. Opponents also argue that the administrative regulations governing the location of signs in rural areas exceed the statutory requirements. They argue that statutes require a single commercial or industrial activity to create an area on an unzoned rural interstate corridor where a billboard may be located, while relevant Kentucky administrative regulations require 10 separate commercial enterprises for an area to be considered eligible for the placement of a billboard. Opponents often call for legislation to revisit this issue and clarify whether existing administrative regulations conform to statutory authority and legislative intent.

Research And Development Incentives

Prepared by Louis DiBiase

Should the General Assembly expand incentives to encourage investment in research and development?

Background

It is widely believed that investments in research and development (R&D) contribute positively to economic growth and vitality. Some studies suggest that such investments lower prices, raise the quality of goods, and result in higher employment and wages. For this reason, the federal government and a majority of states provide tax incentives, usually an income tax credit, to encourage direct, private investment in R&D. Kentucky does not have this kind of direct incentive, although it does offer limited incentives for constructing research facilities and purchasing R&D equipment.

The Governor's 2012 Blue Ribbon Commission on Tax Reform recommended expanding Kentucky's R&D tax credit so it would include direct, private investments in R&D. This follows similar recommendations from two other groups recently charged with evaluating Kentucky's incentive programs: Anderson Economic Group, commissioned by the Legislative Research Commission as part of 2011 House Joint Resolution 5; and Boyette Strategic Advisors, consultants to the Economic Development Cabinet.

Discussion

Proponents of an R&D income tax credit argue that it would spur investment and contribute positively to the economy. They claim the benefits could be far reaching. As stated by the Governor's Blue Ribbon Commission on Tax Reform:

> It would be beneficial for Kentucky to get a reputation as a state that values and encourages R&D so that university graduates will be motivated to stay here and commercialize their research concepts. It is also beneficial to develop industry clusters by having existing industries developing new technologies that will draw new companies in that industry as well as suppliers.[1]

Opponents of expanding Kentucky's R&D incentives note that it is difficult to measure both the impact of R&D on the economy and the cost-effectiveness of tax incentives to promote it. They note that studies vary significantly depending on the methodologies used. While the influence of R&D overall is positive, one cannot be precise about the costs and benefits involved. Opponents are also concerned about the cost to the General Fund. Under the proposal of the Blue Ribbon Commission on Tax Reform, for example, the cost would be $4 million annually.

[1] Blue Ribbon Commission on Tax Reform. *Report to Governor Steve Beshear*. Dec. 17, 2012.

Charter Schools

Prepared by Ken Warlick and Erik Carlsen-Landy

Should the General Assembly allow charter schools?

Background

School choice is the concept that, rather than school assignment being based on residence, district priorities, or lottery, families may choose the schools to which they send their children. There are various school choice programs, including magnet schools, open enrollment, charter schools, and neighborhood schools. Nationally, school choice options continue to expand, but not without considerable debate regarding the efficacy of these options.

Discussion

Of the school choice options under discussion in Kentucky, charter schools are possibly the most polarizing. Charter schools are publicly funded semi-autonomous schools operating under a contract, or charter, that describes how the school will be managed, what students are taught and expected to achieve, and how success will be measured. As long as they achieve the academic results described in their charter, charter schools are given more freedom over budget, staffing, and curricula than other public schools and are exempt from selected state or local rules and regulations. Charter schools operate in 41 states and the District of Columbia and constitute 4 percent of the total public school population in the United States.

Charter schools receive public funding for the students they enroll. Therefore, when a child transfers to a charter school, funding follows the student. Research generally indicates that charter schools receive less funding than traditional public schools, with one study showing an average difference of 19 percent, about $2.247 per child, in the 24 states examined.[1]

However, concerns have been raised that charter schools draw the highest-achieving students from traditional public schools, thereby lowering performance scores of traditional public schools. A similar thought is that charter schools force traditional public schools to improve performance because of competition for students and funding. A study by the RAND Corporation on charter schools in eight states found that there was insignificant difference in the scores of charter school students compared to scores of traditional school students. The study reported no evidence that charter schools are taking the highest-achieving students from traditional schools and reported that achievement levels of the transferring students in most sites did not differ substantially from those of other students in the traditional schools they left. The study also found there was no evidence that charter schools are negatively affecting overall student achievement in nearby traditional schools.[2]

Enrollment in charter schools seems to generally reflect the overall student population when viewed at the district or neighborhood level. A report of the Southern Regional Education Board indicated that charter schools in urban, predominantly minority areas have a higher proportion of minority students in charter schools than in traditional public schools.[3]

The RAND study also found that middle and high school students in charter schools showed little or no increase in achievement scores. However, a Center for Research on Education Outcomes study found that two groups fared significantly better in charter schools than in traditional public schools: students in poverty and English language learners.[4]

In terms of graduation and college enrollment rates, the RAND study found that, in the two locations with available data, students attending a charter high school had a higher probability of graduating and enrolling in college than those attending traditional schools. The study also found that students attending a charter middle school and continuing to a charter high school were 7 percent to 15 percent more likely to graduate and 8 percent to 10 percent more likely to enroll in college than students who transitioned from a charter middle school to a traditional public high school. It is unclear whether the difference is due to differences in students who attend charter schools or due to the effects of the charter schools.[5]

The United States Government Accountability Office reported that charter schools enroll a lower percentage, about 3 percent, of students with disabilities than traditional schools. However, the report noted that little is known about the factors causing the lower enrollment percentage but offered some anecdotal reasoning:

- Parents of students with disabilities may not be choosing to send their children to charter schools.
- Because charter schools receive less funding, they may have fewer resources to provide services to students with severe disabilities.
- Not all charter schools make the final decision about placement of students with disabilities within the public school system.
- Charter schools may be discouraging families with a child with a disability from enrolling.[6]

The Kentucky Charter Schools Association, a grassroots organization, was formed in August 2013 to advocate for legislation to support charter schools. Many Kentucky educational organizations have historically opposed charter schools. A possible reason Kentucky has not implemented charter schools may be the flexibility already given to school councils and schools located in districts of innovation.

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[1] Shen, Yilan, and Alexander Berger. National Conference of State Legislatures. Charter School Finance. 2011. P. 1.
[2] Zimmer, Ron, et al. RAND Educ. Charter Schools in Eight States: Effects on Achievement, Attainment, Integration, and Competition Summary. RAND Corp., 2009.
[3] Grove, Jeffrey et al. Charter Schools in SREB States: Critical Questions and Next Steps for States. Southern Regional Education Board 2012. P. 8
[4] Center for Research on Education Outcomes. Stanford Univ. National Charter School Study. 2013.
[5] Zimmer.
[6] United States. Government Accountability Office. Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities. GAO-12-543. June 2012.

Kentucky Educational Excellence Scholarship

Prepared by Jo Carole Ellis

Should the General Assembly expand out-of-state use for the Kentucky Educational Excellence Scholarship?

Background

The Kentucky Educational Excellence Scholarship (KEES) provides postsecondary grants to Kentucky students based on their grade point averages (GPAs) each year of high school and ACT or SAT exam scores. At the end of each year of high school, students with GPAs of 2.5 and higher earn awards ranging from $125 for a 2.5 GPA to $500 for a 4.0 GPA. Students can receive another award for a qualifying ACT or SAT score, ranging from $36 to $500. Additional amounts can be earned by low-income students who score well on Advanced Placement or International Baccalaureate exams, ranging from $200 to $300 for each qualifying exam score. The total amount earned is their annual KEES scholarship amount for 4 years of college. Approximately 87 percent of high school students have earned a KEES award when they graduate, and the average annual award disbursed is about $1,200.

KEES awards may not be used at out-of-state postsecondary institutions, except to pursue a program available through the Academic Common Market (ACM). The ACM is a tuition-reduction agreement among the 16 Southern Regional Education Board states that enables students who are interested in academic programs not offered in their home state to pay in-state tuition to pursue the programs at a participating out-of-state university.

During fiscal year 2012, KEES awards totaling $407,518 were disbursed to 221 students enrolled at ACM institutions, representing less than 1 percent of the total KEES population and dollars. Of the 38,949 Kentucky high school students who graduated in 2012, about 3,000 attended college out of state and did not use their KEES awards.

Discussion

Proponents of expanding the use of KEES awards at out-of-state institutions contend it will provide greater postsecondary access to students, particularly students who live in border counties closer to out-of-state institutions than to Kentucky institutions. Others note that high school students “earn” their KEES awards, and their college choice should not be limited regarding KEES use. Others contend that students should be allowed more flexibility to use KEES to pursue unique programs of study out of state so they can bring that expertise back to Kentucky.

Opponents of expanding KEES use argue that such action would conflict with the purpose of KEES, stated in KRS 164.7871(1), to ensure access to postsecondary education at the postsecondary educational institutions of the commonwealth. Opponents also cite the possible “brain drain” to other states and the belief that KEES funds should stay in Kentucky because the program is funded by state lottery revenues. Others are concerned that the cost of out-of-state expansion would divert funding from need-based student financial aid programs, which are also funded by state lottery proceeds. Some note that because several border-state institutions now match a student's KEES amount to entice the student to attend out-of-state, the expansion of KEES use is unnecessary.

Student Financial Aid

Prepared by Jo Carole Ellis

Should the General Assembly modify state student financial aid programs?

Background

Kentucky's main postsecondary financial aid programs, the College Access Program (CAP) grant, the Kentucky Tuition Grant (KTG), and the Kentucky Educational Excellence Scholarship (KEES), are funded by Kentucky lottery proceeds. CAP provides need-based grants to students attending public and private postsecondary institutions, KTG provides need-based grants to students attending Kentucky private colleges and universities, and KEES is a merit-based scholarship given to students based on their high school grade point averages and ACT or SAT scores.

For fiscal year 2013, amounts disbursed to students were $57 million by CAP, $30 million by KTG, and $102 million by KEES. While KEES awards were fully funded for the 68,700 eligible students who attended college, CAP and KTG funds were exhausted within 6 weeks after students could apply, leaving approximately 45,000 CAP-eligible students and 5,500 KTG-eligible students without need-based grants.

While average tuition and fees have increased 142 percent at the commonwealth's public 4-year institutions over the past decade, the maximum annual KEES scholarship of $2,500 that can be earned for a student's grade point average and ACT/SAT score has not increased since 1999. The CAP award maximum has remained at $1,900, and the KTG award maximum has held between $2,900 and $3,000 since 2006.

Discussion

KRS 154A.130 directs all remaining net lottery revenues to the student financial aid programs after the allocation of $3 million to literacy development. Student aid appropriations are determined by lottery estimates, and when receipts have exceeded estimates in the last several bienniums, the surplus revenue has been redirected to the General Fund. The General Assembly could consider directing more of the surplus revenue to the aid programs; however, this would decrease the funds available for other budget needs.

KRS 164.780 created the KTG program to provide supplementary tuition assistance to Kentucky students who attend the state's independent colleges and universities, acknowledging that these institutions fulfill a public purpose but are not supported with public funds. KTG program eligibility is not limited to the federal Pell Grant's expected family contribution level, like the CAP grant. Some may suggest adding a more stringent need-based requirement to KTG to ensure funds are directed to the neediest students. Others may argue that the current eligibility requirements are appropriate because KTG helps lower the tuition costs for students who attend these institutions in lieu of the public funding benefit (in the form of lower tuition) that all Kentucky students who attend public institutions receive, regardless of financial need. KEES eligibility is merit based, with the exception of an Advanced Placement/International Baccalaureate bonus award category limited to students who are eligible for free and reduced-price lunch. Some higher education professionals favor adding a financial eligibility requirement to KEES to make more funds available for students most in need of financial assistance. Opponents argue that adding a need-based requirement to KEES would severely limit using the program to encourage students to do well in high school because their award eligibility would depend on future financial circumstances.

Some have also suggested requiring KEES recipients to complete the Free Application for Federal Student Aid, like CAP and KTG, to ensure that students receive all the aid for which they qualify. Opponents point out that adding an income or application requirement for KEES could discourage students from taking advantage of their KEES money, particularly those students who are unfamiliar with or intimidated by the financial aid application process.

Fuel Diversification Standards For Electricity

Prepared by Janine Coy-Geeslin

Should the General Assembly establish renewable portfolio standards for electricity produced or sold in Kentucky?

Background

Coal provides more than 90 percent of the commonwealth's electricity. However, demand for coal has decreased nationally, and Kentucky coal production in 2011 decreased by 16 percent.[1] Additionally, changes in federal air quality regulations for power plants may require Kentucky to change its reliance on one energy source for electricity. The federal government and many state governments are pursuing the development of renewable fuel sources such as wind, solar, hydro, biomass, and geothermal. In 2011, renewable energy sources made up 13 percent of utility-scale generation of electricity in the United States.[2] While fossil fuels still provide the majority of the energy in the United States, most states are considering alternative fuel sources for environmental and economic reasons and establishing renewable energy credits and standards.

Currently, 30 states and the District of Columbia have enacted mandatory renewable portfolio standards (RPS), while 7 states have voluntary goals.[3] These standards are policies designed to require or encourage electricity providers to supply a certain percentage of electricity from renewable energy sources. Most states require or encourage electricity providers to supply a minimum percentage of their electricity from renewable resources.[4] Percentage requirements for renewable energy sources range from 10 percent in Indiana up to 33 percent in California. Structure and enforcement vary from state to state, and many programs offer an "escape clause" if the added cost of renewable energy exceeds a certain amount.

Although Congress has proposed several bills involving RPS for electricity generation, national standards have not been enacted. Kentucky does not require diversification of electricity sources. Legislative action concerning renewable portfolio standards for electricity producers has been introduced in the last five sessions; however, none has advanced beyond the committee level.

Discussion

In 2008, the Governor released a seven-point strategic action plan titled "Intelligent Energy Choices for Kentucky's Future" that provides a framework to encourage Kentucky's long-term energy independence and security. Three of the strategies involve fuel diversification for electricity generation in Kentucky. The plan provides for a renewable and efficiency portfolio standard (REPS) under which 25 percent of Kentucky's energy needs will be met by reductions in energy demand through increased energy efficiency, conservation, and use of renewable resources.

In 2011, 93 percent of Kentucky's electricity generation came from coal, 3 percent from hydroelectric power, 2 percent each from petroleum and natural gas, and less than 1 percent from other renewable sources.[5]

Opponents of REPS argue that due to the low cost and abundance of coal and the high cost and lack of readily available renewable energy, REPS would mean higher electricity rates for consumers and economic instability for Kentucky. A renewable and efficiency portfolio standard and federal emissions regulations likely would mean the loss of coal mining jobs, which in turn would have an indirect impact on other industries such as coal equipment manufacturing, transportation, natural gas and electric power transmission, petroleum, and professional services. Kentucky's low electricity rates, compared to those in the rest of the nation, have been a useful economic development tool because energy costs are cited as a major consideration for companies choosing to locate or expand here.

From 2011 to 2012, coal mining employment decreased 22 percent, with a net loss of 4,028 jobs.[6] Proponents of REPS argue that encouraging the use of renewable energy and fuel diversification for electricity generation could create high-paying clean energy jobs, new and innovative research and technologies, and manufacturing jobs in the renewable energy sector. Clean energy advocates argue that fuel diversification will assist state and local economies that have previously relied on manufacturing and coal industry jobs. Kentucky's vulnerability to heavy regulation of any one type of energy would be reduced by diversifying its energy portfolio. Clean energy industries argue that reliance on more than one fuel source will lead to economic and energy security and will benefit the environment.

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[1] *Kentucky Coal Facts*. 13th Ed. Kentucky Energy and Environment Cabinet. Department for Energy Development and Independence in partnership with the Kentucky Coal Association. P. 5.
[2] *Renewable utility-scale electricity production differs by fuel among states*. US Energy Information Administration. May 3, 2012.
[3] *Most States have Renewable Portfolio Standards*. US Energy Information Administration. Feb. 3, 2012.
[4] *Ibid.*
[5] *2012 Energy Profile*. Kentucky Department for Energy Development and Independence. Kentucky Energy and Environment Cabinet. P. 31.
[6] *Kentucky Coal Facts*. P. 25.

Natural Gas Liquids Pipelines

Prepared by D. Todd Littlefield

Should the General Assembly regulate the safety and siting of natural gas liquids pipelines?

Background

The discovery of large natural gas-bearing shale strata in the northeastern United States and in other locations has had an enormous impact on the energy picture for Kentucky and the world. Significant quantities of gas are being extracted from the Utica and Marcellus shale plays, using new horizontal drilling and hydraulic fracturing (known as fracking) techniques. Natural gas liquids (NGLs) including ethane, propane, n-butane, isobutane, and pentane are present in the so-called wet gas or rich gas being extracted from these new wells. The liquids must first be extracted from the natural gas and later separated into different components by a process called fractionation. The NGLs are used in the plastics industry and other petrochemical industries and are sometimes more valuable than the methane fraction. They are also highly flammable and may be toxic at high concentrations.

In early 2013, Williams and Boardwalk Pipeline Partners announced a joint venture agreement with plans to build the Bluegrass Pipeline to carry NGLs from Ohio, West Virginia, and Pennsylvania to processing facilities on the gulf coasts of Louisiana and Texas. New pipeline would be constructed from the source states to the Texas Gas Transmission interconnect in Breckinridge County. An existing natural gas pipeline would be converted to carry the NGLs. from Hardinsburg to Eunice, Louisiana. Though the exact location of the pipeline is yet to be determined, the partnership claims that 90 percent of the necessary landowners have granted survey permission.[1] At least eight counties along the proposed route have passed resolutions opposing the pipeline based on safety, legal, and financial concerns. In August, a second NGL pipeline plan was announced by Kinder Morgan and MarkWest Utica EMG to convert 900 miles of natural gas pipeline, much of it in Kentucky, to carry NGLs to the Gulf Coast.

Some media and public attention has been focused on what regulatory safeguards are in place to protect the public. A request was made that the Governor call a special legislative session to quickly bridge any regulatory gaps. Concern among members of the legislature has resulted in at least one prefiled bill for the 2014 Regular Session dealing with the issue.

Discussion

Concerns about the Bluegrass Pipeline have centered on four issues:
- What safety requirements are the builders obligated to observe?
- Who will see to it that the companies site, build, and operate safely and fairly?
- Where will the pipelines be located? Can they be located away from certain areas and resources?
- Can the companies condemn the property of unwilling owners?

Interstate pipeline transportation of the methane fraction of produced natural gas is regulated under the Natural Gas Act, but similar transportation of natural gas liquids is not. Other regulation of the natural gas industry by the Federal Energy Regulatory Commission (FERC) and the National Environmental Policy Act (NEPA) does not apply to natural gas liquids.

A pipeline for natural gas liquids does not fall under the same FERC jurisdiction regarding siting, safety, or environmental concerns. Some regulation of NGLs can be found in the Interstate Commerce Act, but it does not require advance review of the need for a NGL pipeline or its routing. FERC has a limited role to play and only after the NGL pipeline is complete. FERC must then review and approve the rates that pipeline owners may charge shippers and the terms of such service.

The Pipeline and Hazardous Materials Safety Administration, in the US Department of Transportation, sets physical construction requirements for NGL pipelines, but no permitting process exists. No federal or state standards exist for siting setbacks from homes, communities, schools, historical sites, or other properties or resources.

The secretary of the Kentucky Energy and Environment Cabinet directed the cabinet's general counsel to review current state statutes and federal laws in this area. Some of the relevant conclusions are below.

- "Does not appear that any state agency has any authority in siting of pipeline outside (water crossing and blasting) permitting ..."
- "Does not appear that any federal agency has any authority in siting of pipeline except for the U.S. Army Corps of Engineers."
- "... no state agency appears to have inspection responsibility for the pipeline's operation."
- "U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration has the responsibility for the inspection of the pipeline, as it does all interstate pipelines."[2]

When asked whether the construction of an NGL pipeline would require prior Public Service Commission (PSC) approval, a letter over the executive director's signature stated that the Bluegrass Pipeline did not satisfy the crucial requirement in KRS 278.020 that pipeline activities be "to or for the public." Failing that, the owners could not be considered a "utility" under KRS Chapter 278 and, therefore, are not subject to the PSC's jurisdiction. This finding was in the form of a PSC Staff Opinion and contains the caveat that it is advisory only and not binding on the commission should the issue be formally presented for PSC resolution.[3]

The Public Service Commission has jurisdiction over utilities that provide services to the public. The Kentucky State Board on Electric Generation and Transmission Siting is administratively attached to and staffed by the PSC. In addition to approving siting for merchant generation facilities (those not serving Kentucky ratepayers) and certain nonregulated electric transmission lines, the board also has jurisdiction over pipelines that carry carbon dioxide. The board has no authority over natural gas liquid pipelines. It has been suggested that this board is a logical agency to be given such authority.

If a pipeline route is to cross certain waters, the US Army Corps of Engineers is empowered to review the plans. This review under the Clean Water Act is likely the only advance federal agency approval required. For that reason, it has been suggested that the Corps take the lead in coordinating a comprehensive siting and safety review of NGL pipelines as would be undertaken under NEPA and FERC if the pipeline carried natural gas.

Proponents of the state taking a more vigorous role in siting and safety regulation of NGL pipelines point to the gap in existing regulatory oversight. They express concern over the lack of protections both for landowners who might be in proximity to the pipeline and for the public in general. Some fear that property values will be adversely affected because the land will be less attractive to developers. Beyond a few temporary construction jobs, they see no benefit to the commonwealth and considerable risk of personal, property, and environmental damage.

It is not clear that the creation of a more robust regulatory scheme for NGL pipelines would cause the builders to locate the pipeline in another state. Both proposals take advantage of natural gas pipelines that already exist in Kentucky.

Opponents view efforts to regulate the projects as a hindrance to beneficial development. A brochure published by the Williams and Boardwalk joint venture refers to the benefits of natural gas in general. It promises economic benefits to Kentucky including construction jobs; money spent locally by construction crews for food, lodging, equipment and supplies; and local tax revenue.

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[1] Williams and Boardwalk Pipeline Partners. Presentation. Interim Joint Committee on Natural Resources and Environment. Frankfort. Sept. 5, 2013.
[2] Letter from Energy and Environment Cabinet Secretary Leonard K. Peters to Senator Jared Carpenter. Sept. 17, 2013.
[3] Public Service Commission. Staff Opinion 2013-006. July 30, 2013.

Health Care Professionals

Prepared by DeeAnn Wenk and Wesley Whistle

Should the General Assembly consider actions to increase the number of health care professionals in Kentucky?

Background

Historically, Kentucky has had a shortage of primary care, mental health, nursing, and long-term care professionals in particular areas of the state. This shortage has led to a lack of available services to these regions. According to a study by Deloitte Consulting, Kentucky needs about 3,800 physicians for adequate levels of care.[1] After the federal expansion of health care coverage through the Patient Protection and Affordable Care Act and the recent expansion of Medicaid in Kentucky, it is anticipated that there will be a greater shortage of these professionals as more people will be covered by insurance and will be able to access health care.

The federal Department of Health and Human Services uses a set of criteria, including a population-to-clinician ratio, to define what a health professional shortage area is. The ratio is 3,500 to 1 for primary care, 5,000 to 1 for dental care, and 30,000 to 1 for mental health. In addition to the ratio, another criterion used is the availability of access. If the clinicians in the area are overused, excessively distant, or inaccessible to the population of the area, then the area falls into this category. "Excessively distant" is considered as needing more than 30 minutes of travel to access care. "Inaccessible" can be related to a large percentage of the population that does not speak English or to populations that might lack the resources to travel to the clinicians, which is qualified by more than 20 percent of households having income below the poverty level.

The federal government has designated about 75 percent of the counties in Kentucky as health professional shortage areas in the fields of primary care, mental health, and dental care. These areas are overwhelmingly rural. There are concerns regarding the growing need as an aging population will increasingly continue to need more care.

Discussion

To alleviate the shortage of health care professionals, some observers have suggested expanding the scope of practice for some health professionals such as physician assistants, nurse practitioners, nurse midwives, counselors, and social workers. By allowing these professionals to treat conditions currently treated by physicians, more people in the state could gain access to basic health care. Many states have passed or proposed legislation that would allow a nurse practitioner to practice without the oversight of a physician. Kentucky requires physician oversight.

Physicians have expressed concern about patient safety that might arise with giving full health care responsibility to these professionals. Physicians are concerned that the amount of training given to nurse practitioners is not sufficient for providing full treatment. Many general practitioners are also concerned that expanding the scope of practice of nurse practitioners threatens their job security. Another area of concern for physicians is that there is a shift of pay from medical doctors to the other clinicians.

Others have suggested that the shortage of health care professionals could be addressed by attracting students to the professions and to underserved areas through student loan programs, loan forgiveness, and scholarships. Many states, including Kentucky, have enacted programs like these to attract students to the medical profession, but they are limited in scope. Kentucky established eight Kentucky Area Health Education Centers, where each year about 4,500 students complete training in medicine, nursing, dentistry, allied health, public health, pharmacy, and social work. There is a particular need to attract students to primary care because there is a greater shortage in that field as some medical students choose to pursue higher-paying specialty care positions.

Some states have implemented community-based training and education programs in underserved areas to encourage people to become health care professionals in the disciplines of need. These community programs allow students to remain in the area for their educations, and they encourage the students to practice in the area. Some states work with community colleges, hospitals, and other foundations to allow flexible training programs in other locations. Two examples in Kentucky are a nurse anesthetist program in Madisonville with a partnership of Baptist Health and Murray State University, and a Bachelor of Science in Nursing program in Owensboro through a partnership with Owensboro Health and the University of Louisville.

Another issue is keeping trained health care professionals in the underserved areas because many of the incentive programs are short term, usually a 2- to 4-year commitment. Some have suggested paying higher Medicaid and private insurance reimbursements or providing tax breaks for health care professionals practicing in these underserved areas.

Other options include encouraging young students to consider health professions by providing high school career counseling in health career professions or by offering medical preparation courses or dual-credit programs to college-bound students so they have a foundation when they start college. E-health is an option that provides services through telemedicine, in which a physician can see patients from a distance over the Internet through video conferencing. Nonemergency transportation is also used by Medicaid to transport patients who might have problems getting to clinicians.

There are consequences that should be considered. Providing incentives and tax breaks may have negative consequences in that they may be provided to those who already would have chosen to work in a health profession in an underserved area. Incentives may take away needed resources from other students, professionals, and programs with more need. Using funds for programs such as e-health and non-emergency transportation may be seen as an inefficient way to use resources. Using e-health also may raise concerns about privacy and security.

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[1] Associated Press and Rick Howlett. "Report: Kentucky Doctor Shortage Likely to Worsen with Health Care Expansion." May 22, 2013. wfpl.org. Oct. 31, 2013.

Health Insurance Coverage

Prepared by Jonathan Scott

Should the General Assembly address gaps in health insurance coverage that occur due to changes in an individuals' eligibility for various types of health coverage?

Background

Kentucky expanded eligibility requirements for Medicaid coverage and established a state health care exchange as part of the Patient Protection and Affordable Care Act. The Act requires all individuals to have health insurance coverage. Beginning January 1, 2014, individuals with incomes between 60 percent and 400 percent of the federal poverty level will have additional health care coverage options. One concern is that newly eligible individuals may experience fluctuations in their eligibility, which could mean their coverage is interrupted. This is called "churning," and it occurs when an individual loses or must change health insurance because of changes in the individual's income and eligibility levels. Some examples of current and expected sources of churning include

- Medicaid and the Kentucky Children's Health Insurance Plan,
- subsidized insurance coverage purchased through the health care exchange,
- individual private insurance coverage,
- employer-sponsored insurance coverage, and
- no insurance coverage.[1]

Churning can occur when low-income, nonelderly adults experience changes in income over the course of a year; for example, a single overtime check could cause a person to become ineligible based on the higher income, even though it is temporary. When a person is ruled ineligible, coverage stops, and that person must reapply for Medicaid coverage. There is some evidence to suggest that those who would be newly eligible for Medicaid because of the state's expanded requirements would be somewhat more likely to experience lapses in coverage in the course of a year.[2]

Problems associated with churning include missed treatment because of a lapse in coverage, which could lead to higher costs later. Continuous enrollment in Medicaid for 1 year may reduce the monthly expenditures for that individual by as much as $136 per month because the individual receives primary and preventive care as needed and does not miss appointments or treatments. When individuals move in and out of coverage, it also causes administrative challenges because additional paperwork may need to be resubmitted and because needed medicine or medical care may be delayed.

Churning also reduces the incentive for insurance carriers to invest in long-term wellness programs because they lose the opportunity to benefit from savings associated with wellness and preventive care.

Discussion

Several options have been advocated to address the gaps in coverage due to churning. These options include the Basic Health Program, the "bridge option," use of Medicaid premium assistance (including the "Arkansas option"), and 12-month continuous Medicaid eligibility waivers.

A gap in coverage could occur when an individual's income rises above the 138 percent Medicaid eligibility threshold. To avoid a gap in coverage for these individuals, a state could use federal tax subsidy dollars to offer a basic health plan (BHP) essentially identical to Medicaid to individuals with incomes between 139 percent and 200 percent of the federal poverty level. An individual who is receiving Medicaid would not have to change plans if his or her income rose above the Medicaid eligibility level. The individual could be automatically moved from Medicaid to the BHP, and only the payment mechanism would change. Federal subsidies would pay for about 95 percent of the premium, and the individual would be responsible for 5 percent. The state would contract with insurers to provide the BHP coverage, and the federal subsidy would be paid to the insurer.[3] To date, Kentucky has not acted on the BHP option. Draft federal rules for the BHP have recently been published, and states cannot offer a BHP until 2015.

A gap in coverage could also occur when individual family members are eligible for coverage under Medicaid, subsidized insurance on the health exchange, and the Children's Health Insurance Program. Coordinating health care services for family members covered under different plans could create confusion and lead to a lapse in coverage for individual family members. The bridge option would allow families that have multiple members who qualify for different types of coverage to be covered under one plan. The state could contract with an insurer to offer a bridge plan using state and federal Medicaid funds and federal subsidies to pay the premiums. Families would be responsible for any payment that would have been required for a federally subsidized plan. To date, Kentucky has not proposed offering a bridge plan. The bridge option is not an option established by the Affordable Care Act. However, Tennessee is using a bridge option for eligible families.[4]

Another option is to identify individuals at risk of experiencing a gap in coverage due to a change in income or family composition and to provide them with premium assistance to purchase private coverage.[5] Kentucky uses this option to assist Medicaid-eligible families to purchase insurance through an employer's plan. Kentucky could expand this option to all Medicaid-eligible individuals by providing premium assistance to purchase coverage through the health care exchange. Coverage would be continuous and only the payer would change as an individual's income changes. As the individual's income level rises, he or she may only qualify for subsidies to purchase insurance on the exchange. A Medicaid waiver from the Centers for Medicare and Medicaid Services would be necessary to implement this option. One option may be a version of premium assistance called the "Arkansas option," where the premiums and other costs of care for health care plans available in the private insurance market are paid for Medicaid enrollees by the state. Under this option, coverage could be continuous, and only the payer would change as an individual's income increases. One key difference between this option and previous premium assistance programs is that Arkansas will be given time to show that the program is cost effective.

A 12-month continuous Medicaid eligibility for nonelderly adults is also an option. The 12-month continuous Medicaid eligibility would function similarly to private health insurance in that once eligibility was determined, that individual would be enrolled in Medicaid for the next 12 months, which would provide continuous coverage and care. Such a system could allow for greater preventive care efforts and could help to provide stability for a patient over time. There is some risk that state and federal Medicaid funds would increase with 12-month continuous coverage because some otherwise ineligible individuals—those whose income fluctuates around the federal poverty level—would be covered. Kentucky does not permit 12-month continuous eligibility. A Medicaid waiver from the Centers for Medicare and Medicaid Services would be necessary to implement this option.

A concern about each of these options is that the state and federal Medicaid funds and federal insurance subsidies may not cover the full cost, which would require the state to make up the difference from general fund dollars. This concern is countered by those who point out that those additional costs would be recouped by improvements in the quality of care provided when churning is minimized.

[1] Buettgens, Matthew, et al. *Churning Under the ACA and State Policy Options for Mitigation.* Urban.org. Web. Sept. 25, 2013.
[2] Ku, Leighton, and Erika Steinmetz. "The Continuity of Medicaid Coverage: An Update." Association for Community Affiliated Plans. Web. Sept. 25, 2013. P. 14.
[3] Dorn, Stan. *The Basic Health Program Option Under Federal Health Reform: Issues for Consumers and States*. Urban Institute. 2011. Web. Sept. 25, 2013. P. 3.
[4] Tennessee Insurance Exchange Planning Initiative. "Bridge Option: One Family, One Card Across Time." Nov. 21, 2011. Web. Sept. 25, 2013.
[5] Kaiser Family Foundation. *Premium Assistance in Medicaid and CHIP: An Overview of Current Options and Implications of the Affordable Care Act*. Policy Brief. March 2013. Web. Sept. 25, 2013.

Medical Marijuana

Prepared by DeeAnn Wenk

Should the General Assembly consider legalizing the use of medical marijuana?

Background

Since 1996, 20 states and the District of Columbia have legalized the use of medical marijuana. Only Colorado and Washington also permit its medical and recreational use. Maryland limits use to an academic medical research program. Most states that have legalized medical marijuana require a patient registry for authorized users, specify the medical conditions for use, and permit dispensaries. States also limit the use of marijuana in public and work places, the coverage of medical marijuana by state and private medical insurance, use by minors, and amounts that may be possessed for individual use.

The federal government's position on the use of medical marijuana is ambiguous. Marijuana in any form is illegal under the Controlled Substance Act and is classified as a Schedule 1 substance. Schedule 1 substances are defined as having highly addictive potential and no medical value. The Federal Drug Administration (FDA) has not approved the medical use of smoked marijuana in spite of scientific evidence of some beneficial medicinal effects. However, the FDA has approved and is testing the medical use of some products available in pill, suppository, and inhaler form that contain purified extracts from the marijuana plant. Additionally, since 2009, the federal government has refrained from prosecuting individuals who distribute or use any form of marijuana for medical purposes if the individuals are in states where medical use is legal.[1]

Discussion

The primary beneficiaries of the legalization of medical marijuana are patients who are undergoing chemotherapy, suffering from wasting syndrome associated with acquired immune deficiency syndrome, experiencing spasticity and neuropathic pain with multiple sclerosis, or having pain associated with cancer. Some studies also show that extracts of marijuana that do not contain tetrahydrocannabinol (THC) can be beneficial for the treatment of neurological damage and inflammatory and autoimmune diseases.

Proponents of legalization note that marijuana is not as addictive as some prescription pain medications and does not have the harmful side effects that are common among them. Additionally, proponents note that some states, including Arizona, Delaware, Maine, Massachusetts, Michigan, and Rhode Island, permit the dispensing of medical marijuana to patients from other states.[2] They point out that Kentucky could benefit economically by developing a state medical marijuana program through taxes levied on producers and users of medical marijuana.

Opponents of the legalization of medical marijuana note the ambiguity of the federal law. Unless federal law is amended, citizens and states that have legalized marijuana use continue to be at risk of federal legal action. A considerable amount of new regulation by state agencies is involved in the oversight of production, distribution, and dispensing of medical marijuana. Opponents argue that investment of time and money in new regulatory systems should not occur unless there is greater certainty of the legal status of medical marijuana under federal law.

Additionally, opponents cite studies indicating the addictive properties of marijuana containing THC, the harmful levels of carcinogens in the smoked form of marijuana, and the difficulty of determining the consistency and potency of marijuana in its raw form. Also, studies on the beneficial effects of non-THC marijuana derivatives are considered by some to be too inconclusive or incomplete to permit legalization.

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[1] State Medical Marijuana Laws. Updated August 2013. National Conference of State Legislatures. Web. Sept. 19, 2013.
[2] Medical Marijuana. Treatment Research Institute. Oct. 24, 2012. Web. Sept. 19, 2013.

Mental Health And Substance Use Coverage

Prepared by Sarah Kidder

Should the General Assembly act to ensure that mental health and substance use benefits provided by Medicaid managed care plans under the Affordable Care Act's Medicaid expansion are provided at parity with medical and surgical benefits?

Background

Medicaid is the primary funder of mental health services and accounts for approximately a quarter of all spending on mental health services in the United States each year. More than one in four uninsured adults has a mental illness or substance use disorder, and about one-third of people with a mental illness or substance use disorder have incomes below the federal poverty level and have no insurance.[1] An estimated 181,000 adults in Kentucky live with serious mental illness, and approximately 45,000 Kentucky children live with serious mental health conditions.[2] Additionally, Kentucky has consistently been one of the top 10 states for rates of drug use among those 12 and older in several drug categories, yet Kentucky's Medicaid program provides substance use coverage only to pregnant and postpartum women.[3]

The Governor expanded Medicaid in Kentucky under the 2010 Patient Protection and Affordable Care Act. Under the Act, mental health and substance use services for the newly eligible population under Medicaid expansion must be covered at parity with other medical and surgical care in accordance with the federal 2008 Mental Health Parity and Addiction Equity Act (MHPAEA). Requiring parity means that financial requirements such as copayments and deductibles, and treatment limitations such as annual and lifetime visit limits applied to mental health and substance use disorder benefits can be no more restrictive than those applied to medical and surgical benefits.

There is concern among providers and consumers of mental health and substance use services that Kentucky's Medicaid managed care plans are not in compliance with MHPAEA, specifically regarding financial limitations, treatment limitations, disclosure requirements, and certain medical management techniques such as preauthorization requirements and determinations of medical necessity.

Discussion

The federal Centers for Medicare and Medicaid Services (CMS) has stated it will not actively find managed care organizations out of compliance with MHPAEA but has issued guidance urging states to ensure compliance with federal law. Given this direction, the General Assembly could require that the Kentucky Department for Medicaid Services submit a state plan amendment to CMS requesting changes to the Kentucky's Medicaid plan that ensures full parity for mental health and substance use benefits. Alternatively, the General Assembly could direct the department to apply for demonstration projects or waivers that would permit flexibility in the way the state covers and delivers Medicaid services so that the availability of mental health and substance use services is increased and parity compliance is required. The General Assembly could also explicitly require all new Medicaid managed care contracts to cover mental health and substance use disorder benefits at parity with medical and surgical benefits.

If the General Assembly, the Department for Medicaid Services, or the managed care plans do not act to ensure that mental health and substance use services provided by Medicaid managed care plans are provided at parity with medical and surgical benefits, the state will not be in compliance on the state or federal levels.

[1] Giliberti, Mary, et al. *Coverage for All: Inclusion of Mental Health and Substance Use Disorders in State Healthcare Reform Initiatives*. National Alliance on Mental Illness and National Council for Community Behavioral Healthcare. 2008.
[2] United States. Public Health Service. *Report of the Surgeon General's Conference on Children's Mental Health: A National Action Agenda*. Department of Health and Human Services. 2000.
[3] Office of National Drug Control Policy. Kentucky Drug Control Update / National Survey on Drug Use and Health 2007-2008. Executive Office of the President of the United States. 2009.

Dating Violence

Prepared by Alice Lyon

Should the General Assembly expand the definition of "unmarried couple" to extend domestic violence protections to persons in dating relationships?

Background

Kentucky law includes provisions to protect individuals who are victims of domestic violence. These protections apply in cases where alleged abuse occurs between family members or between members of an unmarried couple. A person is a member of an unmarried couple if the couple have children in common, are currently living together, or lived together in the past (KRS 403.720). A 1997 Kentucky Court of Appeals case, *Ireland v. Davis* (957 S.W.2d 310), ruled that for the purposes of domestic violence statutes, same-sex couples who have lived together in an intimate relationship are members of unmarried couples.

In cases of alleged abuse between family members or members of an unmarried couple, police may arrest the alleged abuser without a warrant as long as probable cause exists. The benefit of a warrantless arrest is that the alleged abuser can be immediately detained. For people who are not family members or members of an unmarried couple, police could not make an immediate arrest unless they witnessed the assault or had additional proof that any physical injury was serious or was caused by a weapon.

Protective orders are another statutory protection available to family members or members of an unmarried couple who allege abuse. Alleged victims may petition courts for temporary emergency protective orders 24 hours a day, and the orders can be issued quickly based solely on the written testimony of the alleged victim. Police officers receive notice of protective orders electronically as soon as they are entered. If the alleged abuser does not stay away from the alleged victim or follow any other emergency order provisions, this constitutes a crime for which the alleged abuser can be arrested immediately. After 14 days, a judge conducts a full hearing involving both parties to consider extending or canceling the temporary protective order.

For people who are not family members or members of an unmarried couple, possible legal actions are limited to filing a general criminal complaint with local police and suing the alleged abuser for a dollar amount. In the case of a criminal complaint, prosecutors could decide not to pursue charges against the alleged abuser and there would be no arrest. In the case of a civil lawsuit for damages, there would be no arrest. In the meantime, any contact between the alleged victim and the alleged abuser would not in itself constitute a crime. The alleged victim could seek a restraining order as part of these court cases, but a violation would result in an additional court appearance, not an immediate arrest.

Beginning with the 2007 General Assembly, each regular session has seen the introduction of bills seeking to expand the definition of unmarried couples to include those in dating relationships.

Discussion

Proponents of revising the definition of unmarried couple argue that the protection offered by domestic violence statutes should be extended to include dating relationships. They contend that this is a needed and logical extension, just as the system was changed to include unmarried couples living together or having children. Proponents cite a 2009 University of Kentucky study of 213 holders of protective orders that found that half had not experienced additional violence, and those whose orders were violated felt the orders reduced the level of abuse. Abusers and victims could currently share a college dorm or an apartment complex without qualifying for protective orders. Kentucky is one of three states that do not issue protective orders to people older than 18 who have been in dating relationships. Proponents point out that police officers and judges question couples and look for other evidence to determine whether couples live together, so distinguishing a casual acquaintanceship from an intimate relationship could be done in much the same way. The factors to consider in determining the nature of a relationship could be detailed in statutory language.

Opponents of revising the definition of unmarried couple argue that a person could easily claim a dating relationship where there was none, potentially resulting in a false warrantless arrest and a burden on courts. Determining whether a social relationship qualifies as a protected dating relationship would require police officers and judges to evaluate multiple factors. Rather than creating a new class of potential civil petitioners, opponents say, persons in violent dating relationships could continue to bring criminal charges. Students might be prevented from attending class if another student held a protective order prohibiting contact or mandating a particular physical distance between parties. Because *Ireland v. Davis* included same-sex couples in statutory domestic violence protections, opponents also argue that expanding the definition of unmarried couple could change the legal status of same-sex couples.

Drones

Prepared by Matthew P. Trebelhorn

Should the General Assembly establish a regulatory structure for the manufacture and use of drones?

Background

Unmanned aerial vehicles, popularly known as drones, have gained attention in the last several years for their role in military operations. Use of drones has not been confined to the military, however. Drones may have applications in many civilian sectors, such as law enforcement, journalism, surveying, border patrol, agriculture, real estate, industry, and government.

The legal framework, on both state and federal levels, has not yet adapted to the new technology: commercial use of drones is not permitted. Airspace under military control, such as that over Ft. Knox and Ft. Campbell, is not regulated by the Federal Aviation Administration (FAA). Because military drones may operate within that airspace, there is the possibility for public-private partnerships to use that airspace in developing new drone technologies for civilian use.

Congress passed the FAA Modernization and Reform Act in 2012, which mandates integration of drones into civil airspace by 2015.

Privacy and civil liberty advocates have expressed concern over the potential for expanded use of drones. Other advocacy groups seek to encourage the drone industry, citing potential economic benefits. The National Conference of State Legislatures reported more than 80 bills had been filed in state legislatures in 2013 relating to drones, and more than a dozen bills have been filed in Congress. One bill was filed in Kentucky in 2013, and one bill has been prefiled for 2014.

Discussion

Active research programs at the University of Kentucky and the University of Louisville use drones as instruments of scientific research and as engineering exercises for their students. Private businesses, while not permitted to operate drones commercially, are putting business plans in place so that they might provide services to agriculture and other sectors if the FAA changes its regulations. Those who use drones, and those who see potential in the technology, do not want to see regulations put in place that would make Kentucky a difficult regulatory climate in which to operate, build, or research drones.

Drones raise a number of concerns. Use of drones by police, by other government agencies, or by nongovernmental organizations creates concerns about civil liberties. Their use by private individuals also raises general concerns about privacy.

Those opposed to increased regulation argue that no additional regulation is necessary because the constitution provides civil liberty protection against unreasonable search and seizure.

Advocates of further regulation argue that a warrant requirement for any law enforcement use of drones is necessary to protect civil liberties. They contend that a blanket requirement for search warrants would ensure that Kentuckians' privacy is protected from police use of drones.

Other concerns relate to the retention of data collected by drones. Because drones allow great quantities of information to be collected and are relatively inexpensive, there is concern that huge databases could be assembled, even where there is no suspected criminal activity. Some argue that retention of drone-gathered data should be limited and that such data should be destroyed after a period of time. Other possibilities include the immediate destruction of data gathered that is beyond the scope of a warrant.

The use of drones by government in noncriminal settings is also a subject of concern. Regulatory agencies may face restrictions on the use of drones to gather data to be used in regulatory proceedings. The sharing of drone data among agencies is also a potential subject of regulation, particularly where information may pass to a regulatory or law enforcement agency.

Other possible methods of regulating drone use would regulate nongovernmental users as well. Texas, for example, has enacted a blanket prohibition on use of drones to take photographs, subject to specific exceptions; for example, allowing use with the consent of the landowner whose property is being photographed, or allowing oil and gas companies to use drones to inspect their installations. Violation of that prohibition is a criminal act.

Some advocates for the increased use of drones argue that no legislative response is necessary, and that existing Fourth Amendment law strikes a balance between the public and the private, allowing aerial photography from public airspace while providing adequate protection of the home.

Heroin

Prepared by Jon Grate and Nicole Straus

Should the General Assembly adopt additional measures to combat the rise in heroin usage and overdose deaths?

Background

According to the Kentucky Office of Drug Control Policy, between 2011 and 2012, heroin overdose deaths rose from 22 to 143, and deaths in 2013 are on pace to reach 174. In the years prior to 2010, heroin accounted for about five deaths per year. Drug control officials have attributed the rise in heroin use to its cheaper street price relative to diverted prescription drugs, the reformulation of medications such as Oxycontin and Opana to tamper-resistant versions, increased efforts to combat pill mills, and decreased public awareness of the dangers of heroin use.

Kentucky punishes heroin trafficking of 2 grams or more as a Class C felony for the first offense and as a Class B for subsequent offenses. For lesser amounts, the offense is a Class D felony for the first offense and a Class C felony for subsequent offenses. Amounts trafficked in separate transactions over a 90-day period may be combined into a single charge to meet the 2-gram threshold. The less-than-2-gram penalty scheme was established in 2011 in an attempt to segregate peddlers who sold heroin to support their own habits from higher-level commercial traffickers and to then provide a greater opportunity for treatment of the peddler while still treating trafficking as a higher-level offense than ordinary possession.

Kentucky punishes heroin possession of any amount as a Class D felony. However, in 2011, Kentucky changed its approach: unlike other Class D felonies, the maximum length of incarceration for heroin possession is capped at 3 years, and a person's first two offenses are weighted toward sentencing options other than prison to better facilitate access to treatment. Expanding access to treatment has resulted in almost 6,000 treatment slots being made available in the correctional system, up from 1,500 slots in 2007.

Discussion

To directly deal with the responsibility for overdose deaths, drug control advocates argue that statutes should clearly attach criminal responsibility to drug traffickers for the overdose deaths of victims. They suggest amending the penal code's foreseeability and causation statutes to better establish a link between homicide charges and trafficking. Alternatively, Kentucky could follow the federal model with a charge of heroin trafficking carrying a much higher penalty when an overdose death results or a strict liability approach where a separate, supplemental charge for an overdose death is levied without regard to a defendant's mental state.

Drug control advocates have also suggested increasing the penalties for heroin trafficking. These increased penalties could include establishing a higher penalty for trafficking in larger amounts of heroin, increasing the length a sentence must be served before an offender is eligible for parole, or increasing the length of time police have to combine separate drug purchases into a single charge. Expanding penalties for trafficking may have the unintended consequence of attaching an overly severe sentence to conduct where its application may be unjust.

Naloxone has been used as a rapid antidote to an opiate overdose. Some have suggested that it be made available to peace officers and other first responders to administer at the scene of an overdose. A consideration in its use is the level of medical training that would be needed by police and other first responders to be authorized to administer drugs to an unresponsive person.

Some states provide criminal immunity for those who report an overdose or who actually transport an overdose victim to an emergency room. The immunity prevents an illegal drug possession charge from being made against such persons. One consideration of this approach is not holding a person accountable for possession of heroin or for possible illegal activity that may have led to the overdose even though the person took action to seek medical help.

Neonatal Abstinence Syndrome

Prepared by Jon Grate and Dallas Hurley

Should the General Assembly enact additional measures to combat the growing number of infants born addicted to drugs?

Background

Kentucky has experienced a recent increase of prescription drug and heroin abuse among its citizens. A related issue associated with prescription drug and heroin abuse is neonatal abstinence syndrome (NAS), a medical condition in newborn infants who were exposed to opioids in the womb. After the infant is born, it no longer absorbs the opioids from the mother's bloodstream, leading to symptoms of drug withdrawal. Symptoms can include seizures, tremors, sleeping problems, hyperactive reflexes, inconsolable high-pitched crying, difficulty feeding, severe diarrhea, mottling skin, and extreme sensitivity to light and sound. According to a recent survey by the Kentucky Office of Drug Control Policy, the number of reported cases of NAS in Kentucky has grown by 2,400 percent, from 29 reported cases in 2000 to 730 reported cases in 2011.[1]

The typical treatment for NAS involves administration of substitute opioids to the infant on a gradually decreasing scale to safely wean the infant off opioids. Along with opioid substitute therapy, infants also require swaddling, gentle rocking, and quiet environments. Most NAS infants are treated in a neonatal intensive care unit (NICU) for the duration of their treatment. Treatment can last several months depending on the severity of the case, which can be difficult for many hospitals. Treating NAS can result in exceedingly high medical costs. A recent study published by the *Journal of the American Medical Association* found that the average cost of delivering and treating an NAS infant was $54,000, compared to average cost to Medicaid of $9,131 for a noncesarean delivery of a healthy infant. Medicaid is the largest payer of NAS-associated costs, accounting for 78 percent of reported cases.[2]

Discussion

States have addressed maternal substance abuse during pregnancy in a myriad of punitive and nonpunitive ways. Punitive responses include using criminal child abuse statutes to prosecute mothers for prenatal substance abuse, court-ordered involuntary commitment of substance-abusing mothers into residential drug treatment facilities, and using civil child abuse statutes to terminate the parental rights of substance-abusing mothers during pregnancy. Nonpunitive strategies include creating drug treatment programs tailored to the needs of substance-abusing mothers, granting mothers priority access to drug treatment facilities, and prohibiting discrimination against mothers in admission to state-funded drug treatment programs.

Some states have chosen to use punitive measures against women who abuse drugs while pregnant. South Carolina is the only state to prosecute mothers for criminal child abuse for using drugs while pregnant. Wisconsin, South Dakota, and Minnesota use civil commitment, which is the involuntary admission by court order of a substance-abusing pregnant woman to a residential treatment facility. Kentucky, like 17 other states, considers maternal substance abuse during pregnancy to be child abuse under civil child-welfare statutes, which could result in the mother's loss of custody of her newborn infant. Some contend that all of these approaches deter a woman from substance abuse during pregnancy because of the potential to lose custody if the child is born with drugs in its bloodstream. Others argue that punitive measures deter women from seeking prenatal care and substance abuse treatment out of fear of prosecution.

Some states use nonpunitive measures to protect the unborn child and to assist the mother in obtaining substance abuse treatment. According to the Guttmacher Institute, 18 states have either created or funded drug treatment programs specifically targeted at pregnant women, with 10 others providing priority access to state-funded drug treatment programs. Iowa, Kansas, Missouri, Oklahoma, and Tennessee prohibit state-funded drug treatment programs from discriminating against pregnant women.[3] Some contend that nonpunitive approaches incentivize pregnant women with substance abuse problems to seek treatment and prenatal care, thereby producing better health outcomes for the mother and infant. Others argue that punitive deterrence is more effective at combating maternal drug abuse than nonpunitive incentives for treatment and prenatal care.

Tennessee provides a hybrid system of punitive and nonpunitive measures to address maternal substance abuse during pregnancy. Tennessee created a statutory "safe harbor" for women addicted to prescription medication who voluntarily enroll in substance abuse treatment programs and prenatal care regimens by the 20th week of pregnancy. The law prevents the termination of the mother's parental rights based solely on her substance abuse during pregnancy as long as she stays in compliance with a substance abuse treatment program and a prenatal care regimen throughout the remainder of her pregnancy. Among its other provisions, the Safe Harbor Act of 2013 gives pregnant women priority in use of state-funded substance abuse services and prohibits state-funded substance abuse programs from discriminating against pregnant mothers. Some argue that this hybrid approach results in the combination of the deterrence that some see as necessary to combat maternal substance abuse during pregnancy with the incentives to seek substance abuse treatment and prenatal care in order to ensure the best health outcomes for both the mother and her infant.

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[1] Ungar, Laura. "Drugs still plague babies." *Courier-Journal.* May 21, 2013.
[2] Patrick, SW, et al. "Neonatal Abstinence Syndrome and Associated Health Care Expenditures: United States, 2000-2009." *Journal of the American Medical Association*. 307 (2012): 1934-1940.
[3] Guttmacher Institute. State Policies in Brief. "Substance Abuse During Pregnancy." Web. Sept. 13, 2013.

Drug-Free Workplace Program

Prepared by Matt Ross

Should the General Assembly exclude employees of drug-free workplaces who test positive for drug use from unemployment and workers' compensation benefits?

Background

The federal government and many states have established drug-free workplace programs in an attempt to address the impact substance abuse may have on workplace injuries. A drug-free workplace program provides incentives for employers to implement policies and worker drug testing to prevent drug and alcohol abuse. The programs provide supervisor training, employee education, employee assistance, and drug testing. Supervisors are counseled on the requirements of the program and how to recognize employees dealing with drug or alcohol issues. Employees are educated about addiction, available treatment resources, and the consequences of failed drug tests. Employees are provided assistance if they voluntarily seek substance abuse treatment. Employees and candidates for employment are subject to drug testing.

In 2006, the Kentucky General Assembly passed House Bill 572 creating a drug-free workplace program for coal miners. Under that statute, participating employers receive a 5 percent workers' compensation premium discount for implementing a certified drug-free workplace program, and coal miners are subject to precertification, random, and post-accident drug tests. The Office of Mine Safety and Licensing certifies coal mine drug-free workplace programs.

In 2008, the Kentucky Department of Workers' Claims implemented a voluntary drug-free workplace program pursuant to authorization contained in HB 296 passed during the 2007 Regular Session. Kentucky's program was created by administrative regulation (803 KAR 25:280). Under current regulations, employers may implement a drug-free workplace program and have it certified by the Department of Workers' Claims. A certified employer is entitled to a 5 percent reduction in the workers' compensation insurance premium. Since inception, 195 employers have sought certification, according to the state Labor Cabinet. Kentucky's regulations are similar to the federal program and include guidelines governing mandatory employee training, drug and alcohol testing protocols, and the treatment available through employee assistance programs.

During the 2013 Regular Session, SB 157 was filed to, among other things, permit the exclusion of employees testing positive for drugs or alcohol at the time of an injury from receiving workers' compensation or unemployment benefits. The bill would have created a legal presumption that drug or alcohol use was the cause of an employee's injury if the employee failed a drug or alcohol screen at the time of injury, which would ultimately result in a loss of workers' compensation benefits to the injured worker. The bill would have also amended the unemployment compensation statute to make it misconduct for an employee of a certified drug free workplace to refuse to take a drug test. An employee terminated for misconduct would be disqualified from receiving unemployment insurance benefits. The measure failed to pass out of the Senate.

Discussion

A recent study by the RAND Center for Health and Safety in the Workplace found that substance abuse may actually cause only a relatively small number of occupational injuries. Further, any correlation between substance use and occupational injuries is because a substance abuser is more likely to take safety risks at work. However, workplace injuries and illnesses exceed $100 billion annually in the United States in direct costs (medical expenses) and indirect costs (lost wages, loss of home, workplace disruption). The exact cost of substance abuse in the workplace is unknown and probably immeasurable.[1] However, some of these expenses are attributable to substance abuse.

SB 157 sought to reduce costs by changing Kentucky's workers' compensation and unemployment insurance schemes. Under that legislation, some employees seeking workers' compensation or unemployment benefits would likely be disqualified because of substance abuse that would presumably lower costs. However, it is unknown by how much. It is also unknown what societal costs will result from the denial of these benefits. Societal costs include increased crime and pressure on public assistance programs. Additionally, a reduction in benefit payments could incentivize insurance companies to push their insured employers into drug-free workplace programs. Because of the consequences attached to the bill's proposed drug-free workplace program, the Labor Cabinet contends that insurers will require most employers to participate as a condition of obtaining workers' compensation coverage. There are more than 150,000 employers in the commonwealth. There will be administrative costs if 150,000 employers seek certification, which may require an increase in funding.

According to the RAND study, drug testing appears to deter substance use among employees, but this may be because substance users are less likely to seek jobs with an employer that drug tests. It is unknown whether a more robust drug-free workplace law will reduce overall costs or whether the cost of implementing the program will have unintended administrative costs, costs to employers and the state, and societal costs.

[1] RAND Center for Health and Safety in the Workplace. The Effects of Substance Use on Workplace Injuries. Web.

Medical Dispute Resolutions In Workers' Compensation

Prepared by Carla Montgomery and Adanna Hydes

Should the General Assembly further monitor new medical dispute procedures implemented by the Department of Workers' Claims before making legislative changes?

Background

Medical disputes usually arise from unpaid medical bills when a workers' compensation insurance carrier denies payment for medical treatment because it determines the treatment was not medically necessary. As medical costs have become the largest part of the workers' compensation claim, medical fee disputes have increased. In 1997, the Department of Workers' Claims adjudicated 306 medical disputes. The numbers of disputes filed in the past 5 years have steadily decreased from the all-time high of 2,471 in 2009 to 796 as of August 31, 2013.

Injured workers are concerned about getting adequate, prompt treatment and about how to pay an attorney for representation when carriers deny medical treatment after a claim is adjudicated because no provision for attorney fees exists. Insurance carriers and employers are concerned about overuse of medical treatment by injured workers and the cost of litigating disputes.

Discussion

The commissioner of the Department of Workers' Claims is required to establish procedures to resolve disputes related to medical treatment. In 2012, Kentucky's commissioner put together a study group to review and offer recommendations for improving the dispute resolution process. New procedures were implemented in January 2013 incorporating recommendations from the study group. Under the new procedures, two administrative law judges were taken out of the normal rotation of case assignment to address only medical issue disputes. Previously, medical disputes were assigned to all the administrative law judges in addition to their regular caseloads.

The new procedures have expedited the process, and most claims are resolved in approximately 90 days. Having two administrative law judges dedicated to medical dispute resolutions has allowed them to promptly monitor procedure deadlines and immediately move to the next step. Previously, administrative law judges have testified that, historically, dispute claims went unchallenged. The claimants were not represented by an attorney or did not present additional information on their own behalf. In addition, physicians did not provide evidence on the dispute. Under the new procedures, the department has encouraged treating physicians to present information on behalf of their patients, explaining the treatment and its need. This additional information provides a more complete picture for the judges to make their determinations. In cases where evidence was presented by both sides, the resolutions have been evenly split in favor of the insurance carriers and the injured workers.

Although the department would like to have increased participation from physicians, it has received positive feedback regarding the new procedures from both sides involved in medical disputes. A variety of options remains to address the medical issues facing Kentucky's employers and injured workers. However, the commissioner's actions must be within the scope of statutory authority. Only the legislature has the authority to resolve or address some of the medical issues in workers' compensation injury claims. The department is hopeful that the new procedure proves to be a good solution for all involved in medical disputes.

Misclassification Of Workers

Prepared by Carla Montgomery

How might legislation on the misclassification of workers affect different executive branch agencies?

Background

Misclassification of an employee occurs when an employer represents to others that a worker is independent of the employer and not an employee, even though all factors indicate that the worker is actually an employee. Some employers purposely call their employees independent contractors to avoid statutory requirements such as paying sufficient taxes, purchasing workers' compensation insurance, paying the appropriate amount of wages and overtime wages, and paying appropriate benefits.

Kentucky case law regarding independent contractors versus employees dates to the 1960s and is still current law. In *Redmon v. Ratliff,* the Court of Appeals set nine guidelines to determine whether a worker is an employee or an independent contractor:

- The extent of control which, by the agreement, the master may exercise over the details of the work
- Whether or not the one employed is engaged in a distinct occupation or business
- The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision
- The skill required in the particular occupation
- Whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work
- The length of time for which the person is employed
- The method of payment, whether by the time or by the job
- Whether or not the work is part of the regular business of the employer
- Whether or not the parties believe they are creating the relationship of master and servant. [1]

The list of nine factors was refined to emphasize the following four guidelines in *Chambers v. Wooten's IGA*:

- The nature of the work as related to the employer's general business
- The employer's extent of control over the work
- The worker's professional skills
- The parties' true intentions [2]

Most executive agencies use the guidelines spelled out in *Redmon v. Ratliff* or very similar regulations for determining whether a worker is an employee or an independent contractor. Four executive agencies are charged with statutory duties that may result in a review and determination of whether a worker is an employee or an independent contractor.

- The Department of Workplace Standards of the Labor Cabinet is charged with determining whether employers comply with the wage and hour statutes. The department uses its

regulation, 803 KAR 1:005, to assist in the determination of whether a worker is an employee or an independent contractor and whether that employer must comply with wage and hour statutes.
- The Division of Unemployment Insurance of the Workforce Investment Department must determine whether employers have paid the correct taxes per employee for unemployment insurance and whether an employee is entitled to unemployment benefits. The division uses the "Restatement of Agency" to assist in making employee versus independent contractor determinations.
- The Department of Workers' Claims is required to determine whether a business has properly obtained workers' compensation insurance for all of its employees and whether an employee is entitled to workers' compensation benefits for a workplace injury. The department uses case law for its determinations.
- The Department of Revenue is charged with collecting state income taxes from employers or their employees. The department uses the Internal Revenue Service's test to determine whether someone is an employee. The Department of Revenue makes a determination of whether the correct amount of taxes is paid, and its employees are not trained to determine whether a worker is an employee or independent contractor.

These executive agencies have found that a number of employers purposely call their employees independent contractors, members of an LLC, or contract labor to avoid statutory requirements listed above. In addition, businesses that properly classify their workers as employees and comply with the statutory requirements may have a disadvantage to those competitors who purposely avoid compliance with mandatory laws for businesses with employees. For example, the Division of Unemployment Insurance found that during the 2012 audits conducted of 1,200 employers, 3,071 employees had not been properly classified as employees. This creates a shortfall of taxes owed to pay benefits to those employees who have become unemployed. The division is forced to bring enforcement actions to get funds to reimburse for the benefits paid to claimants.

In addition, those employers who fail to purchase workers' compensation insurance for improperly classified employees may shift the cost to complying employers who provide financial support for the Uninsured Employers Fund through their workers' compensation insurance premiums. The Uninsured Employers Fund pays workers' compensation benefits for employees who are not covered by an employer's workers' compensation insurance policy (KRS 342.760-342.790). While there are not definitive numbers given by other agencies, all agree that there are recurring issues with employers who purposely misclassify their employees and fail to purchase workers compensation insurance, withhold appropriate taxes, and fail to pay appropriate wages for hours worked.

Some employers may argue that using independent contractors is easier for all involved and object to interference of government agencies. The businesses prefer to have independent workers who can provide a particular service but not be an administrative burden on the business. The employer does not want the worker to be a full-time employee when the employer needs the worker only for one type of specialized work. Those employers are different from employers who clearly hire employees but call them independent contractors to avoid statutory requirements. Businesses also argue that many governmental agencies fail to communicate with other agencies and can have varying interpretations of their employment arrangement with a worker. These businesses want to deal with fewer governmental entities for their business requirements.

Discussion

Two bills dealing with the problem of misclassification of employees have been proposed by the General Assembly in the past 5 years. Neither bill passed both houses. It is important to understand the impact on executive agencies if these bills had passed.

The first proposal, House Bill 392 filed in 2009, would have amended KRS Chapter 337 and was for the construction industry only. It would have required the Department of Workplace Standards to investigate and prosecute discovered misclassification against employers. The proposal included criteria for who is and who is not an independent contractor. Civil penalties could have been assessed for employers who failed to properly classify their workers as employees. The department would have had to notify other executive agencies of its findings on misclassification. The agency would have had to investigate, issue civil penalties for violators, and provide an appeals process for civil penalties issued. The Labor Cabinet had procedures in place for appeals of civil penalties so there would have been no need for different procedures to be drafted. A major issue would have been the need for additional staff to handle this additional statutory responsibility that would have required an increase in funding. Construction employers could have ended up with double penalties for misclassification as well as failure to pay proper wages even though the cabinet would essentially be making a similar finding. The proposed bill would have required that a new process be designed to properly exchange this information between agencies. The bill did not address how other executive agencies handle this information from the Labor Cabinet.

Senate Bill 89 was filed in 2013 and would have established criteria for what constitutes the misclassification of employees and attempted to bring all issues relating to misclassification of employees to one executive agency. The bill would have amended KRS Chapter 131 and made the Department of Revenue the determining authority on whether a person is an independent contractor or an employee. The proposed legislation allowed employers to request a determination by the Department of Revenue or allowed the department to make its own determination during its routine audit work. The bill further stated that anyone found to be an independent contractor would not be eligible for employee benefits under KRS Chapters 337, 341, or 342. It would have further allowed the Department of Revenue to notify other state agencies, although it was not mandatory. This proposal was similar to one from the 2012 Session. Neither was successful.

Senate Bill 89 would have created a significant statutory assignment and responsibility for the Department of Revenue and would have attempted to replace other agencies' authority with the Department of Revenue's findings. While the Department of Revenue and Internal Revenue Service (IRS) examine whether proper taxes have been paid, the Department of Workplace Standards, Department of Workers' Claims, and Division of Unemployment Insurance examine whether a worker is entitled to benefits under their respective statutes. The Department of

Revenue objected to making any type of determination that affects employee benefits because the department staff do not feel equipped or qualified to make this type of determination.

The purpose of any type of determination or audit by the Department of Revenue regarding an independent contractor or employee is to determine that the business has paid the appropriate tax dollars to the state. Many employers pay workers as independent contractors and provide a 1099 that allows individuals to pay their own taxes on their income. If a worker is an employee, then a W-2 should be filed to ensure the appropriate income tax is paid. In many instances, the Department of Revenue collects the taxes and does not address whether a worker is truly an independent contractor or an employee. The Department of Revenue does use the IRS test for determining whether someone is an employee. This is a different test from the one in the proposed SB 89. This could create a situation where the state would decide that a person is an independent contractor and, yet, the IRS could find that the person is an employee. This conflict would create administrative challenges for businesses and the agencies trying to collect proper taxes.

Under SB 89, the Department of Revenue would have been required to create new procedures for receiving and investigating complaints and for making determinations. Additionally, the hearing and appeals process would be different from the procedures for other tax-related matters. The Department of Revenue would have had to have increased funding to perform these new responsibilities. Under the proposal, the other executive agencies would have continued to perform their statutory duties because those statutes were not addressed in the bill. In addition, the proposed bill did not address the exhaustion of administrative remedies, the issue of conflicting findings on multiple levels of courts from administrative up through the Supreme Court of Kentucky, or the conflicting statutory duties relating to taxes versus benefits.

Unfortunately, some employers will continue to misclassify their employees, a situation that must be addressed by multiple executive agencies. Future legislation should consider the impact on the executive agencies and the purpose of the agencies' statutory responsibilities. In addition, the impact on both employers and employees should be considered.

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[1] *Redmon v. Ratliff*, 396 S.W. 2d 230 (1965).
[2] *Chambers v. Wooten's IGA*, 436 S.W. 2d 265 (1969).

Alcohol Sales At Bed-And-Breakfast Establishments

Prepared by Bryce H. Amburgey

Should the General Assembly approve a new license to sell alcohol by the drink at bed-and-breakfast establishments?

Background

Bed-and-breakfast establishments were recently defined in KRS 219.011, one of the statutes regulating hotels. That statute describes a bed-and-breakfast as a one-family dwelling unit with overnight guests where the innkeeper resides on or adjacent to the premises when the guest rooms are occupied. Bed-and-breakfasts are not eligible for hotel alcohol licenses because KRS 243.084 limits these licenses to hotels with at least 50 sleeping units and a dining facility that seats at least 100 people. The holder of a hotel alcohol license may also acquire a separate hotel in-room service license.

There are 179 bed-and-breakfasts or historic inns in the state. Many of these bed-and-breakfasts are in wet or moist territories, giving rise to the question of whether the General Assembly should allow these establishments to serve alcohol by the drink. Several states, including six of Kentucky's seven border states, allow bed-and-breakfasts to serve some form of alcohol to their guests. States vary in how the alcohol may be served, such as sales only in conjunction with a meal, in-room by-the-drink sales, or in-room package sales. A related issue is whether the alcohol should be included in the basic room fee or should be a separate purchase. However, states that specify alcohol service at bed-and-breakfasts require that the alcohol is available only to guests of the bed-and-breakfast. This almost always means registered overnight guests but on occasion can mean invited guests of an official function hosted by the bed-and-breakfast.

Discussion

Allowing alcohol at bed-and-breakfasts in existing wet or moist territories could add income for those businesses through enhanced room rentals, could increase the local economy by boosting area tourism, could increase state revenue through licensing fees and sales tax receipts, and could bring all accommodation establishments under the same statutory framework.

Not allowing alcohol at bed-and-breakfasts in existing wet or moist territories would maintain the current system and would avoid bringing alcohol sales into more remote premises where consistent regulation is potentially more difficult.

Classification Of Hard Cider

Prepared by Tom Hewlett

Should the General Assembly revise the definition of cider to classify it as a malt beverage?

Background

Hard cider is made by fermenting the juice of apples or other fruit. In Kentucky, cider is defined as a wine by KRS 241.010(62). Consequently, stores licensed to sell only malt beverages (most commonly beer), such as convenience stores and groceries, would not be authorized to sell cider. Similarly, a malt beverage distributor licensed only to store and ship malt beverages would not be able to stock or ship cider.

The popularity of hard cider has been growing dramatically. Between 2007 and 2012, the sales of hard cider tripled. There are now more than 150 cider producers across the United States and Canada.[1] Increasingly, large US beer companies are moving into the cider market, including MillerCoors, Boston Beer Co., and Anheuser-Busch.[2]

Discussion

Proponents of changing the definition of cider to classify it as a malt beverage argue that cider is packaged and distributed like a malt beverage, and the two are generally similar in alcohol content. Proponents argue that allowing the malt beverage distributors and retailers to sell cider as a malt beverage would be an acknowledgement of current market trends, and that Kentucky's definition of cider artificially distorts the market. Proponents also contend that increased consumption of cider could lead to more opportunities for orchards and cider production at the local level. Local production of cider at orchards in some states has been similar to the growth of small farm wineries and could open up a new market for Kentucky farmers.

Opponents contend that cider is sweeter than beer so it appeals more to younger and underage drinkers because sweet beverages are easier to tolerate than beer or hard liquor. Opponents fear this will encourage underage drinkers to develop potentially dangerous habits.

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[1] McKee, Linda Jones. Wines and Vines. July 2013. Web. Sept. 18, 2013.
[2] Gales, Arselia. *Milwaukee Journal Sentinel*. July 27, 2013. Web. Sept. 3, 2013.

Keno

Prepared by Carrie Klaber

Should the General Assembly restrict the Lottery Corporation from offering keno?

Background

Keno is a continuous bingo-style game played on electronic terminals at retailer locations. In keno, a player picks 1 to 10 numbers from a field of 80 numbers, attempting to match those numbers to the 20 numbers randomly drawn from that field. The more numbers a player matches, the higher the payout. A keno play slip is similar to those of other draw games such as Powerball, and players can play multiple games on a single ticket.

The Kentucky Lottery Corporation began offering keno in November 2013 at typical lottery locations such as grocery stores and convenience stores. The corporation also is expecting to begin offering the game at new retailers such as restaurants, bowling alleys, fraternal organizations, bars, and taverns where people gather socially for long periods of time. Lottery retailers can decide whether or not to offer the game.

The type of keno the Lottery Corporation plans to offer in Kentucky is referred to as club keno, with drawings conducted at 5-minute intervals. Retailers display the results on one or more monitors in their stores. The key question is whether keno is allowable as a lottery game in Kentucky.

Discussion

Proponents of allowing keno argue that it is authorized under the current lottery statutes. KRS 154A.010(3) defines a lottery as any game of chance approved by the corporation, except for games prohibited by the General Assembly in KRS 154A.063, which specifically prohibits the corporation from approving or operating any casino or similar gambling establishment. It also prohibits any game played with cards, dice, dominoes, slot machines, or roulette wheels, or where winners are determined by a sports contest. Proponents argue that keno falls within the definition of lottery as a game of chance that the corporation is authorized to approve. They contend that keno does not involve skill and that it is not listed as one of the prohibited types of games. Proponents argue that keno is like other draw games in many ways. It is a number-matching game that comes from the same terminal as other games.

Marketing research in other states indicates that keno is viewed as a social game with its sales enhanced in environments where friends and acquaintances gather for longer periods of time. Kentucky lottery officials indicated that since 1991, 13 state lotteries have offered this style of game, with sales of $3 billion annually. Keno revenue generation for state lotteries equates to an average of approximately 5 percent of total lottery sales. Kentucky lottery officials also estimate that the first full year of keno sales in the commonwealth could total $53 million and grow to $110 million by the fifth full year. Annual return to the state would amount to $15 million in the first full year and grow to $30 million after 5 years.[1] Proponents also argue that there is no indication that keno has contributed disproportionately or significantly to compulsive gambling problems in any other state.

Opponents of allowing keno argue that it requires either statutory changes by the General Assembly or a constitutional amendment. They argue that allowing keno would be an expansion of gambling that goes beyond the original intent of the state lottery, authorized by constitutional amendment in 1988. Section 226(3) of the Kentucky Constitution does not define a "lottery" but distinguishes lotteries from other forms of gaming that are forbidden. Section 226(1) authorized the General Assembly to establish a state lottery to be conducted in cooperation with other states, but it is unclear how broadly or narrowly the term "state lottery" is to be construed and what kinds of games of chance were contemplated.

Opponents argue that, as a generic term, "lottery" may be viewed as encompassing any game of chance, but a "state lottery" is a narrowly defined constitutional grant of authority by the state to operate only traditional state lottery games.[2] Opponents argue that club keno differs from the traditional lottery games conducted once or twice weekly because it can be played in social settings with multiple drawings throughout the day. Opponents suggest that the corporation should request an opinion from the Attorney General regarding the legality of keno. Opponents have requested that the corporation cease implementation of the game and work directly with the General Assembly.

Opponents also are concerned that the new game will create new gambling addicts because of the fast-paced 5-minute drawing interval. The Lottery Corporation has stated it will limit the monetary value of draws customers can play on a single ticket to $240; however, the corporation has conceded it cannot limit the number of keno tickets sold to an individual.[3]

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[1] Gleason, Arch. Kentucky Lottery Corporation. President and CEO. Testimony. Meeting of the Interim Joint Committee on Licensing and Occupations. Frankfort. June 14, 2013.
[2] Kentucky. Attorney General Opinion. OAG 99-8: *Authority of the Kentucky Lottery Corporation to operate video lottery terminals*. Nov. 15, 1999. Web. Aug. 28, 2013.
[3] Wheatley, Kevin. "Keno, online lottery games worry legislators." *The (Frankfort) State Journal*. June 27, 2013. Web. July 1, 2013.

Professional Or Driver's Licenses

Prepared by Michel Sanderson

Should the General Assembly revise statutes authorizing the revocation of professional or driver's licenses of individuals who have any state tax liability?

Background

The passage of House Bill 440 from the 2013 Regular Session authorized the Department of Revenue to suspend or revoke the driver's, professional, or attorney's license of an individual who owes delinquent state taxes in Kentucky. The new law applies only to taxes administered by the department and does not include any other type of delinquent payments such as arrears pertaining to child support, or local property taxes.

A "delinquent taxpayer" is defined as "a taxpayer with an overdue state tax liability that is not covered by a current installment payment agreement, for which all protest and appeal rights under the law have expired, and about which the department has contacted the taxpayer" (KRS 131.081). Those who have not filed a tax return within 90 days of the due date and have been contacted by the department are also considered delinquent. The department must give ample notice to the delinquent taxpayer before submitting that person's name to a professional licensing agency, the Transportation Cabinet, or the Supreme Court. A delinquent taxpayer has certain rights to appeal. Failure to appeal or loss of the appeal may result in the suspension or revocation of the license, which can be reinstated only with proof of a written tax clearance from the department to the licensing agency.

According to the Department of Revenue, 95 percent of Kentuckians file and pay their taxes on time, and those delinquent taxpayers who are working with the department to pay their debt will not be affected by the provisions of the new law. Basically, the statute will affect only those delinquent taxpayers who are not working with the department to remedy their outstanding tax liability.

House Bill 440 went into effect on July 1, 2013. As of November, the department had not used the statute to revoke or suspend a professional or driver's license. The department estimates that the law will not generate any new revenue in fiscal year 2014, but it is expected to generate $6 million by FY 2016.

Discussion

Opponents of the state's current system maintain that revoking a license may preclude an individual from being able to work, or from driving to work to earn the wages necessary to satisfy tax debts. They also maintain that the law's language is permissive where it subjects a delinquent taxpayer to the ramifications of the statute, which provides the department an arbitrary standard for enforcing the legislation.

Proponents assert that the bill is necessary to maintain revenue necessary for the operation of the commonwealth and imposes an incentive for delinquent taxpayers to enter into payment agreements with the department to satisfy their debts.

Discretionary Funds

Prepared by Mark Mitchell

Should the General Assembly prohibit local governments from providing public funds to individual officials to spend at their discretion?

Background

Every local government in Kentucky has the ability to employ the use of discretionary funds. "Discretionary funds" are funds that are available for local legislative body members or executive officials to spend using a process that would not necessarily include that specific expenditure being listed in the actual local government budget document. The Kentucky Revised Statutes do not directly address the use of discretionary funds by local governments; however, several statutes and constitution sections control the expenditure of public funds in general. Section 171 of the Kentucky Constitution specifically requires tax money to be spent for public purposes.

Discussion

Discretionary funds, as with all money subject to expenditure by a local government, must first be budgeted; however, local governments can simply assign a sum of money to be made available to each local legislative body member or executive official in the budget without giving details. While the law requires all public funds to be spent for public purposes, there is no constitutional or statutory language to differentiate expenditures that are specifically set out in the local government budget versus expenditures that are at the discretion of local legislative body members or executive officials. The expenditures should encompass the functions that a city or county would normally make through the budget process. Because there is no statutory guidance on the process itself of spending local government discretionary funds, the local government is left to decide the actual procedures of how the funds are distributed. As a result, a local government could choose to make this a comprehensive and deliberate process or a process with little local oversight.

Some options to provide statutory guidance to the process could be to define "public purpose" relative to the expenditure of discretionary funds, which would categorize for what purposes the funds can be used; to limit the total amount of money a particular entity, when giving money to an entity, can receive; and to define the qualifications that entities must meet for receiving funds. In addition, restrictions could be put in place to prohibit the funds being spent without being noted specifically in a budget appropriation.

Proponents of the use of discretionary funds submit that the ability to expend these funds outside of the budgeting process speeds the dissemination of the funds and allows them to be used more quickly, such as in an emergency. These proponents also assert that reducing the amount of discretionary funds available for local legislative body members to spend also can shift power from the local government legislative body to the local government executive authority.

Opponents of the use of discretionary funds have indicated that while individual members of a local government legislative body may be familiar with the particular needs of the districts they represent, the use of these funds can be easily abused. Transparency is an issue with the local processes because while the discretionary fund amounts will be budgeted, the recording of what the funds were actually spent on is up to the local governments. These processes can be relatively easy to find, such as when they are contained in an ordinance, or they can be contained in policies and procedures where citizens may have a harder time finding them if the local government does not draw their existence to citizens' attention.

Library Districts

Prepared by Jessica Causey

Should the General Assembly allow library districts to retain their current tax rates?

Background

Each of Kentucky's 119 library districts was created under one of three Kentucky Revised Statutes chapters: Chapter 65, Chapter 67, or Chapter 173. Two recent court cases have raised questions about the process that library districts created under the petition process found in Chapter 173 use to change their library property tax rates. About 85 percent of library districts were created under Chapter 173.

In 1979, the General Assembly enacted House Bill 44, which specifies the process that taxing districts must follow when setting their property tax rates (KRS 132.010). Essentially, HB 44 creates ranges of tax rates and different conditions that must be followed to adopt rates within these ranges. These ranges are defined by the compensating rate and the 4 percent rate. The compensating rate is the rate that when applied to the current year's real property assessments, excluding any new property, produces an amount of revenue equal to that produced in the preceding year. The 4 percent rate is the rate that generates 4 percent more revenue than the compensating rate. If a taxing district wishes to adopt a tax rate that is higher than the compensating rate, but lower than the 4 percent rate, it must hold a public hearing, but the rate is not subject to recall. Setting a rate higher than the 4 percent rate can subject that portion of the rate in excess of 4 percent to recall. Districts may adopt a rate at or below the compensating rate without a public hearing, and the rate is not subject to recall. The Kentucky Department of Libraries and Archives directed all public libraries to apply HB 44 when adopting property tax rates. However, in 1984, the General Assembly enacted legislation directing that library districts created under KRS Chapter 173 may change their tax rates only if approved by 51 percent of voters by petition (KRS 173.790).

The issue at hand is whether library districts created under KRS Chapter 173 may set tax rates in accordance with HB 44, which subjects only tax rates over the 4 percent rate to voter recall, or in accordance with KRS 173.790, which requires voter approval for any change in the tax rate. Both Campbell County and Kenton County library boards, which were created by petition, have used HB 44 to increase library taxes to account for inflation. The Circuit Courts of both counties have heard this argument.[1]

Discussion

The citizens involved in the lawsuit argue that any library tax increase of any size is unwarranted without voter input, especially because members of library boards are not elected but are appointed. Both of these northern Kentucky Circuit Courts ruled in favor of the citizens and found that HB 44 did not nullify KRS 173.790 prohibiting changes in the ad valorem tax rate unless, as the statute states, a "duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount in signed by 51 percent of the number of duly qualified voters voting at the last general election in each county in the district." Both cases have been appealed.

If the rulings of the Circuit Courts prevail, the two library districts that have been using HB 44's statute, KRS 132.010, to raise taxes could lose more than half of their current revenue, from approximately $4.6 million to $2 million, which could impact library services. Other library districts that were formed by petition and the boards of which have raised taxes without public referendum may face similar challenges.

The issue before the General Assembly is whether to clarify the taxing authority of library districts in relation to their board's ability to increase taxes without public referendum. Among the options available to address this issue, the General Assembly could choose to await the courts' decisions and abide by the recommendations within, which could include library districts returning to the rates at which they were originally created. The General Assembly could allow the library tax rates to remain but allow no further increases without public referendum. Another option would be to make membership on the board an elected office and allow the board the discretion to increase or decrease taxes subject to the will of the voters. The General Assembly could clarify the current statutes to state that public referendum is the only avenue by which to increase or decrease taxes.

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[1] *Charlie Coleman, et al. v. Campbell County Library Board of Trustees*, 12-CI-0089 (Campbell County Circuit Court, April 1, 2013); and *Garth Kuhnhein v. Kenton County Public Library Board of Trustees*, 12-CI-00178 (Kenton Circuit Court, April 11, 2013).

Local Option Sales Tax

Prepared by Joe Pinczewski-Lee

Should the General Assembly enact legislation amending the Kentucky Constitution to allow local governments to impose a local option sales tax?

Background

Section 181 of the Kentucky Constitution grants only certain powers for taxation to local governments. An excise tax, one based on the sale of certain items or services, is excluded from the list of taxes that local governments may be granted. The Kentucky League of Cities and the Kentucky Association of Counties have voiced support for a constitutional amendment to allow local governments to levy a sales tax for a specific purpose. This would be in addition to the current state sales tax levied by the commonwealth. Senate Bill 189 of the 2013 Regular Session was introduced to amend the Kentucky Constitution to allow a local option sales tax. The Senate took no action on the bill. Thirty-seven states have a sales tax sharing arrangement with their local governments, 23 of which have a form of local sales tax generally similar to the one proposed in SB 189.[1]

Discussion

Senate Bill 189 would have
- allowed, not mandated, a local government to impose a local option sales tax;
- required a public referendum;
- required a specific time and specific public project;
- required the tax to be capped, generally at no more than 1 percent; and
- required the tax to operate within the framework of the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales and Use Tax Agreement requires the state to collect all local sales taxes. It imposes a number of obligations on local governments, including that the local government may tax only those items on which the commonwealth imposes a sales tax. A local government must take into account requirements for notification, imposition dates, and boundaries well ahead of time. The commonwealth is responsible for collecting and distributing the local option sales tax to the appropriate local taxing jurisdiction.

It is not known how much money a local option sales tax could raise for a specific local government because the Department of Revenue cannot accurately measure the amount of local sales tax that may be generated at a specific location for all retailers. As an example, a larger retailer with multiple stores throughout Kentucky may file one tax return representing all of its stores as one group. Therefore, Kentucky does not know the amount of sales in a given local government and cannot estimate the revenues a local option sales tax would generate for an individual local government.

While the Department of Revenue does not collect the necessary information to accurately estimate the effect of a local option sales tax on a local government, the Kentucky League of Cities and others have estimated the amount of local sales tax that could be generated for individual cities. For example, estimates for the Louisville Metro Government range from $85.6 million to more than $138 million for the calendar year 2012. [2] The amounts generated vary depending on the methodology chosen, but in both cases the tax rate assumed was 1 percent. For reference, the Metro Louisville general budget for fiscal year 2013 was $528 million. This would make a proposed local option sales tax between 16 percent and 26 percent of the Louisville budget for 2013.

Because the Streamlined Sales and Use Tax Agreement requires all local sales taxes to be collected by the state, not the local jurisdiction, adoption of a local option sales tax by a local government will impose additional administrative costs on the commonwealth. The General Assembly has options in this regard: It could allow the state to pass the cost onto the local jurisdictions in whole or in part, which would reduce the amount of local tax receipts, or it could require the state to absorb the cost.

Also, the imposition of a local option sales tax may affect a local government's economic competitiveness. For example, the imposition of a local option sales tax by the Louisville Metro Government is estimated to affect a family of four, with a $186,000 home and a combined income of more than $100,000, by increasing the family's total tax burden (property tax, license and occupation tax, sales tax) by $188 per year. The total tax burden would be estimated at $11,669. The imposition of a local option sales tax would make the Louisville Metro Government the second most heavily taxed jurisdiction of its 14 benchmark metropolitan areas. Only Columbus, Ohio, would be more expensive for the hypothetical family to live in.[3]

The local jurisdiction and the General Assembly might wish to assess the cost of imposing a local option sales tax on future economic growth as compared to lower-tax jurisdictions. Another consideration is that a sales tax is a regressive tax that places an extra burden on lower- to middle-income citizens by subjecting a greater percentage of income to taxation, as compared to higher-income citizens.

A local option sales tax could negatively affect local economic activity. There is no exact information available on the estimated impact of higher sales taxes, but some point out that geographic pockets of higher local sales tax may make areas of Kentucky less attractive for consumers. Shoppers may seek out areas with lower tax rates, which would affect local sales as well as sales along bordering states. This could put local governments and the state at a competitive disadvantage.

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[1] Kentucky League of Cities. "Research Brief: Local Option Sales Tax and Kentucky Cities." August 2012.
[2] Ibid; Kelly, Janet. Local Option Sales Tax: A Louisville Perspective. Urban Studies Institute 2013.
[3] Kelly.

Asian Carp

Prepared by Tanya Monsanto

Should the General Assembly authorize subsidies for commercial anglers to increase the catch of Asian carp?

Background

Asian carp, which include bighead, silver, grass, and black species, are an invasive, nonnative type of fish that is displacing native fish and ruining several industries dependent on the water's natural ecosystem. In Kentucky, native fish such as paddlefish, walleye, crappie, bass, bluegill, and trout are already being affected. Lake Barkley and Kentucky Lake are infested with Asian carp, and the recreational boating, sport-fishing, and commercial fishing industries are at risk. Some estimate the size of the recreational fishing industry at $1 billion, and the commercial fishing industry, while smaller in economic size, is significant.[1]

The Great Lakes Restoration Initiative, a multistate effort to control Asian carp, received nearly $200 million in federal funding.[2] However, the Kentucky Department of Fish and Wildlife Resources received none of that federal funding, and the department is prohibited from using any Kentucky Sport Game and Fish funds. The department took several steps to control the supply of Asian carp in Kentucky waters, including promulgating administrative regulations that prohibit the stocking of Asian carp. There are also controls over the transport and disposal of baitfish since carp can look like many species of baitfish. The department issued "no restriction" on the taking of Asian carp by sport-fishermen and relaxed regulations on commercial fishing operations to encourage commercial fishermen to catch as many carp as possible. The department held fishing events, such as Carp Madness, and offered prize money to the commercial fishing team that brought in the most Asian carp. While there was good participation by commercial fishermen, intermittent fishing events cannot effectively mitigate an infestation by an invasive fish species like Asian carp.

Discussion

There are few downstream markets for Asian carp. Fish meal and whole fish sales to Asia are the two largest, but they offer insufficient returns. Asian carp are labor intensive to catch and do not fetch as much at the processing plant as other fish. Commercial fishermen require specialized gear, nets, and new methods. At the processor, fish meal returns roughly 10 cents per pound, and the whole fish sells at 12 cents to 14 cents per pound. After the processor factors in costs of operation, the share of the return to the commercial fisherman is significantly lower, only cents per pound.[3] Kentucky Department of Fish and Wildlife argues that the existing economic incentives are not enough to bring processors into the state and to address the low returns to commercial anglers. The Economic Development Cabinet provided $1 million in economic incentives to a fish processing plant, Two Rivers Fisheries, to open in Wycliffe. It is hoped that by opening the new plant and working on expanding local markets, the return to commercial anglers will improve.

The US Fish and Wildlife Service established the Asian Carp Working Group to address the growing national problem of these invasive species. The group prepared a Nuisance Species Management Plan addressing several options to offset the lack of direct finance for species control. Many of these options now are being discussed by state agencies as the Asian carp problem has reached a crisis point. One option is to offer economic incentives such as tax credits or subsidies. Tax credits and subsidies have been touted as easiest to administer of all the options, but opinions differ on who should get the subsidy—the angler or the processor. If offered directly to anglers, a tax credit or subsidy can offset the angler's cost of purchasing specialized gear and nets or be calculated directly on the pounds of carp sold to the processor. Detractors fear this incentive will encourage anglers to illegally stock Asian carp in Kentucky waters. If offered to fish processing companies for their purchase of Asian carp, the processor could increase the price paid to the commercial fishermen for their catch. Placing the credit or subsidy on the processor would encourage fish processors to open in the state.

Another option being discussed is a bounty on Asian carp. Detractors argue that a bounty is hard to administer and also encourages anglers to illegally stock the fish. One popular option is to contract directly with commercial fishermen to fish areas where the waters are infested with carp, but this option does little to address how to pay for those contracts. Kentucky has modified the contract fishing option by using money donated by outdoor organizations to offer prize money for the largest catch of carp taken from infested waters. One-time events, like Carp Madness, have been successful in reducing the numbers at Kentucky Lake and Lake Barkley, but are not a long-term solution to the Asian carp problem.

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[1] "Kentucky tries to interest fishermen to haul in huge carp." The Indiana Law Blog. Web. Sept. 13, 2013.
[2] Kentucky. Department of Fish and Wildlife Resources. "Asian Carp in Kentucky." Web. Sept. 13, 2013.
[3] Brooks, Ron. Kentucky Department of Fish and Wildlife Resources. Email to Tanya Monsanto. Aug. 12, 2013.

Eminent Domain

Prepared by Stefan Kasacavage

Should the General Assembly authorize the condemnation of private property needed to construct a natural gas liquids pipeline?

Background

Natural gas liquids (NGLs) are compounds in some natural gas reserves that are separated out as liquids during processing and can be further processed to be sold or used in other products, including plastics, synthetic rubber, refrigerants, and fuel additives. Over the past several years, natural gas exploration and production have increased dramatically in the Utica and Marcellus shale plays in the northeastern United States, and NGL production has increased as a result.

In May 2013, Williams and Boardwalk Pipeline Partners announced a joint venture agreement to construct the Bluegrass Pipeline, which would transport NGLs from where they are produced in Ohio, West Virginia, and Pennsylvania to the petrochemical refinery and export complex on the Gulf Coast, particularly in Louisiana and Texas. The proposed project would require constructing about 440 miles of new NGL pipeline that would run from those NGL producing areas through Ohio and Kentucky eventually to the Gulf Coast.[1]

The exact path of the proposed new pipeline through Kentucky is unknown, but the general plan calls for the pipeline to enter Bracken County from Ohio and travel west through about 13 central Kentucky counties before it would tie in to an existing pipeline in Breckinridge County.

Williams and Boardwalk will attempt to secure the legal right to construct and place the 3-foot-deep pipeline on private landowners' land by seeking 50-foot-wide permanent easements and additional 50-foot-wide temporary construction easements on all property through which the pipeline would travel.[2] The partnership plans on spending $30 million to $50 million to acquire the easement rights from private landowners for the new pipeline construction.

Williams and Boardwalk believes that it will be able to secure about 98 percent of the required easements through voluntary agreements with landowners, but it will need to exercise the power of eminent domain to condemn the necessary right-of-way for the other 2 percent of landowners with whom they will not be able to reach voluntary agreements.[3]

Eminent domain is the inherent power of a sovereign state to condemn, or take, private land for public use in exchange for just compensation. The General Assembly may grant the power of eminent domain to nongovernmental entities by statute, but, under all circumstances, condemnation is authorized only if the property is taken for public use. For this reason, once a statutory grant of condemnation authority has been identified, the legal analysis of whether eminent domain may then be exercised often focuses on whether or not the proposed use of the property to be condemned is determined to be a public use under the relevant statutes, constitutional provisions, and case law. Williams and Boardwalk believes that it has condemnation authority under current statutory law and that the pipeline will be constructed for public use, but the attorney general, the legal counsel for the Energy and Environment Cabinet, and numerous private landowners disagree. Some stakeholders believe that the General Assembly should clarify the eminent domain statutes to resolve whether Williams and Boardwalk has condemnation authority and whether the construction of the NGL pipeline constitutes public use.

Discussion

Since Williams and Boardwalk believes that it has condemnation authority under current law, it and other proponents of the Bluegrass Pipeline project see little reason to change the existing statutes. Williams and Boardwalk asserts that KRS 278.502 authorizes it, as a partnership organized to engage in the construction of a pipeline to transport oil and gas products in public service, to condemn land needed for the project if good-faith negotiations with the landowners to acquire the needed easements fail. The partnership concedes that the central issue is whether the construction of the pipeline amounts to public use, but since other producers would be allowed to transport their NGLs in the pipeline, Williams and Boardwalk would be a "common carrier," the property use of which the General Assembly has deemed to be public use under KRS 416.675(2)(d).[a]

In addition to having common carrier status, Williams and Boardwalk alternatively argues that the construction of the pipeline amounts to public use because of the sizable safety and economic benefits that will accrue to the people of the commonwealth as a result of the project. The partnership contends that the NGLs will have to be transported through the commonwealth to reach their fractionation and processing destinations one way or another, and a pipeline is the safest and most efficient means of transportation available. It also argues that Kentucky residents will benefit economically from the pipeline because it will ensure that the NGLs, and the natural gas that is produced with them, will remain in abundant supply and energy prices and the cost of products made from NGLs will stay low. Williams and Boardwalk also believes Kentuckians will benefit from new tax revenue paid annually to the commonwealth and from 1,500 temporary construction jobs.

Proponents of the pipeline project also note that without condemnation authority, it would be impossible to construct the pipeline because the 2 percent of landowners with whom Williams and Boardwalk cannot reach voluntary easement agreements would be able to effectively bring the entire project to a halt.

Some private landowners and fiscal courts for the counties through which the proposed pipeline would travel do not believe that Williams and Boardwalk has condemnation authority under current law, but they feel that the General Assembly should clarify the eminent domain statutes to settle the dispute. They contend that when the General Assembly granted condemnation authority under KRS 278.502 for pipelines that carried "oil or gas, including oil or gas products," it was not referring to strictly NGL-carrying pipelines, which are not subject to the same federal

[a] *See also* KRS 278.470, which extends common carrier status to companies transporting oil or natural gas (with no specific mention of NGLs) for public consumption and declares the operation of a pipeline for that purpose to be public use.

or state regulatory oversight as the pipelines contemplated by that section. Furthermore, opponents argue that the pipeline construction is not a public use because the NGLs being transported are not being sold to utilities for public consumption as is typically required for eminent domain to be invoked for pipeline construction. The NGLs are instead being transported to fractionation and processing plants to be made into other products that will eventually enter the stream of commerce. While there is some economic benefit to the people of the commonwealth to keep the supply of these products high and their costs low, opponents of the project argue that this benefit is too tenuous for the pipeline construction to be considered public use. The additional tax revenue, temporary jobs, and continued abundant coproduction of natural gas are likewise all public benefits that are incidental to the primarily private benefit to Williams and Boardwalk. Opponents also argue that Williams and Boardwalk should not be able to avail itself of common carrier status by allowing some pipeline access to other NGL producers, because such access is not sufficiently open to, or for the benefit of, the people of the commonwealth.

Opponents of the pipeline project also contend that the ambiguity of current law regarding condemnation authority only works to the partnership's advantage in negotiations with private landowners to grant voluntary easements. The mere possibility that Williams and Boardwalk could invoke eminent domain to condemn the landowner's property in the event that a voluntary agreement cannot be reached puts the landowner in a poor negotiating position. The prospect of incurring legal costs in trying to fight the condemnation proceeding, even if the landowner eventually prevails, is often enough to lead the landowner to make an easement agreement that he or she would not have made otherwise. The landowners opposing the project therefore believe that the General Assembly should clarify that Williams and Boardwalk does not have condemnation authority, so the threat of the exercise of eminent domain does not hang over negotiations for voluntary easements.

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[1] Williams and Boardwalk Pipeline Partners. *Williams and Boardwalk Formalize Key Joint Venture Agreements Related to Proposed Bluegrass Pipeline and Related Fractionation, Storage and Export Projects*. Tulsa: Williams Media. May 28, 2013. Web. Sept. 11, 2013.
[2] Kocher, Greg. "Underground Gas Pipeline in Central Kentucky Causes Heated Discussion." *Lexington Herald-Leader*. July 11, 2013. Web. Sept. 11, 2013.
[3] Kocher, Greg. "State: Eminent Domain Not Possible for NGL Pipeline." *Lexington Herald-Leader*. Sept. 5, 2013. Web. Sept. 13, 2013.

Prescribed Fire

Prepared by Tanya Monsanto

Should the General Assembly authorize a certified prescribed burner program?

Background

A prescribed fire uses intentionally set fire to control unwanted vegetation and pests, improve soil chemistry, and enhance plant and wildlife ecology. Chemical applications, including herbicides and insecticides, to control unwanted invasive species can be costly, difficult, and sometimes dangerous to apply. Chemical applications often are undesirable from an environmental perspective.

Discussion

State law and local ordinances limit private landowner use of prescribed fire, and Kentucky statutes do not to limit private landowner liability from unintentional damages caused by a fire escape or smoke. Kentucky Revised Statutes 149.500 establishes two fire hazard seasons in Kentucky—February 15 to April 30 and October 1 to December 15—when setting fires is expressly prohibited, except for certain companies such as railroads and pipelines and state agencies. Private landowners use prescribed burns. KRS 149.401 authorizes local government to enact local ordinances to ban burning during fire hazard seasons. Liability also poses a problem for landowners whose fire may burn out of control and damage property or create other types of hazards.

Several southern states have addressed public protection, landowner use of prescribed fire, and mitigation of landowner liability by establishing a certified and licensed prescribed fire professional. These professionals are responsible for completing specific training, obtaining insurance to protect themselves and others from unintentional damage from the fire. Kentucky does not have a certified or licensed prescribed fire professional. Illinois, Alabama, North Carolina, Texas, Tennessee, Louisiana, and Florida have a certified burn manager program, and several states have expressly granted the certificate holder certain protections from civil liability associated with setting a prescribed fire.

Cyber Security

Prepared by Kevin Devlin

Should the General Assembly enact a cyber security breach notification law?

Background

State governments use the Internet to provide many services and maintain a collection of personal and confidential information about their citizens. This includes private information such as names, addresses, Social Security numbers, and health-related information such as health insurance data. For this reason, cyber security is a major concern.

Security breaches occur when an unauthorized individual or entity gains access to confidential information. Security breaches in other states have resulted in millions of dollars of state funds being spent to correct the impact of those breaches. For example, hackers stole the financial data of 6.4 million South Carolina businesses and citizens from the state Department of Revenue in 2012. South Carolina's response to the breach cost the state at least $30 million, which included $15 million to study the state's cyber security procedures and $12 million to provide credit reports to millions of South Carolina residents. South Carolina also notified victims of the breach as required under state law.

According to the Verizon Data Breach Report, which is completed each year in cooperation with the US Secret Service, the cost of a data breach can be as high as $100 million, including response and recovery expenses. From January 1, 2009, to May 31, 2012, there were 268 breach incidents in government agencies around the nation involving more than 94 million records containing personally identifiable information. State and local government agencies account for more than 20 percent of the data breaches reported in the United States.[1]

Kentucky has also experienced cyber security breaches. In 2012, the Finance and Administration Cabinet accidentally posted the names, Social Security numbers, birth dates, home telephone numbers, and other personal information of more than 100 current and former state employees on its publicly accessible website. Also, hackers recently stole more than $400,000 from the payroll of Bullitt County.[2]

The office of the Auditor of Public Accounts regularly conducts cyber audits and vulnerability assessments for state agencies and other public agencies in cases where technology has a significant effect on the processing and reporting of confidential information. Those audits have identified significant deficiencies in information technology security procedures at several state agencies. Some agencies have had information technology concerns identified for several years but have made only limited efforts to resolve the problems. Cost and a lack of expertise are sometimes cited as reasons that agencies do not resolve cyber security issues.

Some states have begun to take steps to address the issue of cyber security. For example, Maryland recently enacted legislation that establishes specific requirements for state and local governments regarding the protection of an individual's private information from unauthorized access. State and local governments, as well as state contractors and service providers, must implement and maintain written security practices and procedures. The legislation also addresses breach notification.

Discussion

Cyber security laws would establish procedures for state and other public agencies to keep the private data of Kentucky citizens and businesses safe. Kentucky has yet to enact legislation relating to cyber security protections, audits, and notice of breach requirements.

Kentucky is one of four states without a security breach notification statute. If a state agency or a contractor working with a state agency inadvertently released confidential information about Kentucky citizens or businesses, the commonwealth would not be required by law to notify the citizens or businesses whose information was released. A security breach notification statute would require state and local government agencies and private data custodians under contract with state and local government agencies to notify citizens and businesses of security breaches involving personal information. Breach notification would allow victims to take steps to protect their finances, including enrolling in a credit monitoring program and applying for a credit freeze.

The state auditor plans to work for enactment of a breach notification law for Kentucky state agencies as well as the enactment of other laws to strengthen cyber security. The auditor advocates consolidating information technology resources and functions under the Commonwealth Office of Technology and plans to continue evaluating evolving advancements in information technology.

Some concerns about cyber security legislation include the cost of implementing cyber security measures. Notification of citizens when a breach of security occurs can be costly and can require the hiring of or contracting with experts in the area of cyber security.

[1] Pageler, Tom. Chief Information Officer. DocuSign. "Cybersecurity Overview Presentation for the State of Kentucky." Presentation. Interim Joint Committee on State Government. Frankfort: July 24, 2013.
[2] "Edelen Pushes for New Cyber Security Regulation." *The (Frankfort) State Journal*. July 25, 2013.

Local Option Elections

Prepared by Greg Woosley

Should the General Assembly require local option elections on the sale of alcohol to be held on the same day as a primary or regular election?

Background

Section 61 of the Kentucky Constitution requires the General Assembly to provide a means for the people of any county, city, town, district, or precinct to vote to permit or prohibit the sale of alcohol. The section also specifies that these local option elections on the sale of alcohol may be held on a day other than the regular election days.

The local option election law in KRS 242.030 specifies that the local option election shall not be held on the same day that a primary or regular election is held in the territory or any part of the territory that is considering the question. In recent years, the Kentucky County Clerk's Association has advocated for amending the law to require these elections to be held on the same day as a primary or regular election. To this end, bills have been considered by the General Assembly in the 2012 and 2013 Regular Sessions, but none has been enacted.

The General Assembly passed legislation in 2007 that permits local option elections on the sale of alcohol at qualified historic sites or as part of a meal to be held on the same day as a primary or regular election, now codified at KRS 242.1242 and 242.1244, respectively.

Discussion

Proponents of requiring local option elections to be held on the same day as a primary or regular election argue that this would be a cost-saving measure for Kentucky's counties. As an example of the costs, Oldham County had one local option election in 2011 in one precinct, where only 146 votes were cast, and the election cost the county $3,749.92.[1] The primary cost for the elections comes from printing ballots, programming voting machines, and paying poll workers, costs that proponents argue would be minimized if rolled into a primary or regular election ballot. The County Clerk's Association points to these costs, especially relative to the typically low turnout of voters on nonelection days, as being a wasteful use of scarce county dollars.

Opponents argue that having local option elections on the same day as a primary or regular election would result in the candidate elections on the same ballot becoming nothing more than a referendum on the wet/dry question. These opponents note that this would be a disservice to voters, as meaningful debate on other important policy questions would be minimized. Other opponents note that having the local option question on the same ballot can result in the local option question—an important community issue—being drowned out among the candidate elections and any other ballot questions, such as constitutional amendment proposals.

[1] Barr, Julie. Testimony. Meeting of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs. Frankfort. Sept. 24, 2013.

Household Goods Movers

Prepared by Brandon White

Should the General Assembly change the procedures for the issuance of certificates for household goods movers?

Background

Household goods movers are carriers who move personal items from one home to another. Entry into the household goods moving industry in Kentucky is unlike most forms of free commerce and can be a lengthy process. Those wishing to enter this industry must apply through the Transportation Cabinet and go through a certificate of necessity hearing process where they are required to prove that they are properly able to perform the service, that there is a public need for the service, and that the existing household goods moving services are inadequate. When an application is submitted, the cabinet is required to notify all known interested parties, including existing companies providing the same service. The notified parties then have 30 days to submit written protests to the application and may appear at the applicant's certificate of necessity hearing to present their objections. Application approval or denial can take 60-90 days if there is no protest, or more than a year if there is a protest. If the Transportation Cabinet determines that there is a need for additional service, an existing household goods carrier may express a desire and willingness to render that service. The existing carrier will be able to submit a new application and be given priority—over a new applicant—to expand its current service to meet the need identified by the Transportation Cabinet.

Since 2008, no company has been granted a certificate after having its application protested.[1] In 2012, the cabinet had 16 active applications. Of those, five were protested; two with no protests were granted; one was denied; six transfers were granted—when an existing goods carrier sells its certificate to another certificate holder; and the remaining ones were withdrawn, dismissed, returned, or still pending.

In August 2012, a Kentucky mover operating without a household goods certificate filed a suit in federal court challenging the notice and protest provisions of KRS 281.615, claiming they are unconstitutional under the 14th Amendment. In June 2013, a federal judge ruled that the mover may stay in business until the federal lawsuit is complete.[2]

Discussion

Certificate of necessity laws were developed around the 1900s with the intent to prevent duplication of services, prevent competition, and ensure that regulated entities would continue to serve remote areas. The system in Kentucky has been in place for more than 50 years and has recently been criticized as limiting business growth and economic development. The protest process has been described as a competitor's veto preventing new companies from getting into the industry.[3] The ability to protest a new applicant could allow an incumbent to prevent competition from other movers who could offer higher quality or lower prices.

In the 2013 Regular Session, Senate Bill 132 sought to restructure the certificate issuance process for household goods carriers. The bill would have required an applicant to simply meet a list of criteria that the Transportation Cabinet would establish by administrative regulation. The measure passed the Senate, but the House took no action. Similar legislation will be filed in the upcoming session that will contain all the provisions sought in Senate Bill 132, as well as requiring criminal history background checks and limiting an employee's duties based on the results. The General Assembly could take action to eliminate the protest and hearing process, while still maintaining the current safety and operating standards contained within statutes and administrative regulations.

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[1] Love, Cameron. "Lexington Moving Company Challenges 'anti-competitive' Law." Web. Sept. 20, 2013.
[2] *Raleigh Bruner et al., v. Tom Zawacki, Commissioner of Motor Vehicle Regulation for the Kentucky Department of Vehicle Regulation, et al.* 2013 US District Court Civil Action No. 3: 12-57-DCR. (ED.KY.2013).
[3] Flota, Ryan. Kentucky Household Goods Carrier Association. Testimony. Meeting of the Interim Joint Committee on Transportation. Frankfort. Sept. 1, 2013.

Public-Private Partnerships

Prepared by John Snyder

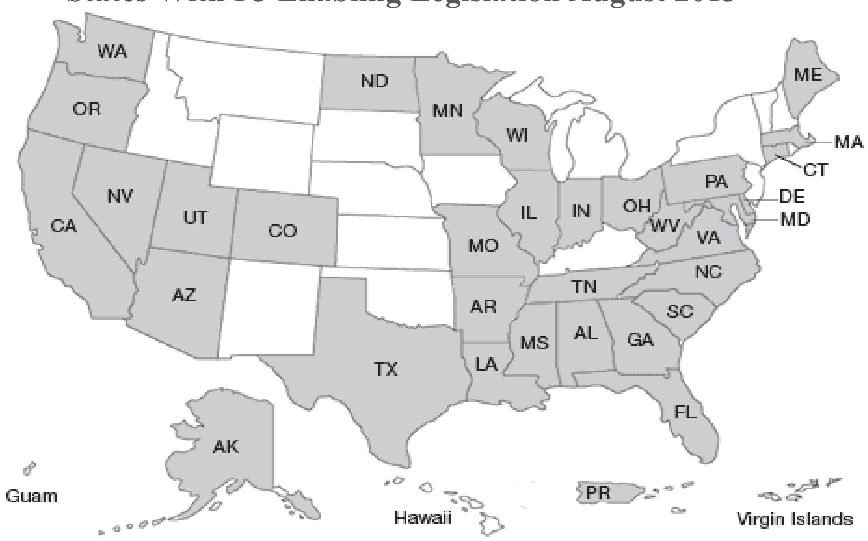
Should the General Assembly allow for the use of public-private partnerships in the construction of infrastructure projects?

Background

Public-private partnerships (P3s) are defined by the Federal Highway Administration as "contractual agreements formed between a public agency and a private sector entity that allow for greater private sector participation in the delivery and financing of transportation projects." P3s can be used to construct new infrastructure projects (greenfield projects) and for the renovation or operation of existing facilities (brownfield projects). Although P3s, when first introduced in the United States, were associated with brownfield projects because of the high-profile leases of the Chicago Skyway Bridge in 2005 and the Indiana Toll Road in 2006, such opportunities for brownfield projects are relatively rare.[1]

The Federal Highway Administration has identified many P3 arrangements, and the degree to which the private sector assumes responsibility, including financial risk, differs from one type of arrangement to another. P3s have been identified as an option to facilitate the construction of major highway projects in Kentucky and have been used on dozens of construction projects nationwide. Currently, 33 states allow the use of P3s in constructing major infrastructure projects.[2]

States With P3 Enabling Legislation August 2013



Discussion

Legislation has been filed in previous sessions of the General Assembly, most recently House Bill 456 of the 2013 Regular Session, to enable the P3 process in Kentucky. Bills relating to the P3 process have not advanced in the General Assembly.

The National Conference of State Legislatures (NCSL) has stated that while P3s are not ideal for all transportation projects, they have been shown to reduce upfront public costs through accelerated or more efficient project delivery. For example, a $1 billion bridge project that would take dozens of years and substantial portions of the state's road fund to construct by conventional project delivery systems might employ a P3 to allow a private entity to front the entire funding for the project on an accelerated schedule, with the private entity recouping its investment through a collection of tolls. P3s are not a funding stream for states, however, in that they do not create new money; instead, the public sector will still have to repay the private investors with revenue from taxes, tolls, or other sources.

NCSL has stressed the need for comprehensive enabling legislation that will protect the public interests and has published a tool kit for legislators on the issue of P3s that lists principles to guide states in determining whether P3s are a sound policy decision. The principles include separating the debate between use of a P3 and method of financing (use of a P3 does not always mean tolls, and tolls can be used on projects that do not use P3s); supporting comprehensive project analyses; setting strong ground rules for bidding and negotiations; and letting the transportation program drive P3 projects, not the other way around.[3]

The secretary of the Transportation Cabinet echoed many of the sentiments expressed by the NCSL, stating that he would be open to finding innovative ways to design, finance, and construct large scale projects on a case-by-case basis [4]

Critics of P3s cite a host of factors in their opposition to the strategy, including a loss of public control and flexibility and the ability of a state to construct alternative routes near a P3 project; private companies seeking profits at public expense; loss of future public revenues because the lengths of some P3 terms have stretched as long as 99 years; risk of bankruptcy or default by the private entity; foreign control of assets; opposition to tolling of roads, which is often used as the revenue stream to finance P3 agreements; and problems with contract terms. These concerns underscore the importance of strong enabling legislation and solid P3 agreements to address concerns before they occur. [5]

[1] Rall, Jamie, James Reed, and Nicholas Farber. National Conference of State Legislatures. "Public Private Partnerships for Transportation: A Toolkit for Legislators." NCSL. October 2010. P. 7.
[2] Federal Highway Administration. Office of Innovative Program Delivery. "State P3 Legislation." Web. Sept. 18, 2013.
[3] Rall. P. 21.
[4] Hancock, Michael. Secretary. Kentucky Transportation Cabinet. Testimony. Budget Review Subcommittee of the Interim Joint Committee on Appropriations and Revenue. Frankfort. July 25, 2013.
[5] Rall. Pp. 11-13.

Recreational Vehicle Dealers

Prepared by Dana Fugazzi

Should the General Assembly establish a recreational vehicle dealer franchise law separate from the current motor vehicle dealer franchise law?

Background

KRS Chapter 190 governs the licensing and regulation of motor vehicle dealer franchises. Motor homes are covered under the motor vehicle dealer franchise law, but nonmotorized recreational vehicles, such as travel trailers, fifth-wheel vehicles, folding camping trailers, and other recreational vehicles (RVs) without an included power drive unit, are not. There are approximately 261 car dealers in Kentucky, compared to 28 RV dealers. There are three car manufacturers and no RV manufacturers. In Kentucky, 98 percent of RVs sold in 2012 were nonmotorized RVs.

There are significant differences between the motor vehicle industry and the RV industry business models regarding the sale of their products. Car dealers must make millions of dollars in brand-specific investments; stock all models in a line-make from one manufacturer; have relatively few manufacturers from which to choose; must open another dealership to sell a new line; and face significant repercussions and dealership closures if a car manufacturer discontinues a line-make, such as Mercury or Saturn, for example. In comparison, RV dealers are not required by manufacturers to make significant brand-specific investments, are able to stock whatever lines or models best suit the marketplace, and have 130 manufacturers competing for space on their lots. When an RV manufacturer discontinues a line-make, there are dozens more to replace it.

The Recreation Vehicle Industry Association has advocated that states adopt a separate vehicle franchise law for RV dealers and manufacturers that would include nonmotorized RVs. There are four key provisions of the proposed RV-specific law:

- territory, which indicates where a dealer is allowed to sell RVs and who is allowed to sell in that area;
- transfer, or how the dealerships are transferred from one owner to another;
- termination, which allows the manufacturer and dealers to terminate with or without cause; and
- warranty, which requires parts manufacturers to be under the franchise and warranty obligations of the proposed law.

Twelve states have adopted RV-specific franchise laws.

Discussion

Proponents of a separate vehicle franchise law for RVs contend that motor vehicle franchise laws evolved to protect car dealers in the dealer-manufacturer relationship and are structured for the car industry business model, which differs from the RV industry business model. One difference between the industries is the termination of agreements. RV dealers terminate their agreements for many reasons, and after termination the RV dealer generally stays in business. Additionally, the RV dealer might get a new dealer agreement for a new line from the same manufacturer and will continue to carry six or eight other manufacturers regardless of termination. In comparison, the termination of a car dealer franchise is rarely done at the initiation of the dealer; the action usually results in closure of the car dealership because finding a new car franchise is costly and difficult.

Proponents assert that an RV-specific law would address the unique business model followed by the RV dealers and their manufacturers and would also clearly address the customary relationship between RV dealers and manufacturers. They state that an RV-specific law placing travel trailer dealers under a franchise law provides better protection for consumers, protects travel trailer dealers the same as motor home dealers, and provides a clear law that applies directly to the RV industry. Additionally, they contend that the proposed law would help consumers and dealers in more clearly identifying the responsibility for warranty work, which for RVs often lies with the manufacturers of individual components such as showers, appliances, and furniture. Proponents also assert that franchising RV dealerships would increase value in the business because currently, as opposed to motor vehicle franchises, when the time comes to sell RV dealerships, there is no value in the business name other than the longevity of the business itself and the structure of the building.

Members of the Interim Joint Committee on Transportation expressed concern that some auto dealers have had their dealerships taken away after a franchise has been implemented and cautioned the RV industry to evaluate whether it would be better off without a franchise. Other concerns were if RV dealers would be forced to sell a particular brand because of a franchise agreement and whether allowing the manufacturers to govern the RV industry would result in small dealers being squeezed out of the industry.

College Credit For Military Training

Prepared by Kris Shera

Should the General Assembly require state universities to offer college credit for military training?

Background

Many veterans returning home from military service cannot find jobs because they do not have college degrees. Recent indicators show that unemployment among veterans is slightly higher than the national average. For all veterans who have served since 2001, the unemployment rate is 11.5 percent, compared to 8.5 percent for the entire population. For veterans ages 18 to 24, the unemployment rate is 31 percent.[1]

Some states require public universities to develop policies to award academic credit for military training, while other states direct state institutions of higher education to develop policies by regulation. At least 26 states have enacted policies requiring colleges to offer college credit for military training.

The American Council on Education (ACE) conducts a review of military courses and occupations to produce its Military Guide, which provides academic credit recommendations that are reviewed by active college and university faculty. Some branches of the military have aligned their continuing education programs to create the collaborative Joint Services Transcript program. The program provides the official transcripts for Army, Marine Corps, Navy, and Coast Guard personnel regarding military courses and occupations.

Discussion

There are no statutory requirements for state universities in Kentucky to require the acceptance of military training for academic credit. However, all of Kentucky's public universities and colleges have policies to award credit for military training following the American Council on Education guidelines, though these policies vary in how much credit can be given for military training. Kentucky, Illinois, Indiana, Ohio, Michigan, Minnesota, and Missouri have also formed the Multi-State Collaborative on Military Credit to study the issue.

Challenges to providing academic credit for military service include determining military training course content and whether it aligns with academic content and requirements.

According to the Student Veterans of America, the Joint Services Transcript and the ACE guidelines are only recommendations that individual schools can choose to follow or not. The General Assembly may consider mandating that Kentucky's institutions of higher education provide programs that award academic credit for military training or leaving it to the discretion of the institutions to provide such programs.

[1] Liu, Michelle Camacho. "Easing the Path to College." *State Legislatures Magazine.* National Conference of State Legislatures. April 2012. Web. Sept. 23, 2013.

Dock And Marina Electrical Safety Standards

Prepared by Kris Shera

Should the General Assembly require the same safety standards for electrical systems on public and private docks and marinas?

Background

Many private and state-owned docks and marinas are equipped with electric power sources. The presence of electricity in close proximity to water can create hazardous conditions if electrical equipment on a marina or dock is not properly installed and maintained. There have been drownings in Kentucky due to electric shock, with at least one such death in 2013.

Dock and marina construction standards are regulated by the Kentucky Department of Housing, Buildings and Construction. The department has adopted the National Fire Protection Association (NFPA) 2011 National Electric Code and the NFPA 303 Fire Protection Standards for Marinas and Boatyards by regulation. These standards contain the instructions for proper installation of electrical wiring for both public and private docks and marinas. They include the mandate for a ground fault circuit interrupter (GFCI) on commercial docks and marinas. The GFCI measures the current in a circuit. If there is an imbalance in the current, which can be caused by a sudden discharge of electricity into water, the imbalance will trip the GFCI and shut off the power. There is a requirement in the National Electric Code for a GFCI on a commercial dock or marina, but there is no requirement for a GFCI on private, noncommercial docks or marinas.

Any person wishing to place an electric power source on a dock or marina must obtain a building permit from the local government, then must have a series of initial electrical inspections conducted prior to activation by a private electrical inspector, or by the Department of Housing, Buildings and Construction if the dock or marina is on state property (KRS 227.480). There is no statutory or regulatory requirement for ongoing annual electrical inspections for boat docks and marinas, though Kentucky does conduct annual inspections on boat docks and marinas on state property.

Professional organizations such as the Safe Electricity Program, the American Boat and Yacht Council, the International Brotherhood of Electrical Workers, and the National Electrical Contractors Association suggest monthly testing of the GFCI to ensure that metal portions of a dock or marina are connected to the GFCI in the event that the metal comes in contact with electricity. The groups also suggest annual inspections of dock or marina electrical systems by a licensed inspector.[1]

The Kentucky General Assembly has considered legislation the last two regular sessions dealing with this issue. The most recent proposed legislation, House Bill 277 from the 2013 Regular Session, included the suggested standards above as well as prohibiting swimming within 100 yards of public boat docks and marinas, displaying visible signs stating the presence of electrical shock hazards, and inspecting all sources of electrical supply by a certified inspector. HB 277 also included civil and criminal penalties for violations. The bill excluded any private owner of a dock or marina that does not allow public access to the dock or marina.

West Virginia passed legislation in 2013 that is similar to HB 277 with one key difference being that the standards are imposed on both private and public docks and marinas.

Arkansas requires all dock and marina owners to adhere to the NFPA National Electric Code standards and the NFPA 303 Fire Protection Standards for Marinas and Boatyards. The law also requires dock and marina owners to display signs stating the risk of electrical shock regardless of whether they are privately or publicly owned.

Discussion

An electrical inspection for a dock or marina could cost approximately $35, according to rates adopted by the Finance and Administration Cabinet for state inspectors, although an inspection by a licensed private inspector could cost more. A GFCI unit plus installation by a licensed electrical contractor could cost approximately $45. This figure includes an approximate $20 cost for the GFCI from a hardware store and the mean hourly salary of a licensed electrician.[2] It should be noted that installation of such devices cannot guarantee complete safety but is one tool to improve safety. Requiring annual inspections could create an administrative and financial cost to the department and to property owners.

[1] Energy Education Council. Safe Electricity Program. *Prevent Deadly Shocks—Check Your Boats and Docks*. Springfield, Ill. 2011. Web. Sept. 24, 2013.
[2] United States. Bureau of Labor Statistics. Occupational Employment and Wages. May 2012. Web. Sept. 24, 2013.

Residential Fire Safety Requirements

Prepared by Erica Warren

Should the General Assembly enact additional residential fire safety requirements?

Background

As of September 6, 2013, Kentucky had experienced 50 fire fatalities in 2013, and the state fire marshal predicts the total will be 75 or 80 by the end of the year. Nationally, Kentucky ranks eighth in fire fatalities.[1] These fatalities have fire protection officials and state policy makers questioning what more can be done to increase residential fire safety.

The National Fire Protection Association (NFPA) noted that states with the highest fire death rates tend to have higher percentages of adults who did not finish high school, smokers, households living in poverty, and people living in rural areas.[2] Kentucky demonstrates these correlations, as the state is ranked 47th in attainment of a high school diploma, has the highest percentage of smokers nationwide, is the third poorest in the country, and has over 41 percent of its population living in rural areas, according to Census data.

The NFPA reported that, in 2011, home structure fires caused 84 percent of the civilian fire deaths and 79 percent of the civilian fire injuries nationwide. For home-related fires, cooking equipment was the cause of the most fires, but fires caused by smoking materials and heating equipment together accounted for 44 percent of the civilian deaths.

Smoke alarms and sprinklers are the most prevalent mechanical ways to warn people of and mitigate danger. While almost all homes in the United States have at least one smoke alarm, 62 percent of home fire deaths resulted from fires in homes without working smoke alarms. Sprinklers decrease the fire death rate by 83 percent, but a 2009 NFPA survey found that sprinklers were installed in as few as 4.6 percent of occupied homes, including multi-unit dwellings, and 18.5 percent of occupied homes built between 2005 and 2009. The National Fire Protection Association studied the cost associated with adding sprinklers to residential homes and found that it was $1.35 per square foot.[3] Some insurance companies offer discounts for residential homes with working smoke detectors or sprinklers. While not typically required in state residential building codes, the NFPA reports that communities that require residential sprinkler systems have shown drastic reduction in fire deaths. One community in Kentucky, Indian Hills, has enacted a residential sprinkler ordinance.

Discussion

Automatic sprinklers are highly effective for fire protection in buildings but are not required in single-family homes where the most fire deaths occur. The Kentucky Building Code applies to most buildings including apartments and other multi-unit residential facilities. The recently adopted 2013 code, which will take effect on January 1, 2014, requires sprinklers only in those apartments that are more than two stories, including basements, in height. The state fire marshal acknowledged that in prior adopted versions of the Kentucky Building Code, the requirement for sprinkler systems in apartments has been left out, but the 2013 code includes it. There has been resistance from the building industry over the inclusion of this requirement primarily due to the additional installation costs.

The Kentucky Residential Building Code applies to single-family homes, including mobile homes and residential buildings with up to two units. The 2013 version of the residential code also takes effect on January 1, 2014. It requires smoke alarms but not sprinklers.

Fire deaths are reduced as safety equipment is installed and used. Legislators and public officials must weigh the benefits of a potential improvement in public safety versus additional costs. As of 2012, California, Maryland, and South Carolina have required fire sprinkler systems in one- and two-family dwellings. The South Carolina requirement takes effect in 2014, and no statistics have been gathered in the short time that the provisions have been in effect in California and Maryland.

While the average installation cost for sprinklers is $1.35 per square foot, or $2,700 for a 2,000-square-foot home, the maximum cost in the National Fire Protection Association survey was $2.47, or $4,940 for a 2,000-square-foot home.[4]

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[1] Swope, Bill. Presentation. Meeting of the Kentucky Safety and Prevention Alignment Network. Frankfort. Sept. 6, 2013.
[2] "An Overview of the U.S. Fire Problem." National Fire Protection Association. September 2012. Web. Sept. 23, 2013.
[3] "Home Fire Sprinkler Cost Assessment." National Fire Protection Association. September 2013. Web. Sept. 23, 2013.
[4] "Home Fire Sprinkler Cost Assessment." National Fire Protection Association. September 2013. Web. Sept. 23, 2013