

Topics Before The Kentucky General Assembly

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Prepared By

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Foreword

The Kentucky General Assembly will convene on January 5, 2016, to take up a host of important public policy matters. But the hard work of developing this public policy doesn't start that day – it actually started much earlier, shortly after the adjournment of the 2015 Session. The Legislative Research Commission (LRC) supports the General Assembly year round, developing background information and research to support the bill drafting process.

This document profiles a selection of public policy issues facing the General Assembly in 2016. We publish this document as a public service, to give constituents and legislators quick “bullet point” summaries on matters of common interest. It isn't an exhaustive list, nor should it be taken necessarily as a profile of the most prominent issues. Many thanks to the LRC Director's office staff, committee staff administrators, and analysts who have collaborated to bring you this document.

We invite you to participate in the legislative process. Share your perspective and find your voice on the matters that are of interest to you. The LRC is here to facilitate your involvement; learn more at our website, lrc.ky.gov.

David A. Byerman
Director

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Use Of Local Foods In Public Universities

Prepared By Kelly Ludwig

- In 2002, the General Assembly passed Senate Bill 13, requiring the Department of Parks to establish a program, in conjunction with the Kentucky Proud Program, promoting the sale of Kentucky-grown agricultural products in state resort park restaurants, gift shops, concessions, and golf courses.
- The Kentucky Proud Program is administered by the Kentucky Department of Agriculture and funded through the Kentucky Agricultural Development Fund. The fund is directed by the Kentucky Agricultural Development Board and administered by the Governor's Office of Agricultural Policy. Since its inception, the Kentucky Agricultural Development Board has awarded \$15.8 million to the Kentucky Proud Program.
- The Kentucky Department of Agriculture's Kentucky Proud Farm to Campus Program was launched in April 2013 to assist higher education institutions in its efforts to integrate Kentucky Proud foods in foodservice systems and shelf-stable Kentucky Proud products in campus bookstores.
- The Kentucky Department of Agriculture works with university dining services to identify current levels of local food purchases with a goal of expanding the number of local food options at campus dining locations. Five public universities participate in the Kentucky Proud Farm to Campus Program: Eastern Kentucky University, Morehead State University, Murray State University, University of Louisville, and Western Kentucky University.
- Food service systems face challenges integrating local foods in campus dining halls, such as the lack of available farm-fresh products due to Kentucky's growing season conflicting with the university academic calendar; higher cost of local foods; failure of producers to meet food safety and food handling regulations; and farmers' lack of capacity, infrastructure, and resources.
- In 2014, the University of Kentucky signed a 15-year, \$245 million contract with Aramark, a food service provider. Aramark guaranteed \$2 million in Kentucky Proud and local food purchases. By the end of the contract, it is projected Aramark's local food purchases will represent approximately 25 percent of its total food purchases. Aramark faces penalties of \$100,000 to \$150,000 a year if it fails to meet contract guidelines.
- Agriculture industry representatives argue that Aramark's purchases of \$1 million for Coca-Cola beverages, \$45,000 for ice from Home City, Inc., and \$39,000 for Pepsi products in its first year should not have counted toward fulfilling the local food purchase requirements.
- Since its 2014 contract, UK purchases from some reporting local suppliers drastically declined. A local meat processor that sources animals solely from Kentucky farms reported

sales to the university declined from \$88,000 to \$12,000 because Aramark reached its contractual obligations with purchases from Coca-Cola, Pepsi, and Home City, Inc.

- Agriculture industry representatives argue that purchases such as Coca-Cola are not local foods and have no farm gate impact. Representatives argue that public institutions should support the local economy, especially when receiving public financial support.
- Agriculture industry representatives advocate that language in food service contracts and Kentucky statutes be amended to clarify what products can be considered Kentucky Proud and local food products.

Zipline Regulation

Prepared By Lowell Atchley

- Recreational ziplines and canopy tours are growing in popularity, prompting some states to consider added regulation out of concerns for the public health, safety, and welfare.
- The Kentucky Tourism Cabinet lists a dozen zipline venues in Kentucky and touts a “Zip the Bluegrass” tour on its website.
- Ziplines typically allow participants to travel from one support structure to another by gravity, suspended in air riding a harness attached to a pulley that travels on a cable. Canopy tours generally involve guided aerial explorations or forest canopies.
- It is unknown how many commercial or professional ziplines exist in the United States. A 2012 report by the Hawaii Office of the Auditor on the regulation of ziplines indicated there were more than 300 ziplines and canopy tours in the nation.
- In the US, 23 states either currently regulate or are considering regulating ziplines, according to the Hawaii report. Only one state conducts inspections, the rest that inspect do a paperwork review, such as looking at engineering plans and drawings, operations manuals, third-party inspection records and logs, and staff training records and certificates.
- The Kentucky Department of Agriculture regulates amusement rides, but it does not regulate ziplines. The department has indicated that its rides and attractions inspectors cannot adequately monitor what appears to be growing numbers of zipline venues. The department employs nine amusement ride field inspectors, one office staff person, and one branch manager. Department inspectors annually check about 550 permanent amusement locales and venues and almost 2,500 mobile amusement rides.
- Managers of ziplines around central and eastern Kentucky note that their courses and equipment are inspected at least annually by companies certified by the Association for Challenge Course Technology. Managers have said they also conduct their own safety inspections throughout the year.
- As with any amusement or recreational activity, zipline accidents occur. Deaths at zipline venues have been investigated in North Carolina, Utah, South Carolina, and Tennessee.
- In Kentucky, one zipline accident caused serious injuries to a child at a festival in Lexington in May 2014.

Coal And Natural Resource Severance Taxes And Funding For The Local Government Economic Assistance And Development Funds

Prepared By Eric C. Kennedy

- The amount of money made available to local governments through the Local Government Economic Assistance and Development Funds, which originates from state severance tax revenues, has been declining due to a decline in overall tax revenue as well as the allocation of fund money for various programs and projects through the state budget. This decline is presenting fiscal challenges for many localities that rely on these funding programs.
- The coal and natural resources severance taxes are imposed on the privilege of severing or processing coal or natural resources at the rate of 4.5 percent of the gross value of the material severed or processed.
- The coal severance and processing tax was enacted in 1972 to offset the reduction in general fund revenues caused by exempting groceries from the sales tax. The natural resource severance and processing tax was enacted in 1980 and includes all forms of minerals other than coal and oil, such as limestone and natural gas.
- Since fiscal year 2012, the amount of revenue generated by these taxes has decreased.

Figures In Millions

	FY 2012	FY 2013	FY 2014	FY 2015
Coal	\$298.3	\$230.5	\$197.5	\$180.3
Natural Resources	\$35.8	\$28.0	\$31.3	\$30.5

- By statute, the coal severance tax is allocated this way:
 - 50 percent of receipts goes to the state General Fund
 - 35 percent goes to coal-producing counties through the Local Government Economic Development Fund
 - 15 percent goes into the Local Government Economic Assistance Fund
- By statute, the natural resource tax is allocated this way:
 - 50 percent goes into the General Fund
 - 50 percent goes into the Local Government Economic Assistance Fund
- The Local Government Economic Assistance Fund (LGEAF) is distributed directly to coal-producing counties, coal-impact counties (counties through which coal is transported), natural resource-producing counties, and incorporated areas within those counties. These funds may be used for specific types of expenditures related to improving the quality of life for residents.

- The Local Government Economic Development Fund (LGEDF) is distributed to coal-producing counties in the form of grants for specific industrial development projects.
- Decreasing tax revenues has resulted in a decrease in the amount of funding that is transferred into the LGEAF and LGEDF. Therefore, less revenue is available for the participating local governments. Additionally, the state budget typically makes specific allocations at various steps throughout the distribution of the severance revenues. These allocations reduce the amounts that local governments receive through the LGEDF.
- From 2005 through 2016, the state budget also amended the LGEDF program to allow counties to use these funds for activities other than industrial development.
- These funding reductions are challenging many localities that rely on these funds to operate programs, make community investments, and pay debt service for new and completed capital projects.
- Legislation has been introduced in each of the last four regular sessions to address this topic in various ways, such as by increasing the portion of tax receipts transferred into the LGEAF and LGEDF and also reforming the formulas through which money in those funds are allocated among the local governments.
- The table on the next page details the flow of funds for the 35 percent allocation of coal tax receipts into the LGEDF for coal-producing counties in FY 2015.

**Flow Of Funds For The 35 Percent Allocation Of Coal Tax Receipts
 Into The Local Government Economic Development Fund
 For Coal-Producing Counties
 Fiscal Year 2015**

Total coal tax receipts in FY 2015	\$179,229,517
<i>less</i> allocation to pharmacy scholarships	800,000
<i>less</i> allocation to osteopathic scholarships	872,500
<i>less</i> allocation to Trover Clinic	1,000,000
Coal tax receipts remaining	\$176,557,017
35% of remaining receipts into LGEDF	\$61,794,956
<i>less</i> allocation to Department for Local Government	669,700
<i>less</i> allocation to Kentucky Infrastructure Authority	370,000
<i>less</i> allocation to Read to Achieve	2,100,000
<i>less</i> allocation to School Facilities Construction Commission	4,617,900
<i>less</i> allocation to mining engineering scholarships	300,000
<i>less</i> allocation to School Technology in Coal Counties	1,750,000
<i>less</i> allocation to Robinson Scholars Program at UK	1,000,000
<i>less</i> allocation for debt service on prior water & sewer resource development projects	4,091,400
<i>less</i> allocation for debt service on prior infrastructure for economic development projects	22,573,000
<i>less</i> allocation to Mine Safety and Licensing	3,219,800
<i>less</i> allocation to Save the Children	500,000
LGEDF moneys remaining after above allocations	\$20,603,156
66.66% of remaining moneys to be allocated among the coal-producing counties (amounts deposited into a county account are appropriated for projects authorized in the budget bill prior to any grants being awarded pursuant to the statutory program)	\$13,735,437
<i>less</i> allocation to the Regional Strategic Development Fund (from eastern Kentucky coal-producing counties' portion only)	2,000,000
33.33% of remaining moneys to be allocated to the multi-county fund	\$6,867,719
<i>less</i> allocation to Operation Unite	2,000,000
<i>less</i> allocation to Energy Research and Development Fund	1,584,500
<i>less</i> allocation to multi-county regional industrial park authorities	200,000
<i>less</i> allocation to SOAR administrative expenses	200,000
<i>less</i> allocation to Coal County College Completion Scholarships	2,000,000
<i>less</i> allocation to Division of Oil and Gas – Best Practices Manual	25,000
Multi-county fund moneys remaining after above allocations	\$858,219

The Kentucky Law Enforcement Foundation Program Fund And The Kentucky Firefighters Foundation Program Fund

Prepared By Pam Thomas

Background Information

- The Kentucky Law Enforcement and Firefighters Foundation Programs were established by the General Assembly to encourage local law enforcement agencies and fire departments to require law enforcement officers and firefighters to meet educational and training standards. Departments adopting the program standards and training requirements receive salary supplements for each officer or firefighter who attends basic training and receives a minimum number of hours of in-service training annually. In addition, the Kentucky Firefighters Foundation Program also provides aid to local volunteer fire departments through an annual stipend.
- Because the purpose of the original program was to encourage local law enforcement officers and firefighters to obtain training, law enforcement officers and firefighters employed by the state were not included in the program.

Governance of the Funds

- The Kentucky Law Enforcement Foundation Program (KLEFP) is administered by the Department of Criminal Justice Training, which is a part of the Justice Cabinet and housed at Eastern Kentucky University.
- The Kentucky Firefighters Foundation Program (KFFP) is administered by the Commission on Fire Protection Personnel Standards and Education, housed at the Kentucky Community and Technical College System.

Program Funding

- Both programs, by statute, are funded through a dedicated insurance premium surcharge. The assessment rate is statutorily established at \$1.50 on each \$100 of premium, assessments, or other charges paid for insurance coverage provided to policyholders on risks located in Kentucky.
- Statute requires the commissioner of the Department of Revenue to adjust the statutorily established rate as necessary to provide sufficient funds for the uses and purposes of the KFFP and KLEFP. The Commissioner increased the rate to \$1.80 effective April 1, 2010. The insurance surcharge generated approximately \$102.9 million in fiscal year 2014.
- There is no statutory formula splitting the receipts between the two funds, but the split historically has been approximately 60 percent to the KLEFP fund and 40 percent to the KFFP fund. In FY 2014, the KLEFP fund received approximately \$60.4 million, and the KFFP fund received approximately \$42.3 million.

- Over the years, transfers have been made from both funds to the General Fund to support general governmental expenditures. In FY 2014, \$17.5 million was transferred from the KLEFP fund and \$9.4 million was transferred from the KFFP fund.

Detailed Information – Kentucky Law Enforcement Foundation Program – The KLEFP fund provides the following support:

- **Salary Supplements** – The KLEFP provides salary and related retirement supplements to local governments participating in the program for each law enforcement officer who meets the annual training standards. The statutory amount of the supplement is \$3,000 per officer; however, language in executive branch budget bills since 2006 has increased the salary supplement to \$3,100. In FY 2014, \$30.8 million was paid for salary and related retirement supplements to approximately 7,300 certified law enforcement officers.
- **Other Administrative Costs** – The fund also pays administrative costs of the Department of Criminal Justice Training, the Kentucky Law Enforcement Council, and the Police Officer Professional Standards office. These expenses were \$17.8 million in FY 2014.
- **Officers Included Through Budget Language** – In addition to the law enforcement officers included by statute, the General Assembly has, through language in the executive branch budget, included the following additional law enforcement officers:
 - Since 2006, state troopers, arson investigators, hazardous device investigators, legislative security specialists, vehicle enforcement officers, and state police dispatchers; and
 - Since 2012, Fish and Wildlife Resources conservation officers.
- **Officers Not Included That Must Fulfill Training Requirements** – One of the issues that has been raised over the past several sessions is that there are approximately 300 law enforcement officers, most of whom are employed by state government, who are required to receive training, but are not included in the KLEFP. Proposals to amend the KLEFP would have amended the definitions to include these officers and the officers added through budget language.

Detailed Information – Kentucky Firefighters Foundation Program – The KFFP provides the following support:

- **Salary Supplements** – KFFP provides salary and related retirement supplements to local governments participating in the program for each firefighter who meets the annual training standards. The statutory amount of the salary supplement is \$3,000 per firefighter; however, language in executive branch budget bills since 2006 has increased the salary supplement to \$3,100. In FY 2014, \$15.4 million was paid for salary and related retirement supplements to approximately 3,700 professional firefighters.
- **Volunteer Fire Department Aid Payments** – KFFP provides annual aid stipends of \$8,250 annually to qualifying volunteer fire departments for equipment and training, workers' compensation insurance, health insurance, and general expenses. In FY 2014, these stipend payments totaled \$5.6 million and were paid to 681 departments.

- **Other Programs, Benefits, and Support** – The KFFP also pays for workers’ compensation insurance and provides other training and educational benefits, facilities, and assistance programs to fire departments.

Proposals To Amend The KFFP And KLEFP – Over the past several years, legislation has been introduced to increase the amount of the salary supplement paid to firefighters and law enforcement officers, as well as the stipend paid to local volunteer fire departments. The supplement amount was set in statute at \$2,500 in 1980, was increased to \$2,750 in 1998, and was increased to the current level of \$3,000 in 1999. Stipends for volunteer fire departments increased from \$5,000 to \$6,500 in 1998 and to \$7,500 in 1999. Other than the small increases mentioned previously via budget language, there has been no statutorily mandated increase in the stipend amounts since 1999, despite increased revenues available from both funds due to the surcharge rate increase imposed by the Commissioner of Revenue in 2010.

Data Mining To Set Insurance Rates

Prepared By Dale Hardy

- Data mining is a general term given to a variety of data analysis tools used to discover patterns and relationships in data that may be used to make predictions. Data mining is not the extraction of data, but rather gaining knowledge and recognizing behavioral patterns through the analysis of a large amount of data.
- Price optimization is a data mining tool that allows companies to determine how consumers will respond to different prices for their products and services.
- Companies and industries use computer software and algorithms to analyze mined data to ascertain the optimal price a consumer will accept.
- Most insurance rates are required by statute to be based on certain risk factors.
- In the insurance industry, data mining could be used to set different rates for customers with the same risk factors.
- Data mining allows an insurance company to identify which customers are likely to switch insurance carriers due to a rate hike and which customers are likely to stay with the company even if their rates increase.
- Companies that use price optimization are not required to provide that information to regulators.
- A 2013 survey by Earnix, a company that produces software for pricing analytics and optimization, found that 26 percent of all auto insurance companies used price optimization in that year, and an additional 36 percent said they plan to do so in the near future.
- The Insurance Information Institute stated that the process of using price optimization does not abandon the core principle of risk-based pricing, instead contended that it provides more precision in the process associated with pricing.
- Data mining could cause rate disparity among certain demographic groups as it identifies such factors as address, education level, income level, or race.

Health Insurance Network Adequacy And Transparency

Prepared By Sean Donaldson

- Network adequacy refers to the ability of an insurer to arrange for a sufficient number of primary care physicians, specialists, and other providers within its network to meet the needs of the plan's enrollees.
- Under KRS 304.17A-254 (non-managed care plans) and 304.17A-510 (managed care plans), insurers are required to disclose to plan enrollees the availability of a printed provider directory listing all providers in the plan's network. This directory must be filed with the Department of Insurance. Insurers also may make electronic directories available, but are not required to do so.
- Balance billing is a process where a provider bills an individual insured for the portion of the bill not reimbursed by the insurance company. In-network providers are prohibited from balance billing pursuant to KRS 304.17A-254(2), for non-managed care plans and KRS.17-527, for managed care plans. A typical scenario is where a hospital and a surgeon are in network but the anesthesiologist for a surgery is not. As a result, the anesthesiologist may bill the insured a "surprise bill" for the balance that is not reimbursed by the insurance company. The insured assumed that because the hospital and surgeon were both in network, all services were provided by in-network providers.
- Recently, several organizations have raised issues relating to balance billing and network adequacy, relating specifically to transparency. While insurers are required to provide access to the printed directory, there is no time requirement for updating it. Most insurance policies renew on an annual basis, so the directory may only be updated once a year. Provider changes throughout the year are not required to be updated immediately.
- The National Association of Insurance Commissioners reviewed its Managed Care Plan Network Adequacy Model Act and proposed changes in October 2015 that would require insurers to post electronic provider directories that are updated at least monthly. A printed copy would be available upon request. The proposed act also encourages states to require insurers to contact providers within a set time frame to verify that they are still active providers. The proposal also includes directions to state insurance regulators for dealing with patients who receive services, and charges, from providers after they are no longer in network but have not been removed from the directory.
- The American Medical Association has also stated its position that provider directories should be updated online at least every 30 days.

Brownfields Remediation

Prepared By Louis DiBiase

- Brownfields are unused properties where the release of a pollutant, contaminant, or hazardous substance has occurred or has the potential to occur. They are generally on industrial sites where petroleum or chemical processes were involved, such as dry-cleaning facilities, paint factories, and so forth. Presence of the pollutant, contaminant, or hazardous substance may violate environmental regulations and makes reuse of the property difficult.
- Brownfield sites can be barriers to economic development. Many of these properties are located in prime business locations. However, the cost of cleanup and returning the properties to productive use can be prohibitive. If the properties sit for long periods of time, they become blighted and further deter development in the area. The problem is significant, as there are an estimated 8,000 brownfields sites throughout Kentucky.
- Funds invested in brownfields remediation can contribute to economic development and improve the environment and overall quality of life in the neighborhood around the brownfields. According to the US Environmental Protection Agency (EPA), for each dollar the agency invests in brownfields remediation through its grant programs, there is an additional \$17.54 in private investment, and every \$100,000 invested is associated with 7.3 jobs. The agency also claims that a remediated brownfield can increase surrounding residential property values by between 5 percent and 12 percent.
- Kentucky state and local governments have some programs to encourage investment in brownfields remediation. Funded partly through grants provided by the EPA, these programs include loans, subgrants, assessments, and technical assistance. The state also provides liability protection for potential investors. It also has two tax incentives: an income tax credit of up to \$150,000 credited against funds spent on remediation, and a property tax reduction for 3 years on the brownfields property that reduces the tax on assessed value from 31.5 cents per \$100 to 1.5 cents per \$100.
- Economists with the Legislative Research Commission caution that there is little quantifiable evidence that tax incentives to remediate brownfields encourage investment that would not have otherwise taken place. They contend that incentives to develop in one area may draw investment away from another area, resulting in no positive net improvement statewide. The economists also note that tax incentives to remediate brownfields may have a negative fiscal impact.
- Many states provide tax incentives for brownfields remediation. Missouri offers a tax incentive of up to 100 percent of the cost of cleanup. Iowa offers up to 30 percent of the developer's investment. Missouri and Florida both tie tax credits for brownfields remediation to job creation. Meanwhile, in Kentucky, only two applicants have applied for Kentucky's income tax credit, possibly because the credit is not available to anyone who has received

funding through another public program. Since most brownfields remediation is undertaken with some funding through grant programs, this makes Kentucky's credit of limited use.

- Brownfields remediation poses an ongoing challenge for economic development. Whether and to what extent remediation is encouraged through tax or other incentives will involve balancing the costs and benefits across and between communities and for the state as a whole.

Kentucky State Parks Infrastructure Funding

Prepared By John Buckner

- Kentucky's State Parks System is a large, diverse system composed of 17 resort parks, 21 recreation parks, and 11 historic sites. Within these parks, there are 12 18-hole and 4 9-hole golf courses, 24 swimming pools, 15 marinas, 31 campgrounds having 2,600 campsites, and 250 miles of trails, all situated within 45,000 acres of land.
- In the last fiscal year, the Department of Parks generated \$48 million in revenue and received \$33 million from the General Fund. A 2014 economic analysis by the University of Louisville of state parks showed a nearly \$890 million statewide economic impact. In some counties, a state park is the largest income generator.
- Many infrastructure components within state parks are antiquated and require costly maintenance. Officials from the Department of Parks state that many of the waste water treatment facilities, lodge pools, roofs, and HVAC systems need to be replaced; numerous campground sites fail to meet customer expectations for electrical and water hookups; and the lodge at Jenny Wiley State Resort Park needs to be replaced.
- To address infrastructure needs, the Department of Parks uses a 6-year capital plan that covers three biennia. Each plan is flexible to address unforeseen issues that may be caused by weather events or an unanticipated system failures.
- Each 6-year capital plan is subdivided into three broad categories: 1) general maintenance, which encompasses both preventive and unanticipated maintenance needs; 2) repair and replace infrastructure, which encompasses planned major facility repairs; and 3) facility improvements, which includes projects that are enhancements to existing facilities.
- The department's 2016-2022 capital plan calls for \$53.6 million in general maintenance, \$137 million in repair and replace infrastructure, and \$50.3 million in facility improvements, for a total of \$241 million in capital needs for the 6-year period. In addition, the department requested \$11.6 million in road funds to maintain 182 miles of roads within the state park system. There is some debate whether to issue bonds to cover the total cost or to divide the cost into three increments.
- To generate additional revenues to reduce funding needs, some have suggested that entry and parking fees be levied. Only 10 states, including Kentucky, do not charge entry or parking fees. Some have suggested privatizing certain elements within state parks. Others argue that the historic mission of Kentucky's state parks is to preserve and protect natural settings and cultural and historic landmarks, and not to generate a profit.

Kentucky's Aviation And Aerospace Industry

Prepared By John Buckner

- In 2014, Kentucky overseas exports in aerospace and aviation products were valued at \$7.8 billion. This sector accounts for 28 percent of the total value of all products manufactured in Kentucky for export abroad.
- Between 2013 and 2014, exports of aircraft components increased over 37 percent. This increase is driven by many US and foreign airline companies replacing their existing stock of aircraft with new, more fuel-efficient planes. In April 2015, General Electric's aviation division, which is based near Cincinnati, reported a manufacturing backlog of over 15,000 jet engines.
- In 2014, France was Kentucky's primary export market, with \$1.75 billion in aerospace products shipped. Kentucky ranked first among all states with exports to Brazil, and second in exports to Britain, China, and Hong Kong.
- The demand for new aircraft and aircraft components is pushing investment and employment in supplier companies. The Cincinnati/Northern Kentucky region is ranked in the top 15 in the nation in aerospace products and parts manufacturing. Over 60 aerospace companies directly employing more than 12,000 workers are based in the area.
- In 2014, counties in northern Kentucky were named by the US Department of Commerce as part of a leading aerospace region. This designation will allow companies in the region to more efficiently access funding and manufacturing assistance to address a rapid increase in demand for aerospace components.
- The rapid growth in aviation and aerospace industries in Kentucky has largely gone unnoticed and more information is needed to understand the scope of this industrial sector. To address this, 2015 House Joint Resolution 100 directed the Transportation Cabinet, the Economic Development Cabinet, and the Commission on Military Affairs to cooperatively study the economic impact of the aerospace and aviation industry in Kentucky. The participating agencies are developing a Request for Proposal for a firm with expertise and experienced staffing to undertake the study.

Management Of And Participation In Interscholastic Athletics

Prepared By Janet Stevens

- The Kentucky Board of Education (KBE), by statute, manages and controls public schools and all programs operated in the schools, including interscholastic athletics.
- KBE has designated the Kentucky High School Athletics Association (KHSAA) to manage middle school and high school interscholastic athletics, but KBE must approve any rules, regulations, and bylaws adopted by the KHSAA.
- In addition to each public high school, each nonpublic high school that chooses to be accredited by the Kentucky Department of Education is eligible to become a member of the KHSAA and participate in KHSAA-sanctioned contests. KHSAA membership fees are based on the number of students enrolled in the school.
- KHSAA sanctions 40 state championships in 13 sports and 4 sport activities for students in grades 9-12, licenses and trains over 4,000 officials, provides catastrophic insurance for its more than 70,000 member school student-athletes, and oversees coaching education and sports safety programs.
- KHSAA bylaws require student athletes in grades 9-12 to be enrolled in the KHSAA member school they want to represent in athletics and receive a minimum 4 hours of instruction daily in that school. Students in the 7th and 8th grades are allowed to participate on the high school team for which their school is a feeder school.
- There are no statutes or regulations that prohibit local school boards from adopting policies to allow nonpublic school students, such as home school or private school students, to participate on public school-sponsored athletic teams; however, teams with athletes not meeting KHSAA bylaws approved by the KBE would be ineligible to participate in KHSAA-sanctioned contests.

Performance-Based Funding For Postsecondary Education Institutions

Prepared By Ben Boggs

- The purpose of outcomes-based performance funding for postsecondary institutions is to connect a portion of the state allocations to specific results to provide tangible institutional incentives to improve state, institutional, or student outcomes. If an institution meets its goals, it receives state funds linked to the performance measures.
- Outcomes-based performance measures in postsecondary education include indicators such as
 - graduation rates,
 - transfer rates,
 - remediation activities and effectiveness,
 - numbers of degrees awarded, and
 - pass rates on licensure exams.
- According to the National Conference of State Legislatures, 32 states have incorporated some form of outcomes measurements in postsecondary institutional performance assessment and funding allocations.
- Models can vary in design with implications for base or additional incentive funding.
- Assessments could be based on the institution
 - reaching a specific institutional target,
 - demonstrating a specific rate of improvement, or
 - reaching a statewide target earlier than other institutions.
- Advantages of performance-based funding may include
 - accountability for the institutions while allowing them the flexibility to determine how best to reach their outcome goals;
 - a direct focus on student success and how well the postsecondary institutions produce degrees in comparison to their state allocations; and
 - successful student transfer measures. The community colleges and public universities could be rewarded for student transfers that lead to bachelor's degrees.
- Concerns regarding performance-based funding may include
 - a risk of underemphasizing other institutional contributions to state needs, such as the benefit of university research on the state's economy;
 - a focus on "quantity versus quality," with the emphasis on granting degrees or certificates rather than on improving student learning; and
 - a "one size fits all" risk of neglecting the difference in missions that research universities, comprehensive universities, and community and technical colleges have in service to their regions and the Commonwealth.

- The Council on Postsecondary Education intends to bring a performance-based funding model to the 2016 General Assembly.

School Calendars

Prepared By Joshua Collins

- School calendars are set by local school boards upon recommendation by the district superintendent, and typically with input from a school calendar committee, which may include parents and other interested parties. Most Kentucky public schools start by the middle of August and end by the middle or end of May.
- State law requires school calendars to contain a minimum of 185 days, including at least 1,062 hours of instructional time for students delivered on not less than 170 student attendance days. The calendar must also include 4 holidays, 4 professional staff development days, and 2 planning days. The 185 days may not include fall, winter, spring, or any other breaks. The calendar does not include any snow or emergency days, which add to the length of the school year.
- Tourism industry representatives indicate that August is the best month for tourism, but tourist activity is being affected by school calendars. They assert that it would help their industry to shift the school year to start later, either later in August or after Labor Day, and end later in May or June. This could provide the industry with more vacationing families and student labor to keep tourism attractions operating during August.
- Education professionals indicate that current school calendars provide an educational rhythm that reduces learning loss. With a later start date, some schools may be pressed for time for instruction and testing when courses have end-of-course exams before the winter break. There is also concern about limiting local boards of education from determining the best calendar for their districts. Another issue is restricting flexibility that allows districts to plan for dealing with inclement weather.
- The Kentucky tourism and travel industry contributed over \$13 billion to Kentucky's economy in 2014. The tourism industry in 2014 generated nearly \$1.37 billion in tax revenues in Kentucky, with \$1.19 billion in state taxes and nearly \$176.1 million in local taxes. A total of 179,963 jobs in Kentucky resulted from the industry in 2014, providing over \$2.9 billion in wages.
- Shifting the school calendar may simply shift when and where families spend their entertainment dollars.
- Every state allows districts to choose school start dates but many impose conditions on those dates. Most restrictions set the earliest start date at the end of August or beginning of September.

Conversion Of Existing Natural Gas Pipelines To Carry Natural Gas Liquids

Prepared By D. Todd Littlefield

- Natural gas liquids (NGLs) are a hydrocarbon byproduct of natural gas extraction and include ethane, butane, and propane. They are used in plastics, synthetic rubber, and antifreeze. They are a valuable resource.
- A previous attempt to build a pipeline to transport NGLs across parts of Kentucky was abandoned in 2014 by its proponents, Williams Co. and Boardwalk Pipeline Partners. The Bluegrass Pipeline would have required significant new construction and the acquisition of new easements, some from unwilling landowners.
- A second effort is being made to provide pipeline to move NGLs from drilling operations in shale gas deposits in Ohio, West Virginia, and Pennsylvania to fractionation facilities on the Texas coast.
- Tennessee Gas Pipeline Company, a subsidiary of Kinder Morgan, owns many miles of natural gas pipeline crossing 18 Kentucky counties. Some of this pipeline system is as much as 70 years old. These natural gas lines transport gas from Louisiana to the northeast.
- In February 2015, Kinder Morgan requested permission from the Federal Energy Regulatory Commission (FERC) to “abandon in place” one of these pipelines. If FERC approves, Kinder Morgan has indicated that it will sell this pipeline to an affiliated company, Utica Marcellus Texas Pipeline, LLC (UMTP).
- UMTP plans to repurpose this pipeline to carry NGLs south. Use of this existing pipeline (which crosses existing easements) reduces many of the largest problems associated with acquiring new easements. A small amount of new pipeline, two new compressors, four half-acre workspaces, four new main line valves, and seven new pump stations would be required in Kentucky.
- Although much less property remains to be acquired for the Kinder Morgan project than was needed for the Bluegrass Pipeline, eminent domain remains an issue. Some contend that easements originally acquired in the 1940s by way of eminent domain may not be valid for a pipeline that is not for natural gas or “in public service” within the meaning of KRS 278.502.
- On May 22, 2015, the Kentucky Court of Appeals affirmed the Franklin County Circuit Court decision that Bluegrass Pipeline LLC did not have the power of eminent domain because it is not a utility regulated by the Public Service Commission (PSC). An appeal to the Supreme Court is pending.
- Critics of the Kinder Morgan project question the ability of an older pipeline to safely carry a different substance in the opposite direction at a higher pressure. Concerns raised include safety of nearby residents in the case of a leak or explosion, danger to groundwater, and lack

of regulatory oversight. Others question the economic development value for Kentucky beyond a small number of jobs.

- Whereas a natural gas leak tends to rapidly dissipate, NGLs are heavier than air, posing an asphyxiation danger and elevating the risk of an explosion or fire. Similarly, NGLs pose greater risks of water and surface pollution.
- Other than FERC’s jurisdiction over the abandonment process, there is little regulation to approve or control such a project. The Pipeline and Hazardous Materials Safety Administration (PHMSA) sets standards for construction of NGL pipelines but does not regulate the location or routing of such lines. The US Army Corps of Engineers must review the placing of any pipeline across or through jurisdictional water. Existing aerial crossings of the Ohio and Dix Rivers would be replaced by pipeline under the river bed.
- In September 2014, PHMSA issued “Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service.” However, there is no advance review by PHMSA of any of the topics covered nor is there a permitting process. The document is a set of recommended practices, not binding requirements. Representatives of the agency have stressed the absence of regulation and the lack of resources within the agency.
- Kinder Morgan has held a solicitation for interest in buying space on the pipeline and reports insufficient interest. Additional solicitation is planned. The abandonment petition and other efforts continue.
- Legislative action might include amendments to the eminent domain statutes.

Municipal Electric Authorities

Prepared By Janine Coy-Geeslin

- In the energy industry, a joint action agency is a mechanism for utility companies, municipalities that own public utilities, or municipalities that purchase energy from private utilities to obtain economically reliable energy for their consumers. A single committee or board decides the acquisition and delivery of energy needs and resources.
- In September 2015, 11 municipal electric utilities formed the Kentucky Municipal Energy Agency. As required by their purchase power agreements with Kentucky Utilities, the members have notified Kentucky Utilities that they will not renew their contract and will begin buying power on the open market in 2019.
- In Kentucky, the Interlocal Cooperation Act gives local governmental units the authority to cooperate with each other to provide services and facilities for their communities.
- According to municipal utilities, this Act is not sufficient, and legislation is necessary for multiple municipal utilities to cooperate in the most streamlined and cost-effective organization to provide lower rates for their customers.
- Legislation has been proposed that would allow municipal electric utilities to form municipal electric authorities, a type of joint action agency. A municipal electric authority would be a separate body and public agency with power to finance the acquisition or generation of reliable supplies of electric capacity and energy for the municipal utilities.
- According to the investor-owned utilities such as Kentucky Utilities, any energy generation by the municipal electric authorities should fall under the regulatory authority of the Public Service Commission (PSC). Under existing law, municipal utilities are not regulated by PSC.

Child Fatality And Near Fatality Prevention

Prepared By Ben Payne

- The Children’s Bureau of the US Department of Health and Human Services reported that Kentucky has relatively higher numbers of abused and neglected children and child deaths per capita compared to other states.
- In 2013, the Kentucky External Child Fatality and Near Fatality Review Panel was established to conduct comprehensive reviews of child fatalities and near fatalities to help understand what actions Kentucky might take to reduce the possibility of future incidents.
- The panel reviewed records provided by the Department of Community Based Services for 72 child fatalities and 43 near child fatalities from 2013.
- Based on circumstances of the reviewed cases, the panel issued the following recommendations in 2014 to the General Assembly:
 - Improve public education on safe bed sharing habits and unsafe sleep for children.
 - Increase identification of caregivers who are substance abusers.
 - Increase mental health assessment and treatment for caregivers.
 - Improve education on identifying and preventing abusive head trauma of children.
 - Coordinate investigations of abuse and neglect cases between courts, law enforcement, health care providers, and state agencies.
 - Provide effective services for families with multiple needs.
 - Improve public education on neonatal abstinence syndrome and child maltreatment.
 - Open Kentucky court hearings related to dependency, neglect, and abuse cases.
 - Conduct a study of the need to increase the number of trained and qualified social service workers in the Department for Community Based Services to reduce caseloads and provide more effective and consistent services across the state.

Kentucky Living Will Directive

Prepared By DeeAnn Wenk

- The Kentucky Living Will Directive Act of 1994 permits individuals to complete a legal form making decisions about their own medical care, including the right to accept or refuse treatment.
- The growth in the number of elderly individuals and the increasing complexity of medical care has punctuated the importance of designating a surrogate to help make health care decisions in emergency and end-of-life situations.
- National studies show that fewer than one-third of adults have a current living will directive. Living will directives for minor children are even less common.
- In Kentucky, a person's designated surrogate may make health care decisions for the person *only* after a physician has determined that the person is incapacitated. Individuals may want a surrogate to begin making decisions before a physician has determined that the person is incapacitated, particularly in emergency situations.
- The federal government allows but limits the ability of health care providers to share information with a patient's family and friends even if they have been named as a surrogate without specific authorization by the patient. Kentucky does not allow health care providers to share information with a surrogate, which limits a surrogate's ability to make informed decisions for an individual. Specific language could be added to Kentucky statutes to permit individuals to authorize a surrogate to receive health care information.
- Unless a specific person is designated, health care providers may not share health care information or involve others in decisions when children are injured and parents are not present. Kentucky has no provision to allow parents and guardians to designate a surrogate and provide directions for care of a child in emergency situations when the parents or guardians are absent or also injured. Kentucky statutes could allow a separate living will directive form for the health care of minor children.
- Every state has its own living will form. Some states accept forms from other states or alternative forms as legally binding. By statute, Kentucky appears to recognize only its own living will form, saying that a living will "shall be substantially" in the form provided by Kentucky law.
- Kentucky's statutes could be amended to allow use of the Kentucky form or that of any other state or alternative form if it is properly witnessed and notarized.

Medication-Assisted Treatment

Prepared By Sarah Kidder

- Drug overdose deaths quadrupled in Kentucky between 1999 and 2010, ranking the state 5th in terms of overdose deaths.
- The US Department of Health and Human Services estimated that 2.5 million people currently need treatment for opioid use, but fewer than 1 million are receiving it.
- Medication-assisted treatment (MAT) is an evidence-based practice that combines medication approved by the Food and Drug Administration (FDA) with intensive behavioral therapies.
- According to the Substance Abuse and Mental Health Services Administration (SAMHSA), the Centers for Medicare and Medicaid Services, and the White House Office of National Drug Control Policy, MAT is the most effective standard of care for treatment of opioid use disorders.
- There is resistance in the substance use treatment provider community and in the criminal justice system to the use of MAT. Some express concern over the use of opioid-related drugs to treat opioid addiction and believe an abstinence approach, requiring detoxification and the elimination of all drugs, is the best treatment.
- MAT is subject to both federal and state legislation, regulations, and guidelines. The FDA has approved three medications for use in the treatment of opioid use disorders: methadone, buprenorphine, and naltrexone.
 - **Methadone** can be dispensed only at specially licensed outpatient treatment programs certified by SAMHSA and registered with the Drug Enforcement Administration (DEA), or to a hospitalized patient in an emergency. There are 20 methadone treatment programs in Kentucky.
 - **Buprenorphine** (trade names Subutex, Suboxone, Bunavail, Zubsolv) can be prescribed by physicians who complete a training course and receive a special waiver from the DEA. There are approximately 500 physicians who have DEA certification to prescribe buprenorphine in Kentucky, and each is limited to 30 patients the first year, and 100 per year in subsequent years.
 - **Naltrexone** (trade names Vivitrol, ReVia, Depade) must be prescribed by an approved health care provider.
- In the past year, the federal government has taken steps to improve education about and increase access to MAT:
 - Beginning in October, all federal health care agencies must identify barriers to MAT and submit action plans within 90 days to combat them. One goal is to double the number of physicians who are authorized to prescribe buprenorphine.

- Proposed federal legislation would raise the physician prescribing cap for buprenorphine, and the Secretary of Health and Human Services announced planned changes to buprenorphine prescribing regulations.
 - SAMHSA released new grant guidelines that strongly encourage states to require treatment facilities to either use MAT or have collaborative relationships with providers of MAT.
 - The White House Office of National Drug Control Policy announced that drug courts that barred addicts from receiving MAT would no longer receive federal funding.
- At the state level, substance use coverage has been significantly expanded under the implementation of the 2010 federal Affordable Care Act and Kentucky's 2015 Medicaid State Plan Amendment. MAT was addressed in the passage of SB 192 during the 2015 regular session, which included MAT as a substance use treatment option in the funding section.

Oral Health In Kentucky

Prepared By Miranda Deaton And DeeAnn Wenk

- Dental disease is the most common chronic illness for children in the United States. By the age of 19, 68 percent of youth will have experienced tooth decay in permanent teeth. Dental disease is preventable, yet dental care is the most common unmet health treatment and disproportionately affects low-income families and racial or ethnic minorities.
- Kentucky ranks poorly in some indicators for oral health.
 - Only nine states have fewer annual dental visits.
 - Only five states have larger percentages of children with untreated dental decay.
 - Only three states have a larger percentage of senior citizens with six or more missing teeth.
- In Kentucky, 37 percent of adults reported that someone in their household had skipped preventive care or checkups during the past 12 months because of cost.
- The federal Affordable Care Act requires plans in the state health insurance exchanges to provide coverage for children's oral health services as an essential health benefit. Kentucky's plan provides dental services to Medicaid enrollees, but the rates paid to dentists for providing these services are below the national average.
- Access to dental treatment also is an issue. In Appalachia, there are 3.5 dentists per every 10,000 people, while there are about 7 dentists per every 10,000 people in Louisville.
- Dental health has direct impact on school readiness and school attendance. Children with oral health issues are more likely to be absent from school due to dental pain than their peers. Dental health also affects health in permanent teeth. Children who experience issues with oral health also may experience loss of sleep, inability to eat a varied and healthy diet, and loss of energy and concentration.
- In Kentucky, fluoridation is mandatory for community water supplies serving a population of 1,500 or more. Kentucky is a national leader with approximately 96 percent of citizens on a fluoridated water supply. However, about 93,600 households are not connected to a public water system and 5 percent of the state's residents are without a connection to a community water system.

Pharmaceutical And Medical Equipment Pricing

Prepared By Jonathan Scott

- One growth area for pharmaceutical companies involves the purchase and raising of prices of long-existing drugs. Often, the patents for these drugs are expired and the purchase is generally of the only generic manufacturer equipped to produce the treatment.
- In 2015, Turing Pharmaceuticals was criticized for raising the price of Daraprim from \$13.60 to \$750 per tablet. Valeant Pharmaceuticals also was criticized for raising the prices of two heart medications by 212 percent and 525 percent. Valeant had increased the prices of 54 other drugs by an average of about 65 percent. In addition, the price of insulin increased from about \$120 per vial in 2013 to \$270 per vial in 2014, and the price of saline bags has also recently sharply increased.
- While not all increases are this extreme, increases in the amount of co-pays and co-insurance mean that some patients have to spend a larger portion of their incomes to purchase the same treatments.
- In addition, dramatic price increases of long-existing treatments may do little to encourage the development of new treatments.
- Some possible ways to prevent or curtail rapid price increases include
 - limiting the amount that patients are required to pay per month out of pocket.
 - establishing disclosure laws requiring companies to justify drug prices.
 - Some disclosure initiatives require disclosure if a course of treatment exceeds a certain dollar amount.
 - Additional initiatives have required disclosure of marketing costs and disclosure of the price of the drug in international markets. If warranted price caps have been assigned.
 - limiting coinsurance payments relating to specialty drugs.
 - One initiative has capped coinsurance in a specialty drug market to \$250 per month.
 - Another prohibits placing biologics in a specialty drug tier to keep the cost-sharing burden lower.
 - Finally, another initiative prohibits placing all drugs to treat a particular disease in one specialty tier, so that at least one lower price alternative remains.
 - changing drug pricing to reflect the effectiveness of a drug or treatment.
 - incentivizing the use of public benefit corporations to manufacture certain generic treatments.
 - encouraging changes at federal level, such as by modifying the length of time that a biologic drug is excluded from competition.
- Some of the options above may cause insurance premiums to increase, which could negatively affect affordability.

Redrawing Judicial Circuits

Prepared By Jon Grate

There is an assertion that caseloads among judges have become unbalanced as Kentucky's population has shifted over the past several decades. This has led to discussion of redrawing boundaries of Kentucky's judicial circuits and districts and re-allocating the number of judges assigned.

- The judicial branch will report in January 2016 on the results of a weighted caseload analysis to quantify the workload in each judicial circuit and district using consistent statistical metrics across the entire state. This study was mandated by the General Assembly to gather additional data for potential recircuiting plans.
- The Circuit Court is Kentucky's trial court of general jurisdiction, handling felony prosecutions, civil cases over \$5,000, and other cases not specifically assigned to District Court. There are 57 judicial circuits consisting of one or more whole counties. A circuit will have one or more circuit judges. Filings in Circuit Court range from one circuit with 1,319 filings per judge at the high end to a circuit with 379 filings per judge at the low end.
- The District Court is Kentucky's trial court of limited jurisdiction, handling misdemeanor prosecutions, circuit cases \$5,000 and lower (including small claims), and other types of cases specifically assigned to it by statute. There are 60 judicial districts consisting of one or more whole counties. A district will have one or more district judges. Filings in District Court range from one district with 10,434 filings per judge at the high end to a district with 1,477 filings per judge at the low end.
- A family court is a Circuit Court that hears domestic relations cases such as divorce, child custody, and child support, regardless of whether those types of cases would have been heard in Circuit or District Court in the absence of the existence of a family court. Family courts serve 35 of Kentucky's circuits, with the remaining circuits utilizing domestic relations commissioners. Filings in family court range from one circuit with 2,680 filings per judge at the high end to a family court with 750 filings per judge at the low end. The lack of a family court in the remaining counties of Kentucky may also be an equal protection issue.
- A commonwealth attorney is elected for each judicial circuit. Any change in the boundaries of a judicial circuit will also affect the assignment of commonwealth attorneys. Circuit court clerks and county attorneys are elected at the county level and serve only within the county they are elected from and would not be re-assigned by any judicial recircuiting.
- One consideration in redrawing circuit boundaries is the need to accommodate existing judges and commonwealth attorneys who may not be deprived of their office by virtue of a recircuiting. A new plan could be implemented in conjunction with an election. However, the affected offices are not synchronized on the election calendar, with circuit judges serving

8-year terms and being next elected in 2022, and district judges serving 4-year terms and commonwealth attorneys serving 6-year terms and being next elected in 2018.

Heroin And Other Drug Issues

Prepared By Alice Lyon

- Opioids include naturally occurring opiates like heroin, morphine, codeine, and opium as well as synthetic pain medications such as methadone, oxycodone, fentanyl, and hydrocodone.
 - Before heroin is sold to users, it is mixed with other compounds, often multiple times. Because the strength of the drug can vary widely, overdoses are common. In 2011, 3 percent of overdose deaths in Kentucky were from heroin, while the rate in 2014 was 25 percent.
 - Chronic opioid abuse causes changes in the brain that can lead an addicted person to seek more opioids regardless of the consequences. The long-lasting nature of these changes means relapse is common.
 - Opioid users often have co-occurring disorders such as chronic physical illness and mental health disorders. Intravenous drug users who share needles risk infection with Hepatitis C and HIV.
 - Many addicts may steal or sell drugs to get the money to buy opioids. Many addicts are receiving treatment in jails or prisons.
- The 2015 General Assembly passed Senate Bill 192, which provided \$10 million in one-time funding to the Justice and Public Safety Cabinet for distribution to courts, correctional facilities, community mental health centers, and other community programming. Criminal justice savings reinvestment funds will be distributed biennially under the same Justice Cabinet model.
- People in Kentucky who witness or who believe they are experiencing a drug overdose and call for emergency help gained immunity from drug possession charges at the scene in SB 192's "Good Samaritan" provisions. Preventing overdose deaths was the goal of the immunity.
- With implementation of SB 192, new policy questions are arising:
 - Whether callers should instead be charged and arrested, with Good Samaritan actions as a defense to drug possession charges at the time of arraignment.
 - Whether involvement with the criminal justice system could be an incentive for an overdose victim to receive treatment.
 - Whether immunity should extend to situations where 911 would have been called regardless of criminal charges, such as a store clerk calling 911 about an overdose in a public restroom.
- Local health departments may, with local government approval, operate needle exchanges. The word *exchange* is used in statute.
 - There is disagreement about whether SB 192 authorizes needs-based programs where participants could receive clean needles even if no dirty needles are exchanged, or whether the statute requires "strict one-to-one" exchanges of dirty for clean needles, or

“one-to-one plus” exchanges of one dirty needle for set quantities of clean needles. An Attorney General opinion was requested in June 2015.

- Aggravated trafficking is a heroin-specific crime for those who traffic in 100 grams or more of heroin.
 - It is a Class B felony carrying a 10- to 20-year sentence. A person convicted must serve 50 percent of the sentence before being eligible for release on probation or parole.
 - The 100 grams threshold (approximately 1,000 doses) has been criticized as too high.
- Some opioid treatment plans use an abstinence-only and some use medication-assisted treatments. There are three FDA-approved medications:
 - Methadone is a synthetic opioid, used as a replacement to treat symptoms of withdrawal during detox and as a maintenance drug. It requires a daily dose, typically distributed at specially licensed clinics.
 - Buprenorphine is a semi-synthetic opioid that has milder euphoric effects than methadone. It is dispensed for home use, but only by specially licensed physicians who are limited to 100 buprenorphine patients at a time. The Suboxone brand of this medication also contains Naloxone, which stops potential overdoses.
 - Naltrexone is often referred to by the trade name of its once-per-month injectable form, Vivitrol. Naltrexone is not an opiate replacement therapy like methadone or buprenorphine, so it requires detoxification from opioids before it can be used. Any doctor can prescribe naltrexone to any number of patients. Naltrexone is administered in a physician’s office.
- Both methadone and buprenorphine are sometimes illegally sold to self-treating addicts to prevent painful withdrawal symptoms and to recreational users. Naltrexone does not create a euphoric effect or have any divertible street value.
- SB 192 lifted some licensure requirements for new treatment centers with 16 or fewer beds and expedited Medicaid payment to new treatment providers. Demand for inpatient and outpatient treatment is greater than the supply.
- Naloxone is an overdose antidote drug. SB 192 allowed specially trained pharmacists to distribute Naloxone to any person or agency requesting it.
- Since 2004, Kentucky has allowed a spouse, relative, friend, or guardian of a person suffering from substance abuse to petition courts for involuntary drug treatment under Casey’s Law. The law requires
 - an imminent threat of danger to self or others.
 - a signed guarantee to pay the costs of treatment.
- Many jurisdictions have established “rocket dockets” to expedite review of lower-level drug-related cases to identify defendants who might benefit from immediate treatment. In these programs, additional prosecutors are hired for 1 year with SB 192 funds. If those defendants agree to participate, they appear before judges within a matter of days to plead guilty and potentially receive drug treatment as a condition of being released on bond.

- Continuity of care across criminal justice and treatment components has emerged as a policy issue. Individualized case management linking detox, behavioral therapy, insurance benefits, probation supervision, court-ordered treatment terms, community resources, family services, and other components has been suggested as a means to achieve and maintain recovery.

Driving Under The Influence of Drugs

Prepared By Chan Jones

- The offense of driving under the influence, or DUI, typically relates to alcohol intoxication. However, alcohol is just one of many drugs and other substances that can impair a person's ability to operate a motor vehicle.
- The incidents of drugged driving, a form of the criminal offense of driving under the influence, appear to be increasing. In 2013, the National Highway Traffic Safety Administration's Fatality Analysis Reporting System found that drugs were present in 40 percent of fatally injured drivers with a known test result, almost the same level as with alcohol.
- In Kentucky, driving with the presence of certain controlled substances in the blood is a *per se* violation. The prosecution is not required to prove impaired driving, only the presence of the drug in the blood. This includes all illicit drugs except marijuana and some specifically delineated controlled substances.
- A person can also be convicted of driving under the influence of drugs, including over-the-counter medications and prescription drugs, if the drug impairs driving ability.
- Kentucky law does not require that there be a specified amount of drugs in the blood system to determine conviction for driving under the influence of drugs. Whether a driver is charged with a crime is determined on a case-by-case basis and at the discretion of the prosecutor.
- The relationship between a drug's presence in the body; its concentration in blood, breath, saliva, or urine; and its impairing effects is complex and can be difficult for law enforcement to ascertain.
- To combat this uncertainty, some state legislatures have expanded drugged driving laws to include zero tolerance provisions.
- For example, in Arizona, it is unlawful for a person to drive a vehicle while under the influence of any drug, or any combination of liquor and drugs, if the person is impaired to the slightest degree or while there is any drug or its metabolite in the person's body.
- Zero tolerance laws vary by state but typically allow drivers to rebut a drugged driving charge if the drug is one for which they have a prescription. In Kentucky, the claim that the driver has been legally prescribed the drug is a defense to a *per se* drugged driving charge. Having a prescription is not a defense for an allegation that the prescribed drug impaired a person's driving ability.
- A growing concern for many state legislatures is the increasing number of drivers who test positive for marijuana, the drug most often linked to drugged driving. Tests for detecting

marijuana measure the level of delta-9-tetrahydrocannabinol (THC), marijuana's active ingredient, in the blood.

- The National Institute on Drug Abuse reports that in 2013-2014, 12.6 percent of drivers on weekend nights tested positive for THC. This is significantly higher than the 8.6 percent who tested positive in 2007.
- Policy challenges remain because some drugs may remain in the body for days or weeks, long after any impairment has disappeared. Also, drugs affect people in different ways, which may complicate setting limits on amounts in the body as a threshold for prosecution.

Untested Sexual Assault Evidence Collection Kits

Prepared By Matt Trebelhorn

- Health care facilities that offer emergency services are required to provide specialized medical care and forensic medical exams to patients who report rape or sexual assault. Evidence gathered in those exams is collected in a Sexual Assault Evidence Collection Kit.
- If the victim wants to report the rape or sexual assault, the kit will be turned over to law enforcement. The kit is a medical record; if the victim does not consent to its release, it is subject to those privacy requirements.
- The Kentucky State Police Forensic Laboratory tests kits for Kentucky law enforcement agencies. DNA profiles obtained are uploaded to, and checked against, an FBI database.
- Many states have found large numbers of untested kits.
- The 2015, General Assembly passed Senate Joint Resolution 20, which directed the Auditor of Public Accounts to study and report to the General Assembly the number of sexual assault examination kits that had not been sent to the Kentucky State Police Forensic Laboratory for testing.
- The Auditor of Public Accounts issued its report in September 2015. Key findings are included below.
 - There are 3,090 untested sexual assault kits in Kentucky. Some of the kits date as far back as 1970. The report included historic data on submissions per year, ranging from 500 to over 700 since 2008. These are only the kits in the possession of law enforcement; those not reported and not submitted to law enforcement would be subject to privacy rules and were not part of this inquiry.
 - The majority of those kits (1,859) are in the possession of law enforcement agencies that have not submitted them because of error, neglect, uncertainty over whether kits should be submitted without a sample of DNA from a suspect, or lack of policies for submission of DNA evidence/rape kits in many law enforcement agencies.
 - The remaining 1,231 untested kits are in the possession of the State Police lab.
 - The State Police lab's turnaround time is about 8 months, and is growing longer. Other jurisdictions reviewed in the auditor's report had turnaround times as short as 20-30 days, but the national average for turnaround times has not been studied.
- The report identified a number of problems, including a lack of funding for the lab for equipment and personnel, low salaries leading to poor employee retention, and a lack of adequate policies at agencies across the state regarding the storage and timely submission of kits.

Marriage

Prepared By Dallas Hurley

- Kentucky's 2004 constitutional amendment defining marriage as being between one man and one woman was struck down by this year's US Supreme Court decision in *Obergefell v. Hodges*.
- In that decision, the court held that the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the US Constitution require Kentucky to
 - license marriages between two people of the same sex; and
 - recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state.
- Many of Kentucky's statutes referring to marriage are drafted using language that is specific to spouses being of one gender or the other. If these statutes are not amended, the courts will be left to modify the meaning of these statutes to conform to the dictates of *Obergefell* on a case-by-case basis, using only judicial judgment in making that determination.
- In Kentucky, county clerks have been responsible for issuing marriage licenses since 1798.
- There have been objections by some county clerks to issuing licenses to same-sex couples based on the clerk's religious beliefs. An adjustment to the license form could be made to meet those religious objections, although there is disagreement over whether such an accommodation is needed or advisable, as well as disagreement over whether potential accommodations should be made by legislation or executive order.

Employment Applications

Prepared By Andrew F. Manno

Applicant Financial Information

- Under state and federal law, employers may not discriminate on the basis of many factors, including race, color, religion, national origin, sex, age, disability, or various health factors.
- Federal law does not prevent employers from asking about an applicant's financial information. Federal laws do prohibit employers from illegally discriminating when using financial information to make employment decisions.
- The Fair Credit Reporting Act requires employers to tell the applicant in writing if they perform a background credit check. It also requires employers to get written permission and to send applicants notice when they use the information.
- Some states have banned the use of financial information in hiring decisions except for positions with the state Department of Justice, some law enforcement positions including peace officers, positions that involve regular access to and processing of credit card applications in a retail business, positions that include the authority to be a named signatory on the employer's bank or credit card account, or positions that require transferring money or entering into financial contracts on the employer's behalf.
- Some studies reveal that approximately 47 percent of all employers check credit status as an indicator of employability. Those employers point to the fact that the ability to handle financial issues is an important component of many positions and is an indicator of a lack of responsibility or resourcefulness. Others argue that use of that information could lead to discrimination against otherwise qualified applicants.

Applicant Criminal Record

- Most states, including Kentucky, allow employers to include on job applications a question of whether the applicant has a criminal record or has been convicted of a felony.
- In Kentucky, applicants do not have to disclose expunged convictions on employment applications. However, most felony convictions cannot be expunged in Kentucky. Otherwise, Kentucky does not prohibit employers from considering arrests or convictions in making employment decisions or asking for convictions on job applications.
- The Equal Employment Opportunity Commission (EEOC) issued guidance in 2012 that proposed a number of practice suggestions for employers concerning their consideration of arrest and conviction records during the hiring process to avoid employment discrimination under Title VII of the Civil Rights Act of 1964. The EEOC suggested that employers should limit inquiries about criminal history to only convictions related to the position in question.

- Arguments for allowing employers to obtain criminal background information include the idea that having a criminal record can have a bearing on an applicant's qualification for a job. Employers may also be concerned about potential business and workplace safety liability issues. There is also concern of increased exposure to discrimination claims if the decision not to hire is made later in the hiring process, after the employer discovers the criminal history during an interview.
- Arguments against allowing employers to obtain criminal history information include that such information could automatically exclude an otherwise qualified applicant from being considered. In addition, steady employment for people with criminal records is a fundamental part of their successful reintegration into society. The public policy behind the initiative includes the thought that when individuals with criminal records cannot obtain employment, it not only affects them but negatively affects entire communities.

Unemployment Insurance Update

Prepared By Carla H. Montgomery

- Employers pay federal and state Unemployment Insurance (UI) taxes.
- Federal Unemployment Tax Act (FUTA) tax is 6.0 percent.
- There usually is a 5.4 percent reduction of FUTA taxes or a 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.
- Kentucky borrowed almost a billion dollars during the recession, and employers endured a 1.8 percent FUTA tax rate in 2014.
- In September 2015, Kentucky had good news. The state paid off its federal UI loan 7 years ahead of schedule. Kentucky went from owing \$948.7 million in January 2012 to having a positive balance of \$36.5 million as of September 2015.
- Kentucky employers will no longer face a credit reduction when filing their 2015 UI taxes. The full tax credit of 5.4 percent will be given for FUTA taxes, or a 0.6 percent tax rate of \$42 per employee.
- The Unemployment Insurance Division estimates a total savings to employers of \$165 million.
- Even though Kentucky has paid in full the loan for the principal, it must still pay the accrued interest on the loan to the federal government and repay a commercial loan with JP Morgan taken to pay the initial interest.
- Money to pay interest cannot come from the unemployment insurance trust fund balance, which is solely used to pay claims.
- Beginning in January 2014, Kentucky employers were required to pay a surcharge of 0.22 percent to pay the interest owed to the federal government and to repay the commercial loan. The surcharge will continue until both are paid in full.
- In September 2015, Kentucky paid \$5.1 million to the federal government for interest and \$9.3 million to JP Morgan.
- Surcharge collections for 2015 are \$29.7 million. The Department of Workforce Investment anticipates being able to pay off both commitments and end the surcharge collections in mid-2016.

- Kentucky requested a waiver of the benefit cost ratio add-on, which is applied to FUTA taxes for states with an outstanding loan balance for 5 years or more. That request was approved but not needed since the loan was paid in full and the trust fund balance remains positive.
- Employers will continue to see an increase in the taxable wage base to \$9,600. The taxable wage base will increase by \$300 until it reaches \$12,000 in 2022.

Competitiveness Of Kentucky's Alcohol Producers

Prepared By Bryce Amburgey

As Kentucky's alcohol industry grows, many of the state's laws and administrative regulations may be putting the industry at a competitive disadvantage with producers in other states. Some policy considerations are below.

- Microbreweries are limited to 25,000 barrels per year. Among Kentucky's border states, four states have production limits of 25,000 or fewer barrels, and three have production limits exceeding 25,000 barrels.
- Small farm wineries are limited to 50,000 gallons per year. Increasing the production limits for microbreweries and small farm wineries could help those producers remain more competitive. Alternative approaches to the question of production limits include maintaining the limits, increasing the limits, or eliminating production limits entirely.
- Microbreweries and small farm wineries are granted special privileges beyond those given to full-sized breweries and wineries. The production limit for the smaller producers was partly designed to prevent large breweries and wineries, especially those from other states, from taking advantage of these special privileges. The concern is that the large producers would then dominate these small producer markets, cutting out the small Kentucky producers in the process.
- Small farm wineries could enter into agreements with other small farm wineries to provide services such as crushing, processing, fermenting, or bottling, where only the winery that grew the fruit is considered the producer of the wine. New small farm wineries with limited processing capabilities are those most likely to want another small farm winery to process their grapes.
- Brandy and fortified wine are considered distilled spirits. The Kentucky Department of Alcoholic Beverage Control has determined that small farm wineries may not produce these items under Kentucky law. These products could be an area of growth for small farm wineries.
- Unlike microbreweries and small farm wineries, distilleries may not sell alcoholic beverages by the drink on their licensed premises. This restriction applies to any distillery, whether it is located in dry, wet, or moist territory. A statutory change would be required to extend this licensing privilege to distilleries.
- Distilleries located in wet territory may sell their products by the package on their premises. Distilleries in dry or moist areas may not. Permitting precinct-level local option elections would allow residents to decide this for their communities.

Licensure Of Historical Racing Machine Providers

Prepared By Tom Hewlett

- Historical racing is an electronic video game that uses tens of thousands of previously recorded horse races upon which patrons can wager. A video terminal randomly selects a previously run race. Players have access to limited amounts of information about the race, including performance information on each horse and jockey, but do not know the date of the race, name of the horse, or name of the jockey. Wagers are placed, the recorded race is played, and winnings are distributed.
- Wagering on historical racing has been determined to be pari-mutuel wagering by the Kentucky Horse Racing Commission and payouts are based on a pari-mutuel formula. The legality of that determination has been challenged and the case is still pending in Franklin Circuit Court.
- Historical racing began in Kentucky at Kentucky Downs in September 2011. Ellis Park installed historical racing machines in August 2012, and a joint venture between Keeneland and The Red Mile began operating historical racing machines in Lexington in September 2015.
- As of September 30, 2015, over \$1 billion had been wagered on historical racing in Kentucky, with over \$95 million retained by the tracks after winnings had been paid out to players.
- In addition to providing a new source of revenue for horse racing tracks, proceeds from historical racing are used for other purposes:
 - Nearly \$11 million has been generated for the Purse Fund to supplement racing purses.
 - Over \$9 million has been generated for the Thoroughbred Development Fund.
 - Over \$4.2 million has been contributed to the Kentucky General Fund.
- Originally, there was only one manufacturer of historical racing machines. Recently, more manufacturers have entered the market.
- The Kentucky Horse Racing Commission has expressed a concern that, with multiple manufacturers providing historical racing machines, inspection of the machines is necessary to ensure uniformity in the games available to players.
- The Kentucky Horse Racing Commission has stated that licensing of historical game suppliers would allow it to ensure that only those meeting specified requirements would be allowed to provide historical racing machines. License fees would offset the cost of testing and inspecting the machines.

Low-Voltage Electrical Installations

Prepared By Michel Sanderson

- Low-voltage electrical work includes landscape lighting, home security systems, satellite television systems, wireless home surveillance, security alarm systems, irrigation systems, fire alarm systems, and energy management systems.
- Low-voltage electrical installations are power-limited installations that maintain control or coordination of interconnected devices separated from a power source by a Class 2 or Class 3 transformer. Class 2 and Class 3 transformers are differentiated by increasing levels of complexity and degrees of life-safety features.
- KRS 227A.150 affords low-voltage installers an exemption from licensure as an electrician. A person who obtains certification as a low-voltage installer is not required to be licensed as an electrician.
- Since the initial passage of KRS 227A.150 in 2004, the statute has become dated and some say it lacks the clarity needed to authorize separate levels of certification classifications necessary to both apply to the growing and more technical aspects of evolving low-voltage technology and to ensure public safety.
- The Electrical Advisory Committee was established by statute to review administrative regulations relating to electrical installers and electrical inspections. Its membership does not include a representative of the low-voltage industry.
- The Department of Housing, Buildings and Construction created a low-voltage review working group composed of department personnel, and numerous stakeholders in, representatives of, and people who work in the low-voltage industry.
- The working group met throughout the 2015 Interim and generated draft language for a legislative proposal that
 - implements industry requests for more specific types or levels of low-voltage installer certification to ensure that installers are competent to work within the low-voltage class in which each will be certified;
 - updates outdated and inconsistent electrical licensing exceptions to balance the original intent of the statute for low-voltage installers with evolving low-voltage technologies;
 - adds two members of the low-voltage industry to the Electrical Advisory Committee, thus enabling the industry to take part in the decision-making process;
 - implements requests by electric utilities and cooperatives for clearer rules regarding licensure versus certification, permitting, and code compliance for low-voltage load control and energy conservation devices;
 - updates definitions to make them uniform with the current language of KRS Chapters 227 and 227A, and the Uniform State Building Code; and
 - ensures uniform application of existing penalty and due process procedures.

Local Minimum Wage

Prepared By John V. Ryan And Carla H. Montgomery

- Kentucky's minimum wage has been \$7.25 per hour since 2009. Kentucky adopted the federal minimum wage laws in its wage and hours statute.
- In the last two sessions of the General Assembly, bills have been proposed to raise the minimum wage from \$7.25 to \$10.10 with increments over 2 years.
- Currently, 29 states and the District of Columbia have minimum wages above the federal minimum wage of \$7.25 per hour. Local minimum wage legislation in states neighboring Kentucky was recently considered in Illinois, Missouri and Virginia. None of these states has adopted legislation dealing with local minimum wage.
- The Louisville Metro government enacted an ordinance raising the hourly minimum wage incrementally from \$7.75 to \$9 by July 2017. The Kentucky Restaurant Association filed suit in Jefferson County Circuit Court alleging that the Louisville Metro government lacked authority to increase minimum wage.
- The Jefferson Circuit Court found that Louisville Metro government has the authority to establish a minimum wage, saying that:
 - Kentucky law neither authorizes a local government to increase the minimum wage nor reserves wage and hour laws exclusively to the General Assembly.
 - When the legislature intends to remove home rule authority from a local government, it does so deliberately using precise language.
 - Under the Fair Labor Standards Act, the federal government recognizes that state and local governments may adopt a higher minimum wage.
 - Louisville Metro government, with all the powers and privileges of a city of the first class, has broad authority to govern and possesses complete home rule.
- Bypassing the court of appeals, the Kentucky Supreme Court agreed to hear the appeal of the Circuit Court decision on the Louisville Metro minimum wage increase.
- Kentucky cities, other than those of the first class, also are given home rule and may exercise any power or perform any function that furthers a public purpose and is not in conflict with the state constitution or statute. Counties are also provided home rule. Each type of local government uses a different statute for its home rule authority; however, the Circuit Court only addressed home rule given to cities of the first class, and the Kentucky Supreme Court probably only will consider home rule given to cities of the first class.
- In November 2015, the Lexington Fayette Urban County Council enacted an ordinance raising the hourly minimum wage incrementally to \$8.20 beginning on July 1, 2016, to finally \$10.10 beginning July 1, 2018.

Use Of Digital Photographic Services By Property Valuation Administrators

Prepared By Mark Mitchell

- Property taxes are based on the assessed value of the property, which is determined by the locally elected Property Valuation Administrator (PVA). Counties, school districts, and special taxing districts establish property tax rates annually in accordance with statutory requirements and must use the PVA assessment in setting their tax rates.
- Cities may use the PVA assessment or may develop an independent valuation system. Kentucky Constitution Section 172 and court cases interpreting this section require all property to be assessed at 100 percent of its fair cash value. To assess the property at this level, PVAs must use precise methodologies.
- All property is required to be listed with the PVA annually, and the PVA is required to revalue the property as of January 1 of each year.
- No less than every 4 years, the PVA is required to physically examine all real property. This is called the quadrennial review. A physical examination is not required of property each year.
- The Department of Revenue (DOR) monitors physical inspections by PVAs and is required to maintain a record of each physical examination.
- In assessing the values of properties, the PVA is subject to the direction, instruction, and supervision of the DOR.
- The DOR, in consideration of its responsibilities relating to establishing guidelines for the assessment practices employed by PVAs, has adopted policies and standards issued by the US-based International Association of Assessing Officers (IAAO), which is an organization established to advance sound assessment practices.
- A question has arisen recently regarding whether PVAs can use digital photographic services as the sole means for performing the statutorily required physical inspections of real property or be limited to use as a supplement to the physical inspection. These digital technologies include the use of planes, drones, or satellites to provide aerial images of parcels of property.
- DOR standards cite that digital imaging can supplement physical inspections, but it does not give direction on the use of digital imaging to replace physical inspections.
- The DOR reported that as of the summer of 2015, 57 of Kentucky's 120 PVAs use a particular proprietary digital photographic service.
- It is not known whether any PVAs currently use digital imaging technology as the sole means to satisfy the physical inspection process required by statute.

- Because of recent questions regarding the use of digital imaging technology in the assessment process, the General Assembly could be asked to provide clarification regarding how digital imaging technology may be used.
- Policy considerations may also include reliability of inspections not made in person resulting in under- or over-valued property or unauthorized use of the images.

Federal Restrictions On Carbon Dioxide Emissions From Power Plants

Prepared By Stefan Kasacavage

- In *Massachusetts v. EPA*, the United States Supreme Court ruled in 2007 that greenhouse gases were air pollutants covered by the Clean Air Act. The court also ruled that the administrator of the US Environmental Protection Agency (EPA) had to determine whether greenhouse gas emissions endangered public health or welfare, or whether the science was too uncertain to make a reasoned decision.
- In 2009, the EPA administrator issued an endangerment finding pursuant to the Clean Air Act that current and projected concentrations of greenhouse gases in the atmosphere threatened the public health and welfare of current and future generations. As a result of the endangerment finding and because carbon dioxide is the most emitted greenhouse gas, the EPA developed a plan to reduce carbon dioxide emissions from the electricity sector, which accounts for about 32 percent of total US greenhouse gas emissions.
- In January 2014, the EPA published its proposed rule for limiting carbon dioxide emissions from new power plants under Section 111(b) of the Clean Air Act.
 - The proposed limit for new natural gas-fired plants was 1,000 pounds of carbon dioxide per megawatt-hour (CO₂/MWh) and 1,100 pounds of CO₂/MWh for coal-fired plants.
 - New natural gas-fired plants could comply with these carbon dioxide restrictions without the use of any new control technologies, but new coal-fired plants would have to be outfitted with carbon capture and storage technology in order to comply, which would add significant technological complications and costs to their construction.
- In June 2014, the EPA published its proposed rule for limits on carbon dioxide emissions from existing power plants under Section 111(d) of the Clean Air Act. Each state was assigned a target rate for statewide generation based on its historical carbon dioxide emissions and other factors.
 - Kentucky's rate-based goal was 1,763 pounds of CO₂/MWh by 2030, which was an 18 percent reduction from the current statewide rate of 2,166 pounds of CO₂/MWh.
 - Officials from the Energy and Environment Cabinet at the time projected that this reduction could be achieved without requiring any additional coal-fired plant closures. They believed that previously scheduled coal-fired plant retirements and other plant closures that had already been planned to comply with other federal clean air rules would be sufficient to meet the proposed limits.
- In August 2015, the EPA issued its final rule for limits on carbon dioxide emissions from new and existing power plants, which differed significantly from those in the proposed rules.
 - The carbon dioxide limit for new gas-fired plants remained the same, but the limit for new coal-fired plants was increased from 1,100 to 1,400 pounds of CO₂/MWh. Even with this increase in the allowed emissions rate, carbon capture and storage technology would still be needed on all new coal-fired plants to comply with the rule.

- The carbon dioxide limits for existing power plants dropped to 1,286 pounds of CO₂/MWh by 2030 in the finalized rule, which was 27 percent lower than the 1,763 pounds of CO₂/MWh limit in the proposed rule and 41 percent lower than the current rate.
- Kentucky must submit a state implementation plan (SIP) to the EPA by September 6, 2016, that demonstrates how the state will meet the finalized carbon dioxide limits for existing power plants. The state can receive up to a 2-year extension if it submits an acceptable initial SIP that meets all of EPA's requirements.
- Any SIP that Kentucky submits must also comply with the requirements of KRS 224.20-142, which, among other things, prohibits the submission of a carbon dioxide emissions control plan to the EPA that would require switching from coal to other fuels, co-firing other fuels with coal, or limiting the utilization of an existing coal-fired electric generating unit.
- Failure to submit a timely, approvable SIP will result in the EPA implementing a federal implementation plan (FIP) for Kentucky.
 - The EPA issued a proposed FIP with the finalized carbon dioxide rules, and officials from the Energy and Environment Cabinet have concluded that the FIP would require Kentucky to participate in either a rate-based or mass-based federal trading program for carbon dioxide emissions.
 - Energy and Environment Cabinet officials believe that the requirements of a FIP likely would be more burdensome and restrictive than those of a Kentucky-crafted SIP.
- In October 2015, Kentucky joined 23 other states in suing the EPA to block the implementation of the finalized carbon dioxide rules, arguing in part that EPA does not have the authority to regulate carbon dioxide emissions from existing sources under section 111(d) of the Clean Air Act and that coal-fired plants are already regulated under a different section of the act.

Rollover Protection For Excavators On Surface Coal Mine Sites

Prepared By Tanya Monsanto

- In 2010, the Federal Mine Safety and Health Administration issued a recommendation that mine operators using excavators on uneven, unconsolidated, or elevated slopes be equipped with certified rollover protection structures (ROPS).
- Kentucky has no statutory requirement for rollover protection.
- State administrative regulations require rollover protection on excavators at coal mine sites.
- Coal operators criticize the administrative regulation because of the high cost for retrofitting excavators for ROPS. The cost is estimated to be between \$15,000 and \$25,000 per excavator. There are only four or five companies in the United States that can retrofit excavators.
- Administrative regulations have exempted excavators from rollover protection because of the excavators' limited time carrying payload on uneven terrain and their structural design that makes retrofitting difficult.
- Excavators are increasingly mining on uneven terrains or elevated slopes increasing the likelihood of accidental rollovers.
- According to the Mine Safety and Health Administration, between January 2002 and September 2009, nationwide, there were 16 accidents involving excavators at surface coal mines—11 were caused by equipment rollover and 2 resulted in fatal injuries.
- In Kentucky, from 2007 to 2015, there were five accidents involving excavators with one resulting in death.
- The Department for Natural Resources is in consultation with coal operators across the state about rollover protection requirements and proposed changes.
- The Division of Mine Safety said it plans to amend the administrative regulation to require ROPS on new excavators rather than on existing excavators and to require operators using an excavator without ROPS to receive safety training.

Kentucky Employees Retirement System Non-Hazardous Pension Fund

Prepared By Brad Gross

- Kentucky provides pension and retiree health benefits to state employees and retirees through the Kentucky Employees Retirement System (KERS), which is administered by the Kentucky Retirement Systems (KRS) Board of Trustees.
- Annual reports prepared by the KRS external consultants have detailed a deterioration in key actuarial and financial statistics for the KERS non-hazardous pension fund over time:
 - Growing Unfunded Liabilities. The unfunded liability is the dollar amount of the actuarially accrued liabilities (the cost of benefits already earned to date) that are not covered by plan assets. Since 2000, the level of unfunded liabilities for the KERS non-hazardous pension fund has grown steadily each year, from a surplus of \$1.9 billion in 2000 to a deficit of \$9.1 billion in 2014.
 - Declining Funding Levels. The funding level is the percent of assets to actuarially accrued liabilities. From 2000 to 2014, the funding level of the KERS non-hazardous pension fund fell from 139.6 percent to 21 percent.
 - Growing Employer Contribution Rates. Since FY 2002, the actuarially required contribution (ARC) employers must pay to finance the system's cost, including the growing unfunded liabilities, has increased from 5.89 percent of pay to 38.77 percent of pay in FY 2015.
 - Shrinking Asset Levels/Increasing Cash Flow Needs. At the end of FY 14, the KERS non-hazardous pension fund held \$2.578 billion in assets, received income of \$727.5 million (contributions + investments at a 15.55 percent rate of return), and paid out nearly \$915 million in benefits and expenses.
- Senate Bill 2, passed during the 2013 Regular Session, was enacted to resolve the long-term actuarial and financial issues facing this system. Key SB 2 changes included
 - committing to require employers to pay the full ARC;
 - eliminating the automatic cost of living adjustment for retirees;
 - re-amortizing the unfunded liability over a new 30-year period (much like refinancing a home loan); and
 - establishing a cash-balance plan for new members.
- Over the long term, if employers pay the full ARC, the changes enacted by SB 2 are anticipated to improve both the financial and actuarial health of the KERS non-hazardous pension fund.
- Over the short to mid-term, key financial and actuarial statistics for the KERS non-hazardous pension fund are projected to continue to deteriorate. KRS projects that even if all actuarial assumptions are met, asset levels will fall below \$2 billion and the funding level will fall to 15 percent before improving.

- Improvement in the fund is contingent on three key factors:
 - the systems will earn their assumed rate of return of 7.5 percent per year;
 - the payroll for the system will grow by 4 percent per year and will increase the level of contributions paid into the system; and
 - the full ARC payment will be made.
- Failure to meet these three key factors likely will mean a further deterioration of the system's funds. A recent Asset Liability Modeling study, conducted by the KRS investment consultant to evaluate various investment options for the fund and how they would fare under various market conditions, concluded there was a 5 percent to 8 percent chance the KERS non-hazardous pension fund would run out of money in the next 20 years.

2015 Preliminary Data Update

- 2015 actuarial and financial reports will not be finalized until December 2015.
 - Preliminary unaudited financial statistics have been released. The KERS non-hazardous pension fund dropped to \$2.330 billion in assets as of June 30, 2015, receiving income of \$681.4 million (contributions + investments at 2.38 percent rate of return), and paying out nearly \$930 million in benefits and expenses. This is a drop of nearly \$250 million in asset values.
 - Income in FY 2015 included the full ARC rate of 38.77 percent (as provided by SB 2), which added \$226 million in employer contributions to the KERS non-hazardous pension fund over the previous year. However, much lower investment returns in FY 15 resulted in less income to the fund over the prior fiscal year.
 - Preliminary estimates from KRS indicate the ARC payable by employers will grow from 38.77 percent of pay to more than 45.46 percent of pay in FY 2017 and 45.80 percent in FY 2018. This increase is due to adverse financial and demographic experience and changes to the actuarial assumptions set by the board in 2015. Final values for the upcoming budget will be available in December.
- Due to the continued decline, some individuals and groups have called on the General Assembly to provide additional funding for the KERS non-hazardous pension fund above the ARC to help resolve any short to mid-term financial issues. Others believe the ARC payment is sufficient, while still others believe further structural changes are needed to bring solvency to the system.

Kentucky Teachers' Retirement System Board of Trustees And Kentucky Retirement Systems' Board of Trustees

Prepared By Judy L. Fritz

- The Kentucky Teachers' Retirement System (KTRS) Board of Trustees and the Kentucky Retirement Systems (KRS) Board of Trustees were each established by the General Assembly to be responsible for the administration, management, and operation of the retirement systems for teachers—KTRS—and state and county employees and the state police—KRS.
- The boards serve as policy and investment advisors, and members of both boards act in a fiduciary capacity.
- The KTRS board has nine members consisting of the chief state school officer, the State Treasurer, both of whom are ex officio members; and seven elected members.
- The KRS board has 13 members. Six members are appointed by the governor, six members are elected, and the Personnel Secretary is an ex officio member.
- There are no legislative members on either board.
- Senate confirmation is not statutorily required for members of either board.
- Neither KTRS nor KRS nor their boards are subject to the Model Procurement Code established in KRS Chapter 45A. Thus, they are not required to submit contracts to the Legislative Research Commission Government Contract Review Committee.
- Concern has been expressed over the financial stability of KTRS and KRS, which called into question issues related to both boards of trustees.
- Policy options include
 - appointing legislative members to serve as nonvoting members on both boards.
 - requiring that KTRS and KRS be subject to the Model Procurement Code established in KRS Chapter 45A.
 - establishing oversight by the Government Contract Review Committee of both boards.
 - mandating that appointed members of the boards be confirmed by the Senate.

Kentucky Teachers' Retirement System Funding

Prepared By Brad Gross

- Kentucky provides pension and retiree health benefits to teaching and administrative staff of local school districts, regional state-supported universities and community colleges, and other education agencies through the Kentucky Teachers' Retirement System (KTRS).
- KTRS is a defined benefit plan, which provides lifetime monthly pension benefits for retirees based on a statutory formula that does not vary. This differs from a defined contribution plan, like a 401(k), where benefits the retiree will receive are based on the account balance accumulated at retirement.
- KTRS serves as the primary source of retirement income for teachers and administrative staff because they do not participate in Social Security.
- Annual reports prepared by the KTRS external actuarial consultant have detailed a deterioration in key actuarial statistics for the pension fund over time:
 - Growing Unfunded Liabilities. The unfunded liability is the dollar amount of the actuarially accrued liabilities (the cost of benefits already earned to date) that are not covered by plan assets. Since 2000, the level of unfunded liabilities for the KTRS pension fund has grown steadily each year from \$0.6 billion in 2000 to \$14.0 billion in 2014.
 - Declining Funding Levels. The funding level is the percent of assets to actuarially accrued liabilities. From 2000 to 2013, the funding level fell from 95.7 percent to 51.9 percent. The funding level did show some improvement in 2014 to 53.6 percent funded, mainly bolstered by above average investment returns.
- As unfunded liabilities have grown, so have the requests from KTRS for additional state appropriations (beyond historical levels) to help payoff these pension unfunded liabilities, which are financed over a 30-year period, much like a home loan.
 - Historical Funding: In fiscal year 2014, the KTRS pension fund received \$563 million from the long-standing fixed employer contribution rate of 13.105 percent of pay and the supplemental direct appropriations made to KTRS in the state budget. This dollar value does not include state appropriations and employer contributions to fund retiree health benefits.
 - Additional State Appropriations Requested But Not Funded: Since FY 2009, KTRS has not received the additional state appropriations needed to begin paying off its growing unfunded liability.
 - KTRS projects that for the upcoming biennial budget, it will need an additional \$520 million in FY 2017 and an additional \$489 million in FY 2018 (above historical levels) to finance its increased unfunded liabilities.
 - If the additional state appropriations are funded, total employer contributions to the KTRS pension fund will exceed \$1 billion annually, not including employer funding for retiree health benefits.

- The issue facing the General Assembly in 2016 is how to address these funding issues facing the KTRS pension fund. Some feel that additional funding in the form of state appropriations is all that is needed, while others feel that benefits changes must also be considered.
- In June 2015, Governor Beshear established the Teachers' Retirement System Work Group composed of legislators, active and retired participants, and members of various interest groups. The work group has been reviewing funding options and best practices in other states regarding pension benefits and is scheduled to make recommendations to improve the fiscal solvency of the KTRS by December 1, 2015.

Electric Vehicles

Prepared By Dana Fugazzi

- Owners of gasoline and diesel powered vehicles pay local, state, and federal fuel taxes at the pump. Owners of electric vehicles that rely only on electric power do not.
- Gasoline taxes are the most important source of transportation funding, making up nearly 55 percent of all state highway revenues and more than 90 percent at the federal level.
- States are addressing concerns regarding the effect that the growing use of electric vehicles may have on transportation infrastructure by exploring new fees for ownership of electric and hybrid vehicles to help make up for lost gasoline tax revenues.
- Georgia, Idaho, and Wyoming enacted legislation in 2015 requiring new fees on certain hybrid and electric vehicles. Colorado, Nebraska, North Carolina, Virginia, and Washington have adopted fees for electric vehicles. These fees range from \$50 to \$200 annually.
- Kentucky's gasoline tax is 26 cents per gallon, and the federal gasoline tax is 18.4 cents per gallon. Drivers of gasoline cars that average 35 miles per gallon will pay \$86.75 in state fuel taxes and \$60.06 in federal fuel taxes each year, based on the 2013 Federal Highway Administration (FHWA) average miles traveled per vehicle of 11,674.
- Federal gasoline tax revenues are placed in the Highway Trust Fund and then distributed to the states based on formulas provided in federal legislation. On average, Kentucky receives about \$1 dollar back from the Highway Trust Fund for every dollar sent to Washington, D.C.
- Based on the 2013 FHWA average miles traveled per vehicle, Kentucky is losing \$146.81 per year in state fuel tax revenue and in Highway Trust Fund revenue for each electric car driven on its roadways. Electric vehicles currently make up a small portion of the number of vehicles on the roadway. However, this is an emerging market as evidenced by annual increases in the sale of electric cars in the United States since they first went on sale in December 2010. For example, there was a 27 percent increase in electric car sales in 2014 over 2013. Establishing fees on electric vehicles would ensure that the growing number of electric vehicle drivers pay for using the roadways.
- Electric car advocates claim these fees work against efforts to get more people to drive electric vehicles.
- Policy makers and some experts argue that taxing hybrid and electric vehicle owners is a matter of making sure all drivers help maintain and construct roads they use.

REAL ID Update

Prepared By Brandon White

- The 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 (DHS) 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 the 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 extension until October 10, 2016, 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. Most states are currently in compliance or under an extension. Kentucky Transportation Cabinet officials have testified that unless Kentucky takes some legislative action during this session, no further extensions will be granted because the state has not shown progress in meeting the requirements of REAL ID.
- 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. The following recommendations were proposed by the Transportation Cabinet at the November meeting of the Interim Joint Committee on Transportation:
 - Central issuance of driver's licenses and ID cards.
 - Application, photo, and presentation of required documents and payment of fees will occur at the applicant's local circuit clerk's office.
 - A temporary driver's license or ID will be issued at the circuit clerk's office.
 - Security provisions of REAL ID would be met at the central issuance facility, most likely operated through a private vendor.
 - Customers would receive driver's licenses or ID cards by mail, produced by and mailed by the private vendor.
 - Change the renewal cycle from 4 to 8 years with a fee increase from \$20 to \$50.
 - Allow current Kentucky citizens to have an option to obtain a license that does not meet the REAL ID requirements at a significantly lower cost.
 - Require all new and incoming residents to obtain an enhanced driver's license/REAL ID compliant driver's license or ID.
- Implementation of proposed changes would require statutory changes, reallocation of fee distribution, and additional funding
- Without legislation that brings Kentucky's driver's licenses into compliance with REAL ID or an extension, Kentucky citizens would be required to present other documents or undergo additional screening to board commercial aircraft or access almost all federal facilities that require a state issued driver's license or identification card for entry. The specific parameters of what additional screening would entail or what alternative IDs would be accepted have not yet been finalized by DHS but would certainly include a passport or military ID.

Military-Connected Student Identifier

Prepared By Jessica Zeh

- School-aged children in military families face a number of challenges depending on the duty status of a parent or guardian. These hardships include frequent moves, parental and sibling deployments, and life transitions that include reintegration and dealing with profoundly changed parents—all of which could impact school performance.
- A military-connected student is a student whose parent or guardian is a member of the Armed Forces of the United States, the Reserves, or the National Guard.
- There are almost 2 million children in the United States who have a parent or guardian in the military and 1.3 million are 4-18 years old. More than 80 percent of these children attend public schools.
- There is no method of tracking military-connected students' attendance and academic progress in public schools.
- The Department of Defense (DoD) has concerns that the education of children of active duty military parents may be harmed by the frequent relocations and are looking for ways to track military-connected students. It asked states to assist in developing policy and military child education initiatives by identifying military children and providing data on their educational outcomes.
 - The DoD contends that identifying military-connected students will help states and the DoD better understand and track academic progress and identify successes and challenges to military families with school-aged children.
 - DoD recommends the development and use of a military-connected student identifier: an optional field in the school enrollment system that would be reported to the state in real time and transfer as part of the student's electronic record.
- As of 2015, 14 states have either a legislative requirement or an independent policy regarding the military-connected student identifier, including Arkansas, Florida, Indiana, North Carolina, South Carolina, and Tennessee.

Pipeline Safety

Prepared By Kris Shera

- Kentucky has over 25,000 miles of pipeline. Of those, 916 miles carry hazardous liquids, while the remaining carry natural gas. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has reported that since 1995, Kentucky has experienced 94 significant pipeline incidents, resulting in 4 deaths, 30 injuries, and approximately \$69 million in damage.
- Nationally, PHMSA has reported that since 1995, there have been an average of 280 significant pipeline incidents a year, resulting in a total of 360 fatalities, over 1,300 injuries, and over \$7 billion in damage.
- These statistics, along with the Bluegrass Pipeline proposal and a natural gas pipeline explosion in Adair County in 2014 that resulted in \$1.8 million in damage, have brought the issue of pipeline safety and disaster response to the attention of Kentucky policy makers.
- PHMSA is the principal federal agency that oversees the nation's pipeline infrastructure and regulates approximately 2.6 million miles of pipelines.
- PHMSA allows for state certification and regulatory authority for natural gas and hazardous liquids pipelines in four areas: natural gas intrastate, hazardous liquid intrastate, natural gas interstate, and hazardous liquid interstate.
- A state must adopt federal regulations and may only adopt more stringent regulations for intrastate pipelines. The Kentucky Public Service Commission (PSC) has obtained certification for one of the areas: natural gas intrastate regulation.
- Kentucky policy makers have begun to consider whether state and local governments have the resources to respond to pipeline disasters and whether first responders have the training and equipment necessary to respond.
- Previous policy options have included
 - creating a pipeline safety fund through a fee based on pipeline mileage paid by pipeline companies.
 - creating a statewide pipeline spill response plan.
 - offering training and equipment to local governments specific to pipeline disasters.
 - requiring the PSC to seek the remaining three PHMSA pipeline regulatory certifications it is eligible for.
- Minnesota, New Hampshire, Washington, and Oregon have passed legislation similar to legislation proposed in 2015 in Kentucky.

