

# Topics Before The Kentucky General Assembly

November 2014



**Informational Bulletin No. 245**

**Legislative Research Commission**  
Frankfort, Kentucky



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**November 2014**

**Prepared By**

**Members Of The  
Legislative Research Commission Staff**

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Frankfort, Kentucky  
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## Foreword

As public servants, legislators discuss many topics that potentially affect citizens across the Commonwealth. This publication provides information on topics that may come before the Kentucky General Assembly. It is by no means an exhaustive list; new topics will arise with the needs of Kentucky's citizens.

The topics 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 committee staff prepared these summaries.

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Frankfort, Kentucky  
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## **Agricultural Operation Interference**

Prepared By Lowell Atchley

- In recent years, whistle-blowers have attempted to expose alleged animal abuses or food safety scandals in agricultural processing facilities through the secret use of video or audio recording equipment. Some videos have been posted on the Internet.
- The Humane Society of the United States released a video of an Owensboro hog farm allegedly feeding dead piglets to sows to combat a type of porcine virus early in 2014. The practice is generally accepted and recommended as the course of treatment for protecting the sows against the virus.
- Lawmakers and farming groups who support strict curbs on such surreptitious recording of accepted practices contend that the laws protect farmers from misrepresentation by animal rights groups. Recordings may not provide appropriate context to understand the content.
- Farm groups have said animal rights activists deliberately set out to cast agricultural operations in a bad light.
- Animal rights groups argue that going undercover to record activities at animal agriculture operations helps expose animal abuse and reveal food safety violations.
- Making secret recordings illegal may be subject to certain constitutional challenges, such as to the First Amendment.
- Kentucky's animal enterprise terrorism law makes it illegal to take control over an animal facility, disrupt or damage an animal facility, or enter and remain concealed in a facility in order to disrupt or damage the enterprise.



## Right-To-Farm

Prepared By Kelly Ludwig

- Right-to-farm laws protect farmers and ranchers from individuals who move into a rural area where normal farming operations exist and file nuisance lawsuits as an attempt to stop the operations.
- Agricultural nuisances may include odors from livestock, manure, fertilizer, or feed; noise from livestock or farm equipment; visual clutter; spraying of farm chemicals; or slow-moving farm machinery.
- Generally, water pollution and erosion are not protected by right-to-farm laws.
- All states have right-to-farm statutes. One of Iowa's right-to-farm laws was ruled unconstitutional by the state's Supreme Court, ruling that the law created an easement for those possibly creating objectionable smells.
- Kentucky's right-to-farm statute can be found in KRS 413.072.
- Most right-to-farm law protections require the farming operation to exist prior to area changes such as residential or commercial developments.
- Some right-to-farm laws require use of generally accepted agricultural management practices to protect farmers from nuisance litigation. State departments of agriculture set those practice standards. States require agricultural operations to conform to federal, state, and local laws and regulations that are viewed as accepted farming practices with no adverse effects on public health and safety.
- Constitutional amendments include language guaranteeing farmers and ranchers the right to engage in farming and ranching practices. Adopting constitutional amendments strengthens legal arguments against future laws or regulations imposing unreasonable restrictions on farming and ranching.
- North Dakota and Missouri adopted constitutional amendments allowing the right to farm in an effort to prevent new state laws from being adopted, such as banned gestation stalls or genetically modified foods.
- Entities fear constitutional amendments will overturn local and state regulations relating to the environment and animal welfare.



## **Confidentiality Standards For Taxpayer Information**

Prepared By Jennifer Hays

- With very limited exceptions, KRS 131.190 prohibits a person from divulging any information acquired by the Department of Revenue regarding the affairs of a taxpayer.
- The department interprets the statute to mean that taxpayer information cannot be divulged except to the taxpayer or the taxpayer's representative.
- According to the department's interpretation, information that cannot be divulged includes whether or not a person is a taxpayer. The department maintains that revealing the taxpayer's identity and tax liability date would impermissibly reveal business information.
- Recently, an attorney made an Open Records request to the department seeking the names, addresses, and dates of registration for all taxpayers registered with the department who are required to file returns remitting the utility gross receipts license tax for schools. The department denied the request based on its interpretation of the statute.
- The Office of Attorney General reviewed the department's denial and directed the department to release the information, finding that it was not confidential and that the purpose of the Open Records Act is to allow any person to check on the operation of government by inspecting the records of state agencies.
- The issue was appealed, and the Kentucky Court of Appeals held that the department's interpretation of the confidentiality statute was overly broad, and that the requesting attorney was entitled to inspect the public records, including the names, addresses, and liability dates of all taxpayers.
- In a similar case currently pending before the courts, the issue is whether, in a protest situation, the department's final administrative rulings issued to a taxpayer must be produced under the Open Records Act. The department denied a request for such information based on its interpretation that the underlying facts describing the taxpayer's financial affairs are protected by the statute.
- These court cases illustrate the fine line between protection of private information on a taxpayer's return and the general public's right to know the workings of government.



## Crowdfunding

Prepared By Rhonda Franklin

- Crowdfunding is a private investment mechanism for start-up or expansion costs of a small business. The investment would be obtained
  - in small dollar amounts;
  - from large numbers of people;
  - mainly through the Internet; and
  - with regulation by the state entity that oversees securities within the state, such as the Kentucky Department of Financial Institutions.
- Congress authorized crowdfunding in 2012 by the Jumpstart Our Business Startups (JOBS) Act. This legislation established an exemption to the Securities and Exchange Act of 1933, which required all businesses, including start-ups, to register with the Securities and Exchange Commission (SEC) and sell stock only to accredited investors who meet net worth requirements. The exemption is intended to aid small businesses while protecting less sophisticated investors. The JOBS Act authorizes intrastate crowdfunding if a state enacts legislation and interstate crowdfunding subject to federal regulation.
  - The SEC would oversee *interstate* crowdfunding.
  - State regulators would oversee the implementation of state legislation authorizing *intrastate* crowdfunding.
- Interstate crowdfunding
  - The JOBS Act authorized the SEC to promulgate regulations for implementation of interstate crowdfunding but no regulations have been adopted.
  - Many states see the potential for interstate crowdfunding to increase the number of small businesses with resulting economic growth under the JOBS Act. Almost half of the states have enacted or are considering legislation to allow interstate crowdfunding. For example, Indiana allows maximum investments of \$5,000 per investor, not to exceed \$1 million per company if not audited by the state.
- Intrastate crowdfunding
  - State legislation should require at least
    - registration and incorporation documents;
    - names of directors, officers, and stockholders;
    - description of the business;
    - prior-year tax returns;
    - financial statements;
    - intended use of the proceeds, target amount, and deadline;
    - share price;
    - description of the ownership;
    - outstanding securities of the company;
    - annual audits of financial statements for investments in excess of \$500,000; and requirements for investment portals such as registration fees or portal examinations.



## **Ridesharing**

Prepared By Sean Donaldson

- Ridesharing is a service provided by Transportation Network Companies (TNCs) to connect passengers with a driver for a one-time ride on short notice. Typically, a ride is arranged through a smartphone application. A customer may use the application to request a ride and track the reserved vehicle's location.
- Ridesharing may help cover areas not served by public transportation, encourage carpooling, reduce traffic congestion, and lower environmental impact.
- Ridesharing is not generally regulated the same as private car companies and taxi services.
- There may be confusion over personal/commercial insurance coverage of drivers.
- Personal insurance policies generally contain an exclusion for liability coverage if the vehicle insured by the policy is being used to carry passengers for compensation.
- TNCs have developed standards of when they consider a driver to be working for the company and covered under the TNC's insurance policies. The standards are not uniform, which can create some confusion for driver, passengers, and the insurance industry.
- The National Association of Insurance Commissioners' property and casualty committee has created a working group to examine the insurance implications of ridesharing.
- The Kentucky Department of Insurance issued a consumer alert in June regarding ridesharing. It discusses several issues regarding insurance and liability and who has jurisdiction over TNCs.



## **Alcohol Sales In State Parks**

Prepared By John Buckner

- The Tourism Cabinet's 2009 study of the state park system recommended the sale of liquor by the drink at selected state parks as a way to increase revenue.
- In 2010, the Department of Parks received alcoholic beverage licenses for five resort parks and two state golf courses that are located in counties where the sale of alcohol is allowed, bringing to seven the number of parks in the state system that sell alcoholic beverages.
- In state park resort lodges, the sale of alcoholic beverages is integrated with meal service in dining rooms; at golf courses, malt beverages are available at club houses.
- As of November 2014, liquor sales in those parks totaled \$185,117 (dining room sales, \$132,784; and golf courses, \$52,333).
- All park employees serving alcoholic beverages are required to complete the Server Training in Alcohol Regulations program conducted by the Department of Alcoholic Beverage Control.
- Kentucky's park rangers report that there have been no complaints of criminal or behavioral problems or arrests associated with the sale of alcoholic beverages at state parks.
- A 2014 Kentucky law allows a local option election for the sale of alcoholic beverages by the drink in the precinct where the state park's qualifying lodge or golf course is located. On December 9, 2014, voters in the Falls of the Rough precinct in Grayson County will vote to decide whether to allow alcohol sales at Rough River Dam State Park.
- The Department of Parks is looking at expanded alcohol sales at other state parks.



## **Certified Wood**

Prepared By Louis DiBiase

- Certified wood is wood that comes from sustainably managed forestlands. These forestlands are certified under industry-recognized, third-party certification programs, such as the American Tree Farm System and the Sustainable Forestry Initiative.
- Certified wood is in high demand and sells at higher prices than noncertified wood. It occupies an increasingly greater share of the national and international wood markets.
- According to the University of Kentucky Department of Forestry, “Kentucky has significantly less certified woodlands than any other state in the South,” placing Kentucky at a competitive disadvantage and requiring Kentucky industries “to import certified timber from surrounding states.”
- Increasing the number of certified woodlands in Kentucky could increase competitiveness in the certified wood market, provide a home-grown source of certified wood for Kentucky industries, and deliver economic benefits for the state as a whole.
- Increasing certified woodlands could promote the natural, ecological, and sociological values involved in having sustainably managed forestlands.
- Options for encouraging more certified woodlands may include standardizing the process for recognizing certified lands or providing tax incentives for certification, though the latter may be restricted by the Kentucky Constitution’s requirement that all land be taxed equally. The costs and benefits of the different options may need to be studied.



## **Cyber Bullying In Schools**

Prepared By Jo Carole Ellis And Joshua Collins

- Cyber bullying involves the use of technology, such as email, instant messaging, and online personal polling websites, to harm others.
- Cyber bullying may be connected to low self-esteem, suicidal thoughts, anger, frustration, school problems, antisocial behavior, substance use, delinquency, and a variety of other emotional and psychological problems.
- Students who bully others often have persistently poor adaptive behavioral patterns and may be at increased risk for serious injury, alcohol dependency, and delinquency that may continue through their lives.
- Over 21 percent of students in the United States report having been cyber bullied. Ten percent of students reported being bullied online, 7 percent via phone, and 8 percent via text messaging.
- Kentucky’s antibullying legislation, which included cyber bullying and expanded the elements of the crime of harassing communications—a Class B misdemeanor—to include students enrolled in a local school district who cyber bully another student.
- The law also requires model policies dealing with bullying and student conduct be provided to school districts by the Kentucky Department of Education. Each school district’s policy must specify the procedures for reporting and investigating violations.
- Some courts have found some state cyber bullying laws as overly broad and in violation of the First Amendment freedom of speech. Other courts have upheld state action when online speech has caused a substantial disruption at school.
- The Kentucky Youth Bullying Prevention Task Force, established by the Governor in October 2014, is charged with analyzing existing laws and policies, collecting training and resource materials, and submitting its findings and recommendations for policy initiatives and school practices by November 15, 2015.



## Dual Credit For Kentucky Students

Prepared By Ben Boggs

- Dual credit courses are college-level courses that allow high school students to earn both high school and college credits.
- Dual credit courses include academic and technical courses.
- Dual credit courses can vary in
  - where they are taught—either online or through other distance education methods, or face-to-face on either a college or high school campus;
  - by whom they are taught—by either qualified secondary teachers or by postsecondary faculty; and
  - when they are taught—either during or outside the traditional school day.
- Taking dual credit courses can result in
  - improved college and career readiness;
  - increased participation in postsecondary education, especially among low-income and underserved populations;
  - reduced postsecondary degree time and costs; and
  - increased postsecondary degree completion.
- During the 2012-2013 school year, a little more than 23 percent of Kentucky’s high school juniors and seniors enrolled in dual credit coursework.
- Dual credit policies, cost, and opportunities vary greatly across Kentucky.
- During the 2014 Interim, the Interim Joint Committee on Education co-chairs requested that the Kentucky Department of Education, the Council on Postsecondary Education, and the Kentucky Higher Education Assistance Authority form a Dual Credit Work Group to examine dual credit issues such as course offerings, student eligibility, credit transferability, tuition and fees policies, and agency and institutional responsibilities. The findings also are expected to discuss guiding principles.



## Support Education Excellence In Kentucky (SEEK) Funding Program

Prepared By Jennifer Rowe and Chuck Truesdell

- SEEK is the funding formula for public schools implemented by the General Assembly in 1990. It was designed to equitably distribute the combination of local and state tax revenues so that each student is provided an adequate education regardless of a school district's wealth.
- SEEK is a tiered system composed of three distinct components: adjusted base guarantee, Tier I, and Tier II.
- The adjusted base guarantee is a guaranteed amount of revenue per pupil provided for each school district.
  - A per pupil base amount is established by the General Assembly each biennium. The base amount for the current biennium is \$3,911 for FY 2015 and \$3,981 for FY 2016.
  - The per pupil base amount is multiplied by the prior year end of year average daily attendance (ADA), adjusted for growth experienced in the current year.
  - Each district's base amount is increased by a series of factors that affect the cost of providing services to students. These "SEEK add on" categories are exceptional children, transportation, at-risk students, students receiving services in a home or hospital situation, and students receiving limited English proficiency instruction.
  - Local districts pay part of the adjusted base guarantee by each district raising no less than 30 cents per \$100 of assessed property value.
  - The state's contribution is the difference between the local effort and the adjusted base guarantee.
  - Hold harmless is a provision provided in budget language that guarantees a school district will not receive less state SEEK funding per pupil than it did in FY 1992.
- Tier I is an option that allows districts, without a referendum, to raise tax revenue above the minimum requirement, up to 15 percent of the adjusted base guarantee.
  - The additional revenue is equalized at 150 percent of the statewide average per pupil assessment, for districts that qualify.
  - The mechanism provides more state funding to those districts with less property wealth than it provides to a property-wealthy district.
- Tier II is an option that allows districts, subject to voter approval, to raise an additional 30 percent of revenue above the base plus Tier I revenues. Tier II is designed to maintain a cap on the amount of revenue a local school district can generate, thereby maintaining some control over the disparity in per pupil revenues that might be available in local school districts.
  - These funds are not equalized by the state.

- Capital outlay funding is based on the ADA multiplied by \$100. These funds are included in each district's guaranteed base amount and are restricted for capital purposes. The General Assembly passed legislation to allow districts to use these funds for other purposes in 2010-2011 through 2015-2016.

## Net Excess Generation

Prepared By Janine Coy-Geeslin

- Net metering allows residential and commercial customers to generate their own electricity and feed any excess back to the electric grid in return for a credit. Forty-three states, the District of Columbia, and four United States territories have adopted net metering policies.
- The overall treatment of the net excess generation (NEG) varies across the US. In most net metering programs, the state allows the customer to carry forward the credits for excess generation.
- In Kentucky, net metering customers receive credits on their electric bills for NEG at the retail rate. Credits can be carried over indefinitely. There are no cash payments. Net metering fuel sources include wind, hydro, biomass or biogas, and solar.
- The calculation of NEG payments or credits is an issue between utilities and their customers. The NEG rates and the factors considered in calculating those rates vary by state.
- Rates of return for utilities are currently based on sales of electricity. Because net metering customers are not paying for their electricity, the utilities are not receiving those funds to help pay for the infrastructure to transmit electricity from the plant to all customers.
- Modernization and maintenance of the electric grid may be necessary to allow customers to continue to generate their own electricity and allow utilities to recover their fixed costs. Issues for consideration in calculating NEG rates may include
  - the amount of energy produced by net metering customers,
  - the time of day energy is produced,
  - the amount of grid backup for net metering customers,
  - the cost of grid maintenance, upgrades, and construction,
  - the role renewable energy plays in reducing carbon emissions,
  - the fixed costs of the grid incurred by the utilities, and
  - the subsidization of costs for maintenance of the grid by non-net metering customers.



## **Propane Price And Availability**

Prepared By D. Todd Littlefield

- Last winter, an unexpected shortage of propane led to rationing and a price spike that affected many states, including Kentucky. Rationing and long waits were common.
- The Kentucky Energy and Environment Cabinet reported that the state average price exceeded \$3.75 per gallon in February 2014. This was more than \$1.50 per gallon higher than February 2013.
- Factors that contributed to the shortage included cold weather, high levels of exports, transportation bottlenecks, and the use of winter propane reserves in October to dry grain crops.
- According to the National Propane Gas Association, exports accounted for 20 percent of domestic propane production in 2013, up from 5 percent in 2008.
- In an attempt to alleviate transportation bottlenecks, more than 30 states issued orders permitting truck drivers to exceed the maximum number of work hours usually allowed.
- In January, the Kentucky Attorney General filed suit against a propane supplier for alleged violations of the Kentucky Consumer Protection Act. An emergency order from the court allowed customers of United Propane Gas to purchase propane from other suppliers.
- The federal Propane Supply and Security Act of 2014, introduced in July, seeks more transparency in pricing and would expand the authority of federal cabinet secretaries to ease restrictions on the maximum number of allowable work hours for truckers and to prioritize propane shipments by rail and pipeline.
- The Kentucky Propane Gas Association said that last winter's problems were caused in part by suppliers having insufficient tanks for storage and insufficient trucks to move the gas. The state Energy and Environment Cabinet, propane suppliers, and the association recommend that customers fill their tanks early and make their homes more energy efficient.



## Basic Health Plan

Prepared By Jonathan Scott

- A Basic Health Plan (BHP) is one way states can expand health benefit coverage and improve health outcomes for low-income individuals with incomes between 138 percent and 200 percent of the federal poverty level. Several states are now assessing whether to implement a BHP.
- The BHP is designed similarly to a federal block grant. The federal government would send 95 percent of the money that would otherwise have been spent on federal tax credits and subsidies for purchasing health benefit coverage to a state trust fund.
- The state would manage the trust fund and administer a BHP health benefit exchange. Any savings accrued through efficiencies would be reinvested to reduce premiums and cost sharing.
- The possible advantages to the BHP include greater continuity in health benefit coverage and lower costs to low-income individuals.
- Interruptions in health benefit coverage often occur when people transition from Medicaid coverage to subsidized coverage purchased on the health benefit exchange. A BHP could have a tiered premium system that would gradually adjust premiums as an individual's earnings increase and not require a change in health benefit plans.
- A BHP also could allow for 12-month continuous eligibility. This could eliminate the need for low-income individuals to repay the federal government for reductions in subsidies that result from increased earnings.
- Lower costs to individuals could be achieved by integrating a BHP with Medicaid managed care plans. Research has shown that health benefit coverage premiums under a BHP could be as much as 5 percent of those purchased on the health benefit exchange.
- More than one-third of Kentuckians could be eligible to participate in a BHP.
- The federal rules relating to the BHP have been finalized, and states can assess whether a BHP would be an advantageous method to expand coverage and improve health outcomes for low-income individuals.



## **Mental Illness And Violence**

Prepared By Sarah Kidder

- In the wake of mass shootings, lawmakers frequently consider policy responses aimed at preventing similar tragedies. The focus often is on interventions that would prevent violent behavior by individuals who have a mental illness.
- Federal law prohibits possession of a firearm or ammunition by any person who has been “adjudicated as a mental defective” or who has been committed to a psychiatric institution.
- Kentucky law requires courts to report individuals who meet federal criteria to the Kentucky State Police, which is then required to forward the information to the FBI for inclusion in the National Instant Criminal Check System database.
- Kentucky firearms dealers must contact the FBI directly to perform a background check on a purchaser, but private sellers are exempted from performing background checks.
- Studies have shown that required reporting of mental health records and background checks can prevent some violence, but by only a very small percentage.
- Numerous studies have found that a diagnosis of mental illness alone does not predict future violence. The primary risk factors that increase the possibility of violent behavior include a history of violent behavior, substance use or misuse, a history of violent victimization in early life, and exposure to violence.
- The vast majority of people with mental illness are not violent. Research shows that people with serious mental illnesses are far more likely to be the victims of violent crime than perpetrators of it. People with mental illness—without substance use or misuse and a history of violence—have the same chances of being violent as those in the general population.
- Evidence-based policy solutions focus on behavioral indicators of violence as opposed to diagnoses of mental illness. Some suggested policy responses that may prevent mass tragedies from occurring include
  - temporary restrictions on the purchase and possession of firearms by individuals convicted of violent misdemeanors, domestic violence, or drug and alcohol crimes;
  - gun violence restraining orders (modeled after domestic violence restraining orders); or
  - identified “dangerous person” gun seizure laws.



## Seniors Aging At Home

Prepared By DeeAnn Wenk

- Individuals aged 65 and older are projected to comprise 20 percent of Kentucky's population by 2030, an increase of 321,415 seniors. Approximately one-fourth of those seniors will be aged 80 and older.
- The majority of seniors indicate a preference to age in a home setting rather than in an institutional setting.
- When possible, aging in a home setting with appropriate supports is more cost effective than nursing home care. In Kentucky, Medicaid pays approximately \$48,000 per year for a nursing home bed compared to \$15,000 for in-home supports.
- Kentucky ranks low nationally compared to other states on indicators of supports such as caregiver supports, home health aides, and personal attendants for seniors aging in a home setting.
- Kentucky spends approximately 81 percent of all long-term care dollars on nursing home care and the remainder on supports to help seniors age at home. The growth of the senior population may outpace available Medicaid funds without a redistribution of spending. The Department for Aging and Independent Living has indicated plans to improve this distribution by increasing services available under the Medicaid waiver for home- and community-based services.
- Compared to other states, Kentucky has a high proportion of individuals in nursing home care who require a relatively low level of care. With supports, many of these individuals could remain in a home setting.
- Some Kentucky seniors feel there is an incentive to enter Medicaid-funded nursing home care to protect financial resources for a spouse. If the eligibility for home care services were given the same consideration of resources as nursing home care, more seniors could remain in a home setting.
- Some Kentucky seniors do not receive effective transitional care when discharged from a hospital. These seniors may experience relapses or deterioration of health that lead to nursing home admission or hospital readmission. Transitional care includes coordination and communication between the patient, health care professionals, and caregivers about necessary post-hospital care.
- Delays in home care services sometimes result from an extended time period between an assessed need for services, a determination of eligibility for services, and delivery of service. Delays in services such as assistance with medications, nutrition management, and personal care can result in rapid health declines, hospitalizations, and nursing home admissions.

Presumptive eligibility at the time of the assessed need for home care services could expedite service delivery and enable seniors to stay healthy in their homes.

- There are shortages of personal care and home health professionals, particularly in rural areas. They often work for low pay and have few or no employment benefits such as health insurance or sick leave.
- Family caregivers are often stressed emotionally, physically, and financially. Improved supports for family caregivers could help more seniors stay in their homes.
- Transportation assistance for seniors to make health care appointments and shopping is not consistently available across the state. Without transportation, caregiver assistance, or other support services, seniors may have difficulty maintaining access to necessary resources.
- Since 2009, the budget for the Department for Aging and Independent Living, the state unit on aging services, has been cut by 27 percent. More than 13,000 senior Kentuckians are on waiting lists for services and supports.

## Animal Cruelty

Prepared By Alice Lyon

- Kentucky has three primary animal cruelty statutes:
  - Cruelty to animals in the first degree/four-legged animal fighting/Class D felony
  - Cruelty to animals in the second degree/non-four-legged animal fighting or mistreatment through neglect or other means/Class A misdemeanor
  - Torture of a dog or cat/intentionally subjecting dogs or cats to extreme physical pain, motivated by an intent to increase or prolong the pain/Class A misdemeanor or Class D felony depending on extent of injury or subsequent offenses
- In Kentucky
  - penalties for cockfighting are less severe than those for four-legged animal fighting.
  - breeders and trainers of four-legged fighting animals are not included in cruelty to animals in the first degree.
  - prosecutors must consider defendants' motivations for dog and cat torture when proving intentional harm.
  - owners convicted of cruelty or torture do not forfeit the animals involved in the offense and may own other animals of that species.
- Hunting, sporting, business and academic research, agriculture, veterinary care, and other purposes authorized by the law are exempt from the cruelty and torture statutes.
- Counties must contract with animal control officers and maintain animal shelters. Animal control officers cannot make arrests and cannot search premises without a search warrant, but they are considered peace officers.
- When an animal is caused to fight, other animals of the same species that are reasonably believed to be fighting animals must be confiscated and turned over to the county animal control officer. There are no similar confiscation provisions for cruelty to animals outside of fighting.
- Peace officers or animal control officers
  - must impound stray dogs that lack identification, and owners are responsible for all associated fees. There is no mandatory impoundment for stray cats or other pets.
  - may impound stray horses, mules, cows, oxen, sheep, hogs, or goats, and place a lien on the animals for limited fees and other expenses incurred.
  - may kill any animals injured beyond recovery, or animals that are completely abandoned and suffering. Before killing the animal, the officer must
    - consult with a veterinarian,
    - bring two witnesses who concur with the officer on an animal's condition, or
    - get the owner's consent.

- For animals that are not running at large, or are not injured beyond recovery, there are no statutory provisions for peace officers or animal control officers to care for those animals onsite or to impound them.
- With the exception of veterinary reports to the Horse Racing Commission, veterinarians are prohibited from disclosing any information on animal injuries without a court order or written consent from the owner. Disclosing information is punishable by a fine of up to \$500 and up to 90 days in jail.

## Civil Protective Orders

Prepared By Dallas Hurley

- Kentucky uses a civil protection order system consisting of Emergency Protection Orders (EPOs) and Domestic Violence Orders (DVOs) to protect individuals from domestic abuse by restraining the conduct of the alleged abuser.
- The following categories of people may apply for a civil order of protection:
  - Family members, including current or former spouses
  - People with a child in common
  - People who are living together or have lived together
- EPOs are temporary, 14-day orders issued based on the victim's testimony only. The issuance of an EPO triggers a full hearing involving both parties to consider issuing a DVO or canceling the order.
- DVOs are issued after a full hearing involving both parties, remain valid up to 3 years, and can be renewed indefinitely.
- In stalking situations, Kentucky courts may only issue a restraining order after a criminal conviction. Stalking orders remain valid for 10 years and can be renewed indefinitely.
- Federal law automatically bans firearm possession if a restraining order involving intimate partners has been issued. If Kentucky authorized dating violence protective orders, the firearms prohibition would not apply to dating violence orders because the federal definition of "intimate partner" does not include dating couples.
- Kentucky, Georgia, Ohio, and South Carolina are the only states that do not grant victims of dating violence access to civil protective orders.
- Kentucky does not provide victims of sexual assault with access to civil protective orders. Twenty-eight states and the District of Columbia do provide victims of sexual assault access to civil protective orders.



## Driving Under The Influence

Prepared By Jon Grate

- From 2008-2012, Kentucky had 106,803 convictions for driving under the influence (DUI)—the consumption of alcohol or any substance that impairs driving ability.
- Kentucky has an “illegal per se” provision, meaning that a person is guilty if driving with an alcohol concentration of 0.08 or higher, measured within 2 hours of driving a motor vehicle. The National Highway Traffic Safety Administration recommends lowering the DUI limit to 0.05.
- If a person is under the age of 21, the legal limit is 0.02, measured within 2 hours of driving a motor vehicle.
- For a person’s first offense within a 5-year period the punishment is
  - a fine of \$200-\$500, 48 hours’ to 30 days’ imprisonment, or both.
  - attendance at an alcohol or substance abuse program.
  - license suspension for 30 to 120 days.
    - Following sentencing, a person may apply to the judge for permission to enter a community labor program for 48 hours to 30 days. A community labor program is labor performed for public agencies, nonprofit corporations, or charity institutions, and is under the supervision of the court.
- For a person’s second offense within a 5-year period, the punishment is
  - a fine of \$350-\$500, 7 days’ to 6 months’ imprisonment, or both.
  - attendance at an alcohol or substance abuse program for 1 year.
  - license suspension for 12 to 18 months.
  - possible community labor for 10 days to 6 months.
- For a person’s third offense within a 5-year period, the punishment is
  - a fine of \$500-\$1,000, 30 days’ to 12 months’ imprisonment, or both.
  - attendance at an alcohol or substance abuse program for 1 year.
  - license suspension for 24 to 36 months.
  - possible community labor for 10 days to 12 months.
- For a person’s subsequent offense within a 5-year period, the person is guilty of a Class D felony and subject to
  - a minimum term of 120 days’ imprisonment.
  - attendance an alcohol or substance abuse program for 1 year.
  - license suspension for 60 months.
- Kentucky does not require the installation of ignition interlock devices in vehicles of drivers who have had their licenses suspended for DUI. An ignition interlock device is connected to

the vehicle and requires that a driver breathe into the device before starting the vehicle. If the ignition interlock device detects the driver's blood alcohol concentration to be above the programmed limit, the vehicle will not start.

## Heroin

Prepared By Chan Jones

- Heroin is a highly addictive opiate that can be injected, snorted, sniffed, or smoked.
- Heroin use creates a significant likelihood of overdose. In 2013, nearly 32 percent of all drug overdoses autopsied by the Kentucky Medical Examiner were a result of heroin use, an increase from nearly 20 percent in 2012.
- The medical consequences of heroin use are severe. In addition to addiction, the risk of blood-borne pathogens such as Hepatitis C and HIV increases dramatically because of needle sharing by intravenous drug users.
- The Federal Substance Abuse and Mental Health Service Administration reported that between 2007 and 2012, the number of heroin users in the United States grew about 80 percent, from 373,000 to 669,000.
- The possession, use, or trafficking of heroin in any form is illegal in Kentucky, with any heroin-related activity being a felony.
- Heroin use and trafficking offenses have increased. *The Courier Journal* reported that jail bookings for heroin in Louisville rose from 1 in 2011 to over 100 in 2014. In Boone, Kenton, and Campbell Counties, the number of court cases related to heroin increased 500 percent from 2008 to 2012.
- Kentucky
  - has expanded the number of drug treatment slots available within the criminal justice system, going from 1,500 in 2012 to 6,000 as of 2014.
  - is ramping up the creation and use of education programs designed to raise awareness about the danger of heroin use.
  - has not increased the criminal penalties for persons who traffic in heroin.
  - is improving the availability of naloxone, a heroin overdose antidote.
  - does not allow health departments to create needle exchange programs that provide clean syringes for used ones.
  - does not provide criminal immunity for a person who reports a drug overdose to 911.
  - is exploring the expansion of access to drug treatment for pregnant users.



## Electronic Privacy

Prepared By Matt Trebelhorn

- Advancing electronic communications technologies have created vast quantities of personal data. Use of and access to that personal data by third parties, including law enforcement, is creating challenges regarding personal privacy.
- Control over digital assets, such as online banking, email, and Facebook accounts, after death is an emerging area of trusts and estates law. Other states, have adopted laws to attempt to standardize treatment of digital assets.
- Employers have sought access to the social media accounts of job applicants to review the contents of the accounts as a factor in determining the suitability of the job applicants. Some states have responded with legislation prohibiting employers from requiring applicants to give them access.
- In 2014, the US Supreme Court held that the contents of a cellular phone could not be searched during arrest without a warrant. Because of the volume and variety of data on a cell phone, traditional justifications for searches during arrest were held not to apply to the data on a cellular phone.
- Nationally, some law enforcement agencies use a device called a Stingray to find all cell phones in a given area. This technology can be used to find a particular telephone, such as that of a crime victim, a missing person, or a criminal suspect. The device sends out a signal that mimics a cell phone tower, and all nearby phones answer back. Use of such devices—sometimes done without a warrant, and collecting information on any nearby telephone—could infringe on privacy rights.



## Parole Board

Prepared By Jon Grate and Dale Hardy

- Parole is the provisional release of a prisoner prior to completion of the prison sentence.
- The General Assembly established the Parole Board in 1956 with 3 members. There are now 9 full-time members, who, so far in 2014, have reviewed over 21,000 cases, including parole eligibility and revocation.
- Kentucky follows a policy of indeterminate sentencing, where an administrative agency, such as the parole board, has the authority to release an offender and determine whether the offender's parole will be revoked for violation of the conditions of release.
- The Parole Board reviews cases when prisoners become eligible. It typically decides on parole by reviewing the offender's file. It will also interview high-level offenders, but these account for a small share of cases.
- The parole board considers various factors, including
  - when the crime was committed,
  - the date sentenced,
  - length of sentence,
  - jail-time credits,
  - whether the crime was violent or a sex crime, and
  - crimes committed while incarcerated, attempting to escape, or while on shock probation or a previous grant of parole.
- In Kentucky, all felons must serve a certain percentage of their sentences before becoming eligible for parole. Most felonies carry a 20 percent service requirement, though some nonviolent drug offenses are set at 15 percent. Violent crimes have an 85 percent service requirement. In 2013, the General Assembly created a 50 percent service requirement for three specific offenses: theft by unlawful taking or disposition when the value of the property is \$10 million or more; manslaughter in the second degree when the victim was a peace officer or a firefighter acting in the line of duty; and reckless homicide where the victim was a peace officer or firefighter acting in the line of duty.
- Indeterminate sentencing uses a screening process and gives wide discretion to the Parole Board. In theory, judges, juries, and attorneys make decisions on how long a convicted individual will serve. In practice, the Parole Board has the authority to make that decision. The uncertainty regarding exactly how long a felon will serve makes it difficult for anyone—including the convicted person or the victim—to know an exact release date.
- In determinate sentencing, an offender is given a fixed term that may be reduced by credits, such as good time or earned time. Essentially, offenders serve the entire time they are sentenced.

- Presumptive parole allows for early release but removes discretion from a reviewing agency. Felons are presumed to be granted parole after serving a predetermined amount of time, unless there has been prohibited conduct while incarcerated. In this model, there is no screening before release, so the system may be releasing those who are likely to reoffend.

## **Black Lung Claims**

Prepared By Matt Ross

- The Division of Workers' Compensation Funds is responsible for administering the Coal Workers' Pneumoconiosis Fund (CWPF), which is attached to the Labor Cabinet.
- The CWPF is liable for 50 percent of the income and retraining benefits awarded for coal workers' pneumoconiosis claims arising from last exposures occurring after December 12, 1996.
- Benefits are funded by assessments on workers' compensation insurance premiums received by insurance companies and self-insured groups from employers engaged in the severance or processing of coal. Assessments are also made on each ton of severed coal and are collected by the Kentucky Workers' Compensation Funding Commission.
- The commission met in September 2014 to establish the CWPF assessment rates for 2015.
- For 2015, the CWPF assessment will be 5.18 percent of workers' compensation premiums of entities engaged in the severance or processing of coal. (In 2014, the rate was 2.54 percent.) Additionally, for 2015, there will be an assessment of 4.92 cents levied on each ton of coal severed. (In 2014, the rate was 2.54 cents per ton.)
- Additional assessments are necessary due to an increase in CWPF awards and settlements.
- As of October 2014, there were 486 awards and settlements and 1,046 pending claims. The estimated liability for the known awards is \$15.4 million.
- Of the pending claims, 440 had been in the system for more than 1 year. The backlogged claims were the result of two court cases that ruled the system for deciding CWPF claims was unconstitutional. Until those cases were settled law, the claims were held in abeyance. Claims were held in abeyance from 2011 through 2013.
- The claims are now being adjudicated, and the Department of Workers' Claims (DWC) expects to eliminate the backlog by the end of 2015. The department estimates that 40 percent, or about 176, of the 440 backlogged claims will result in awards.
- In addition to the claims held in abeyance, it is expected that there will be more new claims filed than previously projected. This is attributed to mine closings in eastern Kentucky and the court rulings. DWC expects to process 513 new claims for calendar year 2014 and 400 claims for 2015. An award ratio of 30 percent is expected for these claims.
- Assessments are necessary to prevent the CWPF surplus from falling below zero by December 31, 2015. The assessment rates reflect current investment interest rates, award

ratios for backlogged claims, award ratios for non-backlogged claims from July 1, 2014, through December 31, 2015, and higher projected award volume in 2015 and 2016.

- The 5.18 percent assessment on workers' compensation premiums for entities engaged in the severance or processing of coal is expected to raise \$4,004,140. The 4.92 cents assessment per ton severed is expected to raise \$3,999,960. This assessment rate is not projected to cover the costs of claims through 2015.
- Assessment rates will need to be revisited in 2015. At 2015 rates, it is projected that the CWPF will run an \$8,004,100 deficit by the end of 2015.
- From July to October 2014, the CWPF paid out \$1.5 million. The fund pays out \$169,042 bi-weekly.

## Unemployment Insurance

Prepared By Carla H. Montgomery

- Employers pay federal and state Unemployment Insurance taxes.
- The Federal Unemployment Tax Act (FUTA) tax is 6.0 percent.
- There usually is a 5.4 percent reduction of FUTA taxes or tax credit for employers if state taxes are paid, which would mean a 0.6 percent rate, or \$42 per employee per year.
- If a state borrows money from the federal government to pay claims and maintains a loan balance for 2 years or more, the 5.4 percent tax credit is reduced by 0.3 percent per year.
- For 2014, Kentucky and 12 states and the Virgin Islands faced another decrease in the tax credit for having outstanding loans. The other states are Arkansas, California, Connecticut, Delaware, Georgia, Indiana, Missouri, New York, North Carolina, Ohio, Rhode Island, and Wisconsin.
- In 2013, Kentucky and 11 states had a reduction of 0.9 percent or pay a FUTA tax rate of 1.5 percent (\$105 per employee). Indiana and the Virgin Islands had a reduction of their tax credit by 1.2 percent or pay a FUTA tax rate of 1.8 percent.
- In 2014, Kentucky employers should plan on an increased reduction of 1.2 percent to the FUTA tax credit or a FUTA tax rate of 1.8 percent.
- Kentucky must pay interest on its outstanding loan balance to the federal government. Money to pay interest cannot come from the unemployment insurance trust fund balance, which is solely used to pay claims.
- Since January 2014, Kentucky employers are required to pay a surcharge of 0.22 percent to pay the interest owed to the federal government on the outstanding loan balance and to repay the commercial loan with JP Morgan that was obtained to pay the initial interest payment. Employers will continue to pay the surcharge until the interest on the federal loan and the commercial loan to JP Morgan are paid.
- Surcharge collections have been in excess of \$24.7 million, which has been extremely successful for the Department of Workforce Investment.
- States that are in their fifth year of carrying a federal loan balance in 2014, as is Kentucky, may be subject to the benefit cost rate add-on, which is an additional tax for employers. The add-on is estimated to be 1 percent on the \$7,000 federal taxable wage base, or \$112 million for all Kentucky employers.

- Kentucky's application for a waiver for the add-on was accepted, saving Kentucky employers \$112 million.
- From January 2012 until Sept. 3, 2014, the federal loan balance for Kentucky was reduced by \$609 million, from \$948.7 to \$339.1 million.
- Kentucky is 7 years ahead of schedule in its loan repayment obligation. The original projected pay off date was 2021 and now is projected to be 2015.
- There is an additional unemployment tax increase that Kentucky employers will experience until 2022. The taxable wage base (the base for Kentucky employers' unemployment insurance taxes) was increased with HB 1 in the 2010 Special Session. It is \$9,600 and will increase by \$300 until it reaches \$12,000 in 2022.

## **Production And Sale Of Brandy And Fortified Wine By Small Farm Wineries**

Prepared By Bryce Amburgey

- Several small farm wineries have requested a statutory change to allow them to produce brandy and fortified wine.
- Alcoholic beverages are generally grouped into three categories: malt beverages, distilled spirits, and wine.
- The Kentucky Department of Alcoholic Beverage Control (ABC) and the US government categorize both brandy and fortified wine as distilled spirits rather than as wine. While both types of products are based on wine, each has some form of distilled alcohol that was created or added during the production process.
- Brandy is a form of spirits distilled from the fermented juice, mash, or wine of fruit or its residue that is bottled at more than 40 percent but less than 95 percent alcohol by volume. The actual alcohol content of brandy varies but is often near 50 percent alcohol by volume. Examples of brandy include applejack, armagnac, and cognac.
- Fortified wine is wine to which a distilled spirit, usually brandy, has been added. Some of the more commonly recognized forms of fortified wine include port, sherry, and vermouth.
- Under state and federal law, a product may not be designated as “wine” if its alcohol content exceeds 24 percent by volume. Fortified wine often falls below this alcohol percentage, but it is still designated as a distilled spirit.
- ABC has determined that, under Kentucky law, small farm wineries may not produce brandy or fortified wine, suggesting that statutory change would be required.
- Any alcohol manufacturer located in wet territory may sell its products to consumers in limited quantities at the manufacturing premises.
- A small farm winery may sell its products directly to consumers at its separate “small farm winery off-premises retail sites” that are located in wet territory and in physically separate locations from its winery manufacturing site.
- Other manufacturers such as brewers and distillers are not authorized to have off-premises retail sites and therefore do not have the ability to make these separate direct sales to consumers.
- Some manufacturers are concerned that a small farm winery that sells distilled spirits (brandy and fortified wine) directly to consumers will have an advantage over traditional producers of distilled spirits that may not sell directly to consumers from a separate retail site.



## EquiLottery

Prepared By Jasmine Williams

- EquiLottery is a new concept in lottery gaming in which winning is based on the results of live horse races.
- Developed by a private company, the game is being marketed to Kentucky and other states as a lottery add-on that would use the existing network of lottery retailers and could be played anywhere lottery tickets are sold without hardware modifications to existing machines.
- The ticket is a quick pick that randomly selects the numbers and names of three horses and notes when and where the race will occur.
- EquiLottery is considered a lottery game because it is a game of chance, not skill; horses are drawn randomly, not selected by the player.
- While the game has not been implemented in Kentucky, EquiLottery LLC asserts that after legal research, the Kentucky Lottery Corporation would have the authority to implement this game under KRS 154A.065.
- A player buys a \$2 ticket: \$1 would go to the Kentucky Lottery pool, and \$1 would go to the EquiLottery pool.
  - The Kentucky Lottery share would go into a supplemental pool that is paid into only by EquiLottery players. This money would be distributed to the scholarship funds (CAP, KTG, and KEES) to which lottery games contribute. Only EquiLottery winners would be paid from the supplemental pool.
  - The EquiLottery share goes to the racetrack where the race is taking place and is applied to the pari-mutuel pool as an exotic wager, which is any pari-mutuel wager other than a win, place, or show.
- Winning players get a percentage from the supplemental lottery pool and from the payout of the exotic wager from the track's pari-mutuel pool.
- If EquiLottery is included as a Kentucky Lottery option, it could bring in revenue from other states that sell EquiLottery tickets when wagers in those states are placed on Kentucky races, or when wagers are placed in Kentucky on races in other states when there is no live racing here.
- EquiLottery games may compete with current Kentucky Lottery games for scholarship funds.
- EquiLottery LLC has projected a handle of over \$30 million in the first year; however, Kentucky Lottery officials state that their estimate is considerably lower. This is a new game with no prior history, so estimates are difficult to develop.

- EquiLottery also estimates that the new game could add up to 15 percent new players to lottery customer base.
- Revenue from EquiLottery that is added to the track's pari-mutuel pool could enhance purse amounts and increase attractiveness of Kentucky races.

## Area Development Districts

Prepared By Mark Mitchell

- Area development districts (ADDs) are a product of the understanding of the necessity for a more regional approach to inter-jurisdictional concerns that were initially addressed by special districts. In 1967, Kentucky created the 15 ADDs. In 1972, they became agencies of the state.
- They are governmental entities subject to certain requirements and given specific objectives.
- ADDs are governed by a board composed of
  - county judges/executive,
  - mayors, and
  - citizen members.
  - Resident members of the House of Representatives or Senate may participate in the ADD's activities in an advisory, nonvoting capacity.
- ADDs are subject to open meetings and open records laws and are required to submit administrative and fiscal data to the Department for Local Government. They must also have an ethics code.
- Their duties are broadly set out by statute and include devising development plans relating to water and sewer provision, land use, open space, and recreation.
- ADDs also establish regional planning councils that provide recommendations to planning units for regional considerations for land use issues.
- ADDs participate in workforce development, economic development, transportation and infrastructure planning, health care and aging services, GIS mapping, broadband planning, tourism, and hazard mitigation and disaster preparedness planning.
- In 2014, the State Auditor of Public Accounts released an audit of the Bluegrass Area Development District (BGADD) that noted a lack of governance and accountability and questionable financial decisions. Concern has been expressed that other ADDs may have employed some of the same governance policies and practices that prompted the state audit of BGADD. The Auditor has not announced further audits of the remaining ADDs.



## Internet Sweepstakes Cafes

Prepared By Joseph Pinczewski-Lee

- An Internet sweepstakes cafe is a storefront business that sells two main things to the general public: long-distance telephone time or Internet access, usually via a computer.
  - With the purchase of Internet time, users receive free entry into a sweepstakes and use their access time to see if they have won prizes, usually cash.
  - The process by which users determine their status looks very much like a video slot machine or video poker game.
  - Purchasers can increase their payouts by increasing the number of “lines” they play, which uses more of their Internet time. The number of lines does not increase the chance of a payout but increases the size of the payout.
  - At the end of a session the user tallies the access time purchased and any sweepstakes prizes awarded and leaves with any winnings, after deducting access time charges accrued.
- There are at least two known Internet sweepstakes cafes in Kentucky.
- Internet sweepstakes cafes present a number of issues for state and local governments:
  - Local governments are divided over these cafes. Some localities issue them business licenses; others refuse them, arguing that they are “gaming” and, therefore, illegal businesses.
  - This is an issue that local governments feel needs to be addressed for legal clarity and equal protection reasons.
  - The businesses are unregulated: their owners and operators are not subject to criminal background checks.
  - The sweepstakes games are unregulated: there is no impartial third party to determine if they are fair or rigged.
  - They compete with the Kentucky Lottery and state-regulated horse tracks for patrons and revenue.
  - In Kentucky, they may be illegal gaming.
- Operators say that these sweepstakes are not gambling mainly because they are not a game of chance, with each sweepstakes code and winner being predetermined.
- There has been no court case to determine the legality of Internet sweepstakes cafes.



## **Disposal Of Infectious Wastes**

Prepared By Tanya Monsanto

- Ebola is a deadly, viral disease caused by one of the five known strains of the Ebolavirus. While treatment options exist, there is no cure for or vaccine to protect against Ebola. The virus is rare but highly contagious and communicated to others by the transmission of bodily secretions—saliva, mucus, vomit, diarrhea, perspiration, blood—from a symptomatic, infected person or animal, or from contaminated personal belongings, materials and medical equipment.
- The Ebolavirus demonstrates the inconsistency in how federal and state authorities treat infectious medical and household wastes. While the number of Ebola cases in the US remains small, state policymakers are examining state guidelines for disposing of infectious medical and household wastes.
- Disposal of Ebola-contaminated wastes is a problem for hospitals, waste haulers, state landfills, and state solid waste regulators because improper management of contaminated wastes poses risk of exposure to personnel handling the waste and to the general public.
- Since October, all waste contaminated with Ebolavirus is regarded by the US Department of Transportation and by the Centers for Disease Control and Prevention (CDC) as hazardous waste. The hazardous waste stream includes all personal contaminated household waste; medical waste; and cadavers, both human and animal.
- The Resources Conservation and Recovery Act (RCRA) is the federal law that regulates the disposal of all types of wastes. Hazardous waste must be disposed of in a hazardous waste landfill, undergo chemical treatment, or be incinerated. Medical wastes are not deemed hazardous wastes under RCRA, and medical wastes may be disposed of in the same manner as household wastes.
- In Kentucky, medical waste is disposed of in the same manner as household waste, meaning both wastes are permanently disposed of in permitted landfills. Hospitals and nursing homes have separate administrative regulations that require sharp medical waste to be segregated from other waste and then incinerated or rendered nonhazardous before permanent disposal. There is no distinction in Kentucky law to treat infectious waste as hazardous waste.
- Some states statutorily created a separate category of medical waste called infectious waste to require those wastes to be inactivated (for example, incineration, chemical treatment, or autoclave) prior to permanent disposal or disposed of in a manner consistent with hazardous waste.



## Eminent Domain Update

Prepared By Stefan Kasacavage

- In May 2013, Williams and Boardwalk Pipeline Partners announced a joint venture agreement to construct the Bluegrass Pipeline to carry natural gas liquids (NGLs) produced in Pennsylvania, Ohio, and West Virginia through Kentucky to the Gulf Coast.
- To secure the necessary easements to construct the pipeline through Kentucky, Williams and Boardwalk claimed to have eminent domain authority to condemn the property of landowners who would not agree to grant voluntary easements. However, the Attorney General, the legal counsel for the Energy and Environment Cabinet, and some private landowners disagreed, filing a lawsuit in Franklin Circuit Court.
  - In March 2014, the court ruled that Kentucky law does not allow Williams and Boardwalk to use eminent domain to condemn property to construct an NGL pipeline because the operation would not be carried out in “public service” and the partnership is not a “common carrier.”
  - The following month, Williams announced it was suspending capital investment in the project due to too few commitments from customers who would use the pipeline to ship their NGLs.
  - In July, Williams and Boardwalk pursued an appeal of the Franklin Circuit Court ruling.
  - With the appeal still pending in November, Boardwalk president and CEO Stanley Horton said that Williams and Boardwalk had agreed to dissolve their joint venture agreement relating to the Bluegrass Pipeline.
- Eminent domain still may be an issue: Kinder Morgan and MarkWest Energy, another NGL pipeline development partnership, is continuing with its plans first announced in August 2013 for an NGL pipeline from Ohio to the Gulf Coast.
  - The pipeline project mostly will entail the conversion of over 1,000 miles of existing pipeline in the Tennessee Gas Pipeline system, which is currently used in natural gas service from Louisiana to Pennsylvania.
  - Existing natural gas pipelines in the Tennessee Gas Pipeline system to be converted to NGL service are in place in the following Kentucky counties: Adair, Allen, Barren, Bath, Boyd, Boyle, Carter, Casey, Clark, Elliot, Garrard, Green, Greenup, Hart, Lawrence, Lincoln, Madison, Marion, Metcalfe, Montgomery, Rowan, Simpson, and Taylor.
  - The project also includes the construction of approximately 160 miles of new natural gas and NGL laterals and interconnects in Kentucky, Ohio, Pennsylvania, West Virginia, Tennessee, and Mississippi.



## Establishing And Maintaining Precincts

Prepared By Greg Woosley

- By law, the county boards of elections establish election precincts, which are reviewed and approved by the State Board of Elections.
- County boards of elections have the responsibility to establish these official precincts as the basis for conducting elections. The Legislative Research Commission may comment on the establishment of precincts as proposed by the counties, based on the redistricting data it maintains as directed by law. The board then approves the precincts. This process takes time and is labor intensive.
- The precinct data maintained by LRC for redistricting purposes may differ from the official data and maps maintained by the counties and approved by the State Board of Elections. Counties are permitted to use paper maps and may create precinct boundaries that cut across census blocks or that do not use underlying physical features.
- When the election precinct boundaries must be modified to coincide with new congressional and state legislative district lines established by the General Assembly in the redistricting process, issues may arise for counties due to the use of differing maps.
- These issues may also be exacerbated by the timing of local reapportionment and state redistricting.
- Various proposals may address the issues of different data and the timing of local reapportionment and state redistricting:
  - 2014 RS SB 210—Permit local governments to initiate redistricting proceedings at any time to align local district boundaries with congressional or state legislative boundaries if the result is the elimination of one or more election precincts.
  - 2014 RS HB 115—Permit local governments to defer redistricting until after state redistricting, provided the proceedings begin no later than May of the third year following the census.
  - Other possible solutions for issues caused by differing data include
    - eliminating paper maps/descriptions and move to all electronic maps.
    - creating a central database of election precincts.
    - standardizing data with periods of county updates.
    - preventing splitting census blocks and requiring the use of an underlying physical feature.



## Certificates Of Convenience And Necessity

Prepared By Brandon White

- Passenger transportation carriers such as taxicabs, limousines, charter buses, contract carriers, and airport shuttles must obtain a certificate of convenience and necessity by the Transportation Cabinet.
- Prior to issuance, an applicant for a certificate must prove that
  - it can properly perform the service,
  - there is a public need for the service, and
  - existing certificate holders are inadequate.
- Law allows existing certificate holders to protest a new application.
  - If protested, approval of the application may take more than a year.
  - The protest process might allow existing businesses to prevent competition from new businesses.
- In February 2014, a federal court ruled that the Transportation Cabinet must stop using the protest process for applicants applying for household goods mover certificates because it violated the due process and equal protection clauses of the 14<sup>th</sup> Amendment.
- In the 2014 Regular Session, the General Assembly changed the certificate issuance process for household goods movers.
- As a result of the change, the Transportation Cabinet will now issue a household goods certificate to any qualified applicant, if the applicant
  - conforms to the provisions of KRS Chapter 281 and the administrative regulations,
  - obtains and retains criminal background checks of employees who have direct contact with the public or who may enter a private residence or storage facility, and
  - limits the duties of household goods employees based on the results of the criminal background check, if that employee has been convicted of certain crimes (class A or B felony or a sex crime).
- The Transportation Cabinet has requested changes to KRS Chapter 281 that would extend the removal of the protest process by competitors to all certificates issued by the cabinet.



## **Governance Of The Cincinnati/Northern Kentucky International Airport**

Prepared By John Snyder

- The Cincinnati/Northern Kentucky International Airport (CVG), was established as a World War II training facility with the help of a \$2 million grant from the Civil Aeronautics Administration. Kenton County provided local investment for the airport that became a commercial airfield in 1947. The airport is located in Boone County.
- CVG is operated by the Kenton County Airport Board. Under KRS 183.132(4), all seven members are appointed by the Kenton County judge/executive. Six members are residents of Kenton County; one member is a resident of Boone County.
- In 1964, the Kenton County Airport Board Advisory Committee was established by executive order with membership appointed by the Kenton County judge/executive to advise the Airport Board in its duties.
- The Advisory Committee's membership was increased by executive order in 1998 to add one member each appointed by the Boone and Campbell County judges/executive, the governor of Kentucky, the mayor of Cincinnati, and the Board of Commissioners of Hamilton County, Ohio.
- The Auditor of Public Accounts recently released a review of CVG's policies, procedures, controls, and financial practices. In addition to other findings, the report called into question the efficacy of the appointment process to the Kenton County Air Board.
- The report argued that best practices urge against one entity having appointment authority, such as is the case with CVG and the Kenton County judge/executive. The report also questioned the relationship between the Airport Board and the Advisory Committee.
- The report recommended expanding the membership of the Airport Board to include members appointed by various entities: Kenton, Boone, and Campbell Counties judges/executive; governors of Kentucky and Ohio; mayor of Cincinnati; and the Hamilton County, Ohio, Board of Commissioners.
- The Auditor's report also recommended that there not be a formal Advisory Committee, rather that advice should be sought and received on an ad hoc basis.
- Any change in the structure of the Kenton County Airport Board appointments would require statutory change.



## **Property Tax On Motor Vehicles Use Of Clean Versus Average Trade-In Value**

Prepared By Dana Fugazzi

- Motor vehicles are assessed property taxes based on their fair cash value by the local property valuation administrator (PVA) under the direction, instruction, and supervision of the state Department of Revenue.
- 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.
- KRS 132.485 states that 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 "shall be the average trade-in value prescribed by the valuation manual" for that particular vehicle's make, model, and year.
- The department's main standard manual for motor vehicles is the National Automobile Dealers Association (NADA) *Official Used Car Guide*.
- In 2008, the *Official Used Car Guide* went from reporting a single average trade-in value to a three tiered system that includes "clean," "average," and "rough" trade-in values.
- NADA market data showed that in 2008, the majority of vehicles in the wholesale market, about 50 percent, were considered average in condition. Vehicles in the clean category represented about 15 percent of the market, while those in the rough category comprised about 20 percent of the market. These three categories encompass 85 percent of all vehicles, with the remaining 15 percent falling into the "salvage" or "extra clean" category.
- The department uses the clean trade-in value as the standard value for valuation purposes, rather than the average trade-in value as specified in statute.
- The clean trade-in value is generally 5 percent to 10 percent higher than the average trade-in value, resulting in proportionally higher property tax bills on the vehicles at the time of registration renewal.



## Property Tax On Older Motor Vehicles

Prepared By Dana Fugazzi

- Motor vehicles are assessed property taxes based on their fair cash value by the local property valuation administrator (PVA) under the direction, instruction, and supervision of the state Department of Revenue.
- The department provides PVAs with standard valuation guidelines and prescribes the standard valuation manuals used to estimate a vehicle's fair cash value.
- KRS 132.485 directs that unless the owner or person registering a motor vehicle appears in person for an inspection, or there is other information available to warrant otherwise, a vehicle's estimated fair cash value will be the average trade-in value listed in the prescribed industry manual for that particular vehicle's make, model, and year.
- The department's standard manuals for motor vehicles 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, the 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 a tax bill.
- Vehicles that are 20 years or older are not included in these manuals. The only NADA manual containing information on these vehicles is the *Classic, Collectible, Exotic and Muscle Car Appraisal Guide and Directory*. The department prescribed it as the standard manual for assessing vehicles of this age.
- The terms "classic" or "collectible" are typically applied to vehicles that are for some reason distinctive and begin to increase in value beyond a certain age rather than decrease in value as is the case for most common vehicles.
- AVIS is not capable of automatically uploading data from the classic car guide, and the department has long advised PVAs to consult the hard copy of this manual to assess vehicles aged 20 years or older. However, this has not been done uniformly. When the new AVIS system comes online, at the earliest in 2015-2016, all vehicles aged 20 and older will be valued automatically using data from the classic car guide to establish their standard fair cash value.
- Approximately 760,000 vehicles aged 20 years or older are titled in Kentucky. Where the classic car guide has not been used to assess a particular vehicle in past years, taxpayers may see a substantial increase in assessed value when the AVIS uploads the new data for the first time.

- Taxpayers may appeal if they believe the assessment is too high. The PVA may adjust the assessed value if circumstances, such as high mileage or damage, support that action.
- A new approach to address this situation could be developed, such as 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 would need to be structured in a way to prevent potentially widespread sudden increases in assessed values.

## REAL ID

Prepared By John Snyder

- The federal Real REAL ID Act of 2005 established federal driver's license standards on state-issued identification cards used to gain access to federally restricted areas and to board federally regulated commercial aircraft.
- The effective date of the Act has been delayed several times, and states have been given several automatic extensions.
- In December 2013, the Department of Homeland Security announced a phased-in implementation schedule for using state licenses that comply with REAL ID provisions. The phase regarding a REAL ID-compliant license to board a commercial aircraft will not be implemented until at least 2016. REAL ID does not
  - affect access for activities directly relating to safety and health or life-preserving services; to law enforcement; and to constitutionally protected activities, including legal and investigative proceedings.
  - require individuals to present identification where it is not currently required to access a federal facility, nor does it prohibit an agency from accepting other forms of identification such as a US passport or military ID.
  - affect other uses of driver's licenses or identification cards, including licenses and cards from noncompliant states, unrelated to official purposes as defined in the Act. For example, the Act does not apply to voting, registering to vote, or applying for or receiving federal benefits.
- Because Kentucky has an exemption, its licenses are currently accepted for federal REAL ID purposes. If the exemption is ever withdrawn, Kentucky's licenses may not be accepted for REAL ID purposes.
- Kentucky has two major compliance issues:
  - States must physically secure facilities where driver's licenses and identification cards are produced and where document materials and papers from which driver's licenses and identification cards are produced.
  - All persons authorized to manufacture or produce cards must have appropriate security clearance.
- Kentucky issues licenses through local circuit clerks at over 140 locations in 120 counties, including at facilities used for other purposes. This system is unique. For example, West Virginia has only 25 driver's license offices across the entire state, and Tennessee has less than 50 full-service licensing centers.
- Meeting REAL ID requirements would have implications for the state and its citizens. Possible solutions have been discussed in the Interim Joint Committee on Transportation meetings:

- Continuing the current system would be convenient but would be a cost to the state for location security and employee background checks.
- Changing to a regional application system would decrease security costs but would result in less convenience and more travel for citizens. Kentucky drivers could apply for a license at a local office, the documents would be reviewed, and the physical license or ID would be produced at a secure centralized location and mailed to the individual.
- Kentucky could offer an enhanced driver's license (EDL), a Kentucky driver's license that would be accepted for REAL ID purposes. Applicants for EDLs would pay an additional fee and go through a different process than that for ordinary driver's licenses.

## Transportation Network Companies

Prepared By Brandon White

- Transportation Network Companies (TNCs) are rideshare companies that use smartphone applications to connect passengers with drivers who use their personal vehicles to provide on-demand for-hire transportation services.
- TNCs in the Commonwealth are not regulated by the Transportation Cabinet.
- The Transportation Cabinet has outlined the following concerns regarding TNCs:
  - Insurance coverage, both personal and commercial
  - Vehicle inspections
  - Standards for criminal background and driver history checks
  - The impact on regulated for-hire motor carriers such as taxicabs and limousines
- The cabinet has stated that it has the statutory authority to regulate TNCs under the definition of motor carrier found in KRS 281.011(1).
- The cabinet has stated that it intends to issue administrative regulations governing TNCs to require them to make application for a certificate to operate in the Commonwealth.
- Other states and local governments have taken a wide range of actions in response to the operation of TNCs in their jurisdictions, including
  - adopting regulations and ordinances governing their operation (Birmingham, Minneapolis),
  - issuing cease and desist letters prohibiting their operation (Nebraska, New Mexico),
  - adopting a statewide system of regulation (Colorado),
  - adopting regulations governing the insurance requirements (California),
  - issuing consumer alerts (Kansas, Washington DC),
  - passing legislation to study TNCs (Connecticut), and
  - prohibiting them from providing transportation to and from airports (Hawaii).



## Veterans' Access To Health Care

Prepared By Kris Shera

- A veteran's access to health care is determined by the federal government and depends on eligibility levels established by the US Department of Veterans Affairs (VA).
  - Basic eligibility is established by having at least 24 consecutive months of active duty military service and any discharge other than dishonorable. Basic eligibility entitles a veteran to treatment at VA hospitals at some cost.
  - Enhanced eligibility is established for various veterans groups, including those who receive a VA pension, are a former prisoner of war, have received a Purple Heart Medal or Medal of Honor, or have a service-connected disability rating of 10 percent or more. These groups are more likely to qualify for health care at VA facilities at little or no cost.
- Veterans in Kentucky can access care at federal VA inpatient hospitals located in Louisville; Lexington; Huntington, WV; and Nashville, TN. There also are 12 outpatient VA health care clinics around the state.
- Factors that can limit veteran's access to health care include
  - the amount of money appropriated by Congress to the VA. Limited funds have resulted in the creation of priority groups.
  - increased competition for VA resources due to the increase in veterans from Iraq and Afghanistan, many who require lengthy treatment for serious service-related injuries.
  - inappropriate scheduling practices and ineffective management of the VA.
- In early 2014, reports of alleged inappropriate scheduling practices at medical centers throughout the Veterans Health Administration surfaced. This led to an internal audit that revealed systemic problems in scheduling methods and willful misconduct by management.
- Kentucky operates three veterans' nursing homes in Wilmore, Hanson, and Hazard with 561 beds. Construction has begun on a fourth veterans' nursing home in Radcliff that will give Kentucky a total of 681 beds available statewide.
- The Kentucky Department of Veterans Affairs (KDVA) does not provide direct health care other than what is offered through its state veterans' nursing homes. KDVA can assist veterans in other ways to increase access to health care by providing information about their VA health care benefits, assistance with benefits determinations, funding to the Disabled American Veterans, and other veterans service organizations to provide veterans with transportation to medical appointments. The General Assembly provides for these activities through the state budget. Additional funding is derived from the sale of veterans' license plates. The General Assembly also provides oversight for these state programs.

