ISSUES CONFRONTING THE 2000 GENERAL ASSEMBLY

Informational Bulletin No. 201

Legislative Research Commission

Frankfort, Kentucky

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The Commission and its staff, by law and by practice, perform numerous fact-finding and service functions for members of the General Assembly. The Commission provides professional, clerical, and other employees required by legislators when the General Assembly is in session and during the interim period between sessions. These employees, in turn, assist committees and individual members in preparing legislation. Other services include conducting studies and investigations, organizing and staffing committee meetings and public hearings, maintaining official legislative records and other reference materials, furnishing information about the Legislature to the public, compiling and publishing administrative regulations, administering a legislative intern program, conducting orientation sessions for legislators, and publishing a daily index of legislative activity during sessions of the General Assembly.

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

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Prepared by

Members of the Legislative Research Commission Staff

Edited by
Charles Bush

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Frankfort, Kentucky
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FOREWORD

This collection of issue briefs, prepared by members of the Legislative Research Commission staff, attempts to bring into sharper focus some of the major issues which have received considerable legislative attention to date during the interim. The report by no means exhausts the list of important issues facing the 2000 Legislature. Nor are the alternatives in the discussion of each issue necessarily exhaustive.

Effort has been made to present these issues objectively and in as concise a form as the complexity of the subject matter allows. They are grouped for the convenience of the reader into the various committee jurisdictions and no particular meaning is placed upon the order in which they are presented. Because of continuing activity by the legislative committees, a supplement to this publication will be prepared in December.

Staff members who prepared the reports were selected on the basis of their knowledge of the subject matter and their work with the issues during the 1998-99 interim.

Robert Sherman
Director

Frankfort, Kentucky
September, 1999

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AGRICULTURE AND NATURAL RESOURCES

RECEIPT AND USE OF TOBACCO SETTLEMENT AGREEMENT FUNDS

Prepared by Andrew Cammack

Issue

How should tobacco settlement agreement funds be distributed?

Background

The Tobacco Settlement Agreement (Phase I), signed November, 1998, by 46 states and 5 tobacco companies, will make $206 billion available to the states over a 25-year period. Kentucky's share will be $3.5 billion. Following the settlement, a second agreement (Phase II) was forged between the tobacco companies and leadership of tobacco producing states to provide $5.15 billion to those tobacco producing states over a 12-year period. Kentucky's share of this amount will be $1.5 billion. The Kentucky General Assembly will play an active role in the distribution of the Phase I funds and should be kept abreast of the developments regarding Phase II funds. This issue paper provides background on the receipt and possible use of these funds.

The suit that produced the settlement agreement (Phase I) was initiated by several states to recoup Medicaid funds that were spent to treat Medicaid patients with smoking-related illnesses. The settlement ends the states' outstanding lawsuits and provides funds to 46 states (4 states had already settled with tobacco companies). The settlement agreement placed no restrictions on how these (Phase I) funds could be spent by the states. Phase I funds are expected to begin to flow to the states, at the latest, by June 30, 2000. Funds could come sooner if a couple of key states work out their state approval before that date.

In anticipation of a possible settlement agreement, and with no knowledge of how any Phase I or Phase II agreement might be structured, the 1998 General Assembly passed legislation that would apply to settlement agreement funds.

To prepare for receiving and distributing the funds, the 1998 General Assembly passed SB 247, which establishes within the State Treasury a tobacco settlement agreement fund to which shall be credited any funds designated to the Commonwealth from the Tobacco Settlement Agreement or related federal legislation. Since Phase I funds were a direct result of the settlement agreement, SB 247 has been interpreted to apply solely to Phase I funds. According to the legislation, the money in the tobacco settlement agreement fund cannot be expended until appropriated by the General Assembly. The legislation states that the General Assembly's highest priority for distributing the funds from this account shall be for tobacco farmers and tobacco-impacted communities and health-related areas.

SB 247 also created the Agricultural Diversification and Development Council, which can receive money from the state's settlement agreement fund if it is appropriated by the General Assembly. Members of this Council have been appointed by the Governor, but no meetings have been called, nor have any funds been given to the Council. Funds appropriated to the council could be used for tobacco quota holders and growers, tobacco dependent communities, and agricultural diversification, marketing, and infrastructure.

Discussion

The General Assembly, then, has taken some preliminary actions regarding Phase I funds. Additional actions can be expected in the 2000 Session or in a special session either before or after arrival of these funds.

A look at how other states are handling the Phase I funds reveals three broad approaches, with many variations. In Southern states where tobacco farming or cigarette manufacturing play a key role in the economy, legislators are looking at ways to reduce the economic effects of declining demand for tobacco. In states where tobacco use control has been a dominant issue, anti-smoking programs appear likely to get substantial funding. In states where smoking or tobacco generally aren't major issues, legislators have looked at a myriad of other approaches and projects. Hearings were held by the Kentucky General Assembly's Tobacco Task Force on use of Phase I and II funds, and a poll of Kentucky tobacco farmers on the use of the funds is expected to be completed before the 2000 General Assembly.

Phase II funds are expected to begin coming to the state's tobacco farmers by the end of 1999. According to the Phase II agreement between the tobacco companies and the tobacco states, these funds are intended to replace income lost by the tobacco farmers as a result of the settlement agreement. The funds will be distributed through the Kentucky Tobacco Settlement Trust Corporation, directed by a board appointed by the Governor. No legislative action appears to be required at this time. The board has met and has determined that the funds for the first year's distribution will go equally to quota holders, owners of the land where the tobacco is grown, and the tobacco growers. Payments will be based on the 1998 crop year. Additional discussions will be held to consider options for the distribution of funds for later years of the 12-year funding period.

CONTAINER DEPOSIT PROGRAM

Prepared by Kim Burch

Issue

Should the General Assembly enact container deposit legislation?

Background

Container deposit programs began in other states in the 1970s in response to the growing problem of beverage container litter. A container deposit program places a small deposit on beverage containers which can be redeemed once the container is returned for recycling. Container deposits are a financial incentive used to encourage recycling and to reduce beverage container litter.

In recent years, states have shown a renewed interest in container deposit legislation due to the rise of “new age” drinks, which include specialty teas, juice blends, sport drinks, and bottled water. These new products have greatly increased the number of single-serve beverage containers on the market and in the waste stream.

Currently, ten states and one city have container deposit programs. Under a typical program the distributor charges 5¢ for each container delivered to the retailer. The retailer charges 5¢ to the consumer who buys the product. The consumer gets 5¢ back upon returning the empty container to a retailer or redemption center. The empty containers are picked up by the distributor, who pays 5¢ plus a 1¢ or 2¢ handling fee for each container. Any unclaimed deposits, or escheats, typically are given to distributors.

In the 1998 Regular Session, container deposit legislation proposed a 5¢ deposit on containers smaller than 20 ounces, and a 10¢ deposit on containers 20 ounces or over. The deposit would have covered soft drinks, beer, water, juice, teas, sports drinks, wine, and liquor. Consumers would have returned containers to state-approved redemption centers. Unclaimed deposits would have been used to pay handling fees and to fund recycling programs at the county level. This proposal did not pass, but the General Assembly created the Special Task Force on Container Deposit to study container deposit programs, and to determine whether such a program is compatible with Kentucky’s existing solid waste management structure. This task force report will be available September 30, 1999.

During the 1998-1999 interim, the work of the task force stimulated statewide interest in a container deposit program. Debate continues on the effect of such a policy on society. Most arguments can be separated into two groups: those that contend that container deposit programs hurt industry, and those that contend that without these programs the environment suffers. The evidence offered by both sides of the debate is often conflicting.

Discussion

Polls taken in states with container deposit programs show strong support for those programs. A University of Kentucky Survey Research Center poll in the Spring of 1999 showed 75.9% of the populace across Kentucky support a container deposit program in this state.

Supporters maintain that container deposit systems result in greater litter reduction and higher recycling rates than litter education programs or curbside recycling programs. Besides reduced roadside and stream litter, environmental benefits include energy and resource conservation. Making a new can from recycled material requires only 5% of the energy it takes to produce the same can from raw materials.

Supporters argue that the cost of maintaining roads and streams, and of picking up litter and properly disposing of it, is borne by the government and taxpayers. A container deposit program shifts the costs of litter cleanup and waste disposal from government and taxpayers to producers and consumers of beverage containers.

Opponents have focused on the increased costs to bottlers, distributors, and retailers which will be passed along to consumers. The beverage industry maintains that container deposit legislation will result in reduced beverage sales, forcing the industry to eliminate jobs. The industry believes that fraudulent redemption in border areas of beverage containers purchased out-of-state will further increase costs of a container deposit program.

Moreover, opponents argue that beverage containers comprise only around 3% of the total solid waste stream. Opponents believe that a container deposit program is too costly to address such a small percentage of the waste stream. They maintain that funds would be better spent on comprehensive solid waste management programs.

Finally, while opponents claim that container deposits place an additional tax on consumers, supporters counter that container deposits, unlike taxes, are 100% refundable.

DRINKING WATER NEEDS OF KENTUCKIANS

Prepared by Dan Risch

Issue

Should the General Assembly consolidate the water supply planning responsibilities of state agencies?

Background

The sporadic rains and parched soils across Kentucky during the summer of '99 underscore subtle crosscurrents in the state's approach to determining the drinking water needs of Kentuckians.

At the time this paper was written, 26 public water supply systems had instituted water shortage response initiatives. The approximately 102,000 Kentuckians served by these systems were asked to voluntarily reduce water use. They were also prohibited from operating water fountains, watering lawns and golf courses, and engaging in other non-essential uses of water. In at least one community, commercial car washes and laundromats were required to cease operations in order to conserve water.

In the aftermath of a similarly dry summer in 1988, the 1990 General Assembly established a program requiring the Natural Resources and Environmental Protection Cabinet to assist local governments in developing long-range water supply plans.

In the 1990 Regular Session the General Assembly responded to the 1988 summer drought by enacting House Bill 419, which has been codified in KRS 151.110, and 151.114 to 151.118. The law directs the Natural Resources and Environmental Protection Cabinet (the Cabinet) to "administer a program for the purpose of developing long range water supply plans for each county and its municipalities and public water systems or for a region composed of more than one (1) county." KRS 151.114 (1)

The General Assembly required that the Cabinet approve the plans and in addition authorized the Cabinet "to approve any water supply plan developed outside of this program which meets the guidelines set out in KRS 151.110 and 151.114 to 151.118 and the criteria established by Cabinet regulations." KRS 151.114 (3)

In 1991 the Cabinet set out in administrative regulation 401 KAR 4:220 the criteria to be used in water supply planning.

Subsequent to the passage of HB 419 and the initial years of water supply plan development, the Governor's Office issued Executive Order 96-1339, establishing the

Water Resources Development Commission (the Commission). The General Assembly confirmed the 1996 order through legislation in 1998. KRS 147A.011 codifies Executive Order 96-1339 and provides a statutory basis for the work of the Commission.

The Commission's 13 members, appointed by the Governor, are charged with the responsibility to "prepare a statewide plan for the provision of potable water to all citizens of the Commonwealth by the year 2020 and assure that no state or federal funds shall be used for the development of a water system that is not in compliance with the statewide plan upon its adoption." KRS 147A.011(1)(b). The director of the Commission is appointed by the Governor. The agency is attached to the Department for Local Government for administrative purposes.

Discussion

A principal goal of water planning is ultimately to lay water pipes and make drinking water service connections. And this, referred to as infrastructure, requires considerable outlays of public money. Based on 1995 data of the U. S. Environmental Protection Agency and recorded in the 1998-99 State of Kentucky's Environment, Kentucky needs an infusion of capital for drinking water infrastructure estimated at 2.25 billion dollars.

Both the Cabinet and the Commission have been given the responsibility to judge the worth of drinking water infrastructure projects.

For example, the Cabinet's water supply planning mandate, KRS 151.114 (1), quoted earlier, also states that "The plans to be developed shall include…a determination of possible alternative approaches that can be taken in order to meet future water supply needs." The Cabinet elsewhere in the statutes is given the responsibility to prioritize drinking water projects to be funded with federal financial assistance, a major funding source for any drinking water infrastructure project.

KRS 224A.1115 creates the federally assisted water supply revolving fund. Subsection (8) states that "Financial assistance may be provided from the fund only for those infrastructure projects which the Finance and Administration Cabinet has approved from *the prioritization schedule prepared by the natural resources cabinet*." (Emphasis added.)

The Commission, in KRS 147A.011(1)(b), is given the following mandate: "*There shall be a Water Resource Development Commission, with the authority and responsibility to:* …Prepare a statewide plan for the provision of potable water to all citizens of the Commonwealth by the year 2000 and *assure that no state or federal funds shall be used for the development of a water system that is not in compliance with the statewide plan upon its adoption*." (Emphasis added.)

Thus the Commission and the Cabinet have similar approval authority for projects to be funded with federal money channeled through the federally assisted water supply revolving fund.

Three legislative committees have received testimony from representatives of the Commission. The testimony reveals the efforts that have been made by both the Commission and the Cabinet to share information and resources and, in at least one respect, to coordinate elements of the planning process (the Commission has pledged to utilize the local planning councils required by the Cabinet's process). The testimony also brought to the fore that the Commission will stress regional water supply projects, which complements the legislative goal of the Cabinet's statutory authority.

While the Cabinet is mandated to set out its process in administrative regulations, the Commission has no requirement to do so. The result of this lack of transparency can make coordination of efforts and comparison of planning requirements difficult, resulting in potential conflicts in requirements or duplication of effort and cost by local applicants.

The General Assembly may want to review the statutes on water supply planning, in order to eliminate the potential for conflict or inefficient expenditures of limited resources. To achieve these goals the General Assembly could designate a single lead planning agency or require a greater coordination of planning effort.

INDUSTRIAL HEMP RESEARCH

Prepared by Cory Birdwhistell

Issue

Should the General Assembly authorize experimental cultivation of industrial hemp?

Background

Industrial hemp is a variety of the *Cannabis sativa* plant. It has a rigid stalk that grows 3 to 16 feet tall and has pointed, serrated leaves. Thought to be the first plant cultivated by humans, hemp has thousands of uses. Textiles have been woven from the long fibers in the stalk, paper has been made from its high-cellulose hurd, and fine oil has been extracted from its seeds.

Marijuana is also a variety of the *Cannibas sativa* plant. While they appear similar, the two varieties have one major difference—the psychoactive drug tetrahydrocannabinol (THC) is present in much greater concentration in marijuana. Industrial hemp does not have a high enough THC content to be used as a drug.

Hemp played a significant role in the early history of the United States. Colonists found hemp growing in the wild, and began cultivating it in 1619 to meet high demand. Two drafts of the Declaration of Independence were printed on hemp paper. The first American flag and the sails of most Navy ships were woven of hemp fibers.

By the early nineteenth century, demand was high enough that the country was forced to import over 80 percent of the hemp it used. Kentucky produced the bulk of the hemp grown in the United States. After the Civil War, with the abolition of slave labor, Kentucky hemp production declined. Wisconsin, which embraced new technologies that produced better quality fiber with less labor, became the country's leading hemp producer.

In the early twentieth century, Kentucky farmers turned their attention to tobacco. The federal government, meanwhile, turned its attention to eradicating marijuana. Cultivation and possession of all varieties of *Cannabis sativa* were outlawed in 1937. During World War II, however, the USDA distributed hemp seeds to farmers in Kentucky and North Dakota to encourage them to grow hemp for the war effort. After the war, the federal government once again banned the cultivation of hemp.

Discussion

At the close of the twentieth century, attention has turned back to industrial hemp. Changes in the agriculture economy, especially the decline of tobacco, have focused attention on hemp as a possible alternative crop.

Industrial hemp may be a viable alternative crop for Kentucky farmers. History indicates that it grows well in Kentucky's climate and soil. Besides historical anecdote, however, little is known about the production potential of industrial hemp in Kentucky.

Experimental cultivation of industrial hemp allows for agronomic and technological analyses of hemp production and processing. A 1998 study by North Dakota State University recommended that the North Dakota legislature authorize controlled, experimental cultivation of industrial hemp. The study cited the lack of agronomic and technological knowledge of hemp production and processing as a weakness in the industrial hemp legalization debate.

The first major issue in considering whether to authorize experimental cultivation is law enforcement. Under federal law, all varieties of the *Cannabis sativa* plant are classified as Schedule I controlled substances. Therefore, it is illegal to grow industrial hemp without a federal permit. A person may apply for a permit from the federal Drug Enforcement Agency (DEA). However, the DEA requires that applicants implement security measures such as fencing, alarm systems, controlled access to the site, and around-the-clock armed guards. When the University of Kentucky attempted to obtain a federal permit in 1995 under the authority of the Governor's Task Force on Hemp and Related Fiber Crops, it determined that the DEA's security requirements make field trials prohibitively expensive.

The DEA and the Office of National Drug Control Policy strongly oppose cultivation of industrial hemp. The agencies say that because industrial hemp and marijuana are identical in appearance, enforcement against illicit growth of marijuana would be impossible. The agencies also believe industrial hemp legalization would send mixed messages to youth about marijuana, as well as give marijuana supporters a foot-in-the-door toward eventual marijuana legalization.

Advocates of industrial hemp legalization counter with the argument that law enforcement officials can easily distinguish between industrial hemp and marijuana, since industrial hemp plants are spaced closely together to maximize the growth of stalk, and marijuana plants are spaced far apart to maximize the growth of leaves. They also contend that their support of industrial hemp is an effort to save the family farm, and in no way advocates the use or legalization of marijuana.

The second major issue to consider is whether the economic benefit of industrial hemp production is certain enough to justify expensive and heavily-regulated research. While several recent studies in Kentucky and other states praise the numerous and diverse uses of industrial hemp, they focus on two significant obstacles to the development of a profitable industrial hemp economy: a lack of processing facilities and an uncertain market for hemp products. Currently, no facility capable of processing hemp fiber or hurds in the United States exists. In order for Kentucky farmers to profit from raising industrial hemp, a processing industry would have to develop in the state. Furthermore, while a small market for hemp products does exist in the United States, this demand is satisfied through imports. Studies disagree about whether the market for hemp products could increase to a level that would support a profitable industrial hemp economy.

Despite these law enforcement concerns and economic uncertainties, however, several states enacted industrial hemp legislation in their 1999 sessions. On April 17, 1999, North Dakota became the first and only state to enact a bill that legalizes all industrial hemp cultivation. In May, Illinois passed a resolution that creates a task force to study and report on the agricultural and economic viability of industrial hemp production. In the same month, the Hawaii legislature passed a bill that authorizes privately-funded industrial hemp research. The Governor of Hawaii is expected to sign the bill in July. On May 25, Governor Ventura of Minnesota signed a bill that authorizes the Governor to submit applications for federal permits that allow cultivation of experimental and demonstration plots of industrial hemp.

ANIMAL FEEDING OPERATIONS

Prepared by Biff Baker

Issue

Should the General Assembly consider stricter guidelines for animal feeding operations than those recommended by the federal government?

Background

In February, 1998, President Clinton announced the Clean Water Action Plan, which provided a blueprint for restoring and protecting water quality across the nation. Included in this plan was a recommendation for the United States Department of Agriculture (USDA) and United States Environmental Protection Agency (EPA) to develop a unified national strategy that would minimize the adverse water quality effects of animal feeding operations (AFO).

In March, 1999, the USDA and EPA released the Unified National Strategy for Animal Feeding Operations. This strategy is not a binding document; it is a broad and flexible tool for states to use in implementing and developing laws and regulations relating to AFOs. Part of the strategy calls for the USDA and EPA to publish guidelines in the fall of 1999 that will provide minimum standards for the states to comply with as the states develop comprehensive plans relating to animal waste and water quality.

The federal government hopes to minimize water pollution from confinement facilities and land application of manure. To accomplish this goal, there is a recommendation in the strategy that all AFOs voluntarily implement a comprehensive nutrient management plan (NMP) which would be site-specific in addressing such topics as feed management, manure handling and storage, land application of manure, and record keeping.

Another subject that will be addressed in the guidelines is that of integrator liability. This involves cases where there is a contract between a farmer and a company (or integrator) and the integrator maintains ownership of the livestock or maintains some level of control as to how the farmer manages the operation. In these cases, it will be recommended that the integrator assume some level of liability if there is an incident that results in water pollution. In addition, the strategy reports that the guidelines will allow states that have permitting programs that meet the Clean Water Act requirements to continue to use their programs. They will probably not address setback requirements or odor. The strategy will require AFOs with greater than 1,000 animal units to comply with the guidelines. It is estimated that of approximately 450,000 AFOs in the US, about 5% exceed 1,000 animal units. In Kentucky, there are approximately 250 AFOs that exceed

1,000 animal units. While these AFOs will be required to comply with the guidelines developed by the federal government, it is hoped that the other AFOs will voluntarily comply. As an incentive to implement the minimum standards, the USDA and EPA will provide financial assistance and technical assistance to those AFOs that voluntarily comply.

Discussion

Many of the issues that will be addressed in the guidelines a re already being considered by the Natural Resources and Environmental Protection Cabinet and by members of the General Assembly. The question is how much stricter the state plan should be than the national plan. As stated earlier, the guidelines will establish minimum standards that the state must comply with. This flexibility has created differing opinions as to what Kentucky should do.

There are those who contend that all AFOs should be required to follow the guidelines, while others feel the national threshold standards are too strict. The same concerns are felt about other areas relating to animal waste permits, including setback requirements, lagoon monitoring and liner requirements, integrator liability, and nutrient management plans. Odor control is another topic whose regulation has resulted in some debate.

The guidelines that will soon be published by USDA and EPA will establish minimum standards for large AFOs. Whether Kentucky should establish more stringent standards is a question the General Assembly may face.

APPROPRIATIONS AND REVENUE

CORPORATION INCOME TAX

Prepared by John R. Scott

Issue

Should the General Assembly modify Kentucky's standards for determining when a corporation is subject to Kentucky's income tax?

Background

Each state determines by statute the level of activity required by a foreign corporation (any corporation not organized within that state) before the corporation becomes subject to the state's income tax laws. This concept is generally referred to as "nexus". The federal government has given some general guidance within the area, but substantial latitude is afforded the individual states.

Kentucky statutes state that a foreign corporation is subject to Kentucky's income tax laws (has nexus) when it has a "physical presence" in Kentucky (when the corporation has property or payroll in Kentucky).

Discussion

All states except Kentucky determine nexus by either a "doing business" or "deriving income" standard. These standards vary somewhat state-to-state, but generally determine that the foreign corporation is subject to the state's income tax laws regardless of whether there is a "physical presence" in the state.

When the current statutes relative to nexus were written, physical presence was a necessity in order to conduct business. Now many entities conduct business by electronic means, and a physical presence is unnecessary.

Kentucky's physical presence standard encourages foreign corporations, through the use of multiple entities, to move taxable income from an entity with a physical presence to an entity that has no physical presence in this state. This is a common practice, and is completely legal. It is not done in many other states because both entities would be taxable under a "doing business" or "deriving income" standard.

SALES TAX

Prepared by John R. Scott

Issue

Should the General Assembly consider expanding the current sales tax exemption for resale to include more than only tangible personal property?

Background

The intent of Kentucky's sales tax laws is to assess sales tax on only the end consumer or user of taxable items. In order to keep from assessing the tax at multiple levels, an exemption from the sales tax is granted for tangible personal property that is purchased for the purpose of resale, or that will be incorporated into a finished product.

An item will be taxed if it is consumed in the process of arriving at a finished, salable product. Exemptions are granted only for those items that are actually part of the finished product for sale. As an example, a person who makes picnic tables may purchase the wood and brackets needed to construct the tables without paying sales tax, but must pay tax on saw blades, drill bits, and other consumable items used in the construction of the tables that do not become a part of the end product.

Discussion

Sales tax statutes exempting items purchased for resale were written when the only items normally sold or resold were tangible personal property. In today's economy, services and electronic products are often sold, and many are subject to sales tax. Additionally, some services that were not taxed by the original sales tax law have been made taxable, but the resale exemption still only applies to tangible personal property.

According to statute, tangible personal property purchased for resale may be exempted from the sales tax, but electronic products and other services are usually not considered tangible personal property. However, they are often purchased for resale.

First example: A long distance phone call. It may be routed through multiple providers, each of whom charge for their services. Only the end provider is selling to an end customer; all other providers are selling an electronic product or an electronic service for resale. Some of these transactions, however, are subject to sales tax even though the 'end seller' is charging sales tax to the customer. Since the exemption is only for tangible personal property, it cannot be applied to other types of sales. So the sale of the electronic product or switching service may be taxable to the provider, who then charges tax on it again as part of the sale to the end customer.

Second Example: Hotel/Motel Accommodations. The rental of a room is a taxable service. If a hotel overbooks and actually purchases rooms from a competitor to accommodate displaced guests, the rooms are taxable to the hotel even though the guest pays tax on the rooms. The same is true of a convention service that actually purchases rooms for resale. Additionally, all telecommunications services purchased by a hotel are subject to sales tax even though purchased for resale, since telecommunications services are not tangible personal property. (Note also that the purchase of furnishings for a hotel is not eligible for the resale exemption. The prevailing point of view is that the furnishings are consumed and not resold; therefore, the resale exemption does not apply.)

It should be noted that there is one special exemption in the statutes for resale of a service (KRS 139.484). Movie admissions are subject to sales tax. The lease of films by commercial motion picture theaters is granted an exemption from the sales tax, since the film is directly involved in the sale of admissions to the theater.

If items that are subject to Kentucky's sales tax are to be treated equally, some provision for a resale exemption that applies to items beyond tangible personal property might be considered. Whether the sale is a service or some future function of electronic commerce, it is likely that more sales for resale will be made in the future that do not meet the definition of tangible personal property.

INDIVIDUAL INCOME TAX

Prepared by John R. Scott

Issue

Should the General Assembly modify Kentucky's income tax structure in order to grant additional relief to lower income Kentuckians?

Background

Kentucky first enacted an individual income tax in 1936. Since the tax was originally imposed, rates have fluctuated between two and six percent. In 1956 a surtax was added that moved the actual rate above six percent. The current structure of a graduated rate that tops out at six percent on taxable income over eight thousand dollars was put in place for tax year 1961, approximately 39 years ago. Graduated rates are normally adopted to impose a higher rate of tax on higher income taxpayers.

Kentucky has taken several steps to remove from taxation some measure of the first portion of income for each taxpayer. The more well known of these methods are the personal credit, the standard deduction, and the low income credit. (Several other methods that target certain taxpayer groups are also available. An example is the child care credit, which allows relief only to taxpayers who pay child care expenses.)

The personal credit amount is $20. A credit is allowed for the taxpayer and each dependent claimed on the return. Two additional credits are allowed to the taxpayer and spouse when their age is 65 or over. Special credits are allowed for certain persons in the national guard.

The purpose of the standard deduction is to stipulate that certain level of income is not subject to the income tax at all. The standard deduction remained at $650 from the early 1960's until 1997. A phased-in increase was then put in place that changed the standard deduction to $900 for 1997, $1200 for 1998, $1500 for 1999, and $1700 for tax year 2000. The standard deduction will then increase annually based on the consumer price index.

The low income credit allows a reduction in tax for per sons whose Kentucky adjusted gross income is less than $25,000. It provides a larger percentage of relief for lower income persons, and effectively changes the rate of tax to less than the statutory rate until the low income threshold is exceeded.

Discussion

Kentucky is frequently criticized by individuals, the press, "watchdog" groups, and others because of the way the individual income tax impacts low income taxpayers. One recent study placed the income tax burden on a Kentucky family of four with income at the federal poverty level of $16,600 at a higher level than in any other state.

The standard deduction and the personal credits were implemented to relieve the tax burden on the first portion of income of Kentuckians. The tax rates currently in place were established to assess a higher level of tax on higher income persons. None of these methods has kept pace with inflation, or with increases in similar items in the federal income tax structure.

When the entire state tax burden on an individual is considered (income, sales, property, motor vehicle, and miscellaneous), however, the ranking of Kentucky improves remarkably. When all taxes are considered, Kentucky ranks lower than most surrounding states on the tax burden for lower income persons.

Some Kentucky taxes are below the national average, and below the amount assessed by surrounding states. For example, property taxes are significantly below similar taxes in surrounding states. Sales tax exemptions permit substantial amounts of tangible personal property to be purchased with no sales tax in Kentucky, while similar purchases in other states would be subject to substantial sales tax.

Possible alternatives are to:

1. Change the income tax structure to reduce or remove the tax from more low income taxpayers. This can be accomplished by several means, utilizing any or all of the methods currently used to modify taxable income levels or tax rates.

2. Change other taxes on individuals, in addition to the income tax, to shift some of the tax burden away from the relatively high income tax and onto one or more of the relatively low taxes.

3. Maintain the status quo.

MOTOR VEHICLE PROPERTY TAXES

Prepared by Terry Jones

Issue

Should the motor vehicle property taxes be repealed?

Background

Section 170 of the Kentucky Constitution was amended by the enactment of House Bill 229 in the 1998 Regular Session of the General Assembly and the subsequent adoption by the vote of the people to permit the General Assembly to exempt all or any portion of the property tax for any class of personal property.

Discussion

Motor vehicles are assessed on January 1 of each year at the average trade-in value of the vehicle, as established in a manual prescribed by the Revenue Cabinet. The tax is collected by the county clerk upon the registration renewal of the vehicle. **In deciding whether to exclude motor vehicles from the property tax, the General Assembly will have to take into consideration the following facts:**

- In 1998 there were approximately 2,850,000 licensed drivers in Kentucky.
- In 1998 there were approximately 3,500,000 vehicles on the tax rolls.
- The average assessed value for 1998 was approximately $5,000.
- Each month nearly 300,000 renewal notices are mailed out.
- The county clerk retains 4% of the tax as a commission (approximately $9 million).
- The state tax rate is $0.45 per $1000 of assessed value and generates annually approximately $75 million.
- School district tax rates vary and the tax generates approximately $76 million.
- County and special taxing districts tax rates vary and they generate approximately $45 million.
- Cities tax rates vary and the tax generates approximately $23 million.

The following table details the 1998 state property tax assessments for motor vehicles **by $5,000 increments of valuation:**

Assessed Value ($1000)	# Vehicles	% Vehicles	Assessed Value (Bils.)	Avg. Value	Avg. State Tax	State Tax (Mils.)	% State Tax
$ 0 to $ 5	2,155,000	64.3%	$ 3.7	$ 1,735	$ 7.81	$ 16.8	22.5%
$ 5 to $10	665,000	19.8%	$ 4.8	$ 7,271	$ 32.72	$ 21.8	29.1%
$10 to $15	330,000	9.8%	$ 4.0	$12,152	$ 54.68	$ 18.1	24.2%
$15 to $20	142,000	4.2%	$ 2.4	$17,079	$ 76.85	$ 10.9	14.6%
$20 to $25	39,000	1.2%	$ 0.9	$22,048	$ 99.22	$ 3.9	5.2%
$25 +	23,000	0.7%	$ 0.7	$30,999	$139.50	$ 3.2	4.3%
Totals	3,354,000	100.0%	$16.6	$ 4,944	$ 22.25	$ 74.6	100.0%

INTANGIBLE PERSONAL PROPERTY TAX

Prepared by Terry Jones

Issue

Should the remaining intangible property taxes be repealed?

Background

During the last several years, there has been a flurry of judicial activity regarding the intangible property tax. **In a January 30, 1997 decision,** the Kentucky Supreme Court held in St. Ledger v. Commonwealth of Kentucky that the 25 cents per $100 tax on out-of-state bank deposits and the statutes imposing the tax on corporate stock while exempting stock of in-state corporations to be unconstitutional. The court held that the bank deposits tax statute violated the Commerce Clause of the U.S. Constitution by creating a lower tax rate on in-state deposits than out-of-state deposits. At the time, in-state deposits were subject to a 1/10 cent rate. In 1996, the General Assembly extended the 1/10 tax rate to all bank deposits. The Court held that the exemption for in-state stock violated the Commerce Clause of the U.S. Constitution. Due to these court decisions, the taxing scheme used by the state of Kentucky to tax bank deposits and stocks was invalidated. This resulted in an approximate loss of $35 million in annual general fund revenues.

Section 170 of the Kentucky Constitution was amended by the enactment of House Bill 229 in the 1998 Regular Session of the General Assembly and subsequent adoption by the vote of the people to permit the General Assembly to exempt all or any portion of the property tax for any class of personal property. [1]

Discussion

Generally, intangible personal property is assessed at fair cash value as of January 1 of each year. The tax still applies to such intangible assets as bonds, patents, trademarks, accounts receivable, notes receivable, and mortgages receivable and generates about $25 million per year.

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[1] Intangible personal property still subject to taxation includes annuities, capital stock of bank for cooperatives, brokers accounts receivable, domestic life insurance, production credit associations, profit sharing plans, retirement plans, savings and loan associations, bonds, patents, trademarks, receivables, royalties, and tobacco base allotments.

There are some tax levies classified as intangible taxes that are paid by businesses in lieu of other taxes. If the intangibles tax is addressed as an entire class in proposed legislation, the taxes paid by certain businesses would be drastically reduced:

(1) **Savings and loan associations' capital stock.** Savings and loan associations currently pay $0.10 on each $100 of taxable value of their capital stock. The tax is paid by the bank or trust company on behalf of the shareholder and the shareholder is not required to list the shares for taxation. Savings and loan associations are also exempt from the corporate income and license tax. Revenues from this tax are approximately $3 million a year.

(2) **Insurance companies' taxable capital.** Domestic life insurance companies currently pay $0.70 on each $100 of taxable capital. Domestic life insurance companies are exempt from the insurance premiums tax, and the corporate income and license tax, because they pay this tax in lieu of those taxes. Revenues from this tax are approximately $1.3 million a year. However, with the enactment of House Bill 648 in the 1998 Regular Session of the General Assembly, domestic life insurance companies have the option in 2000 to begin phasing-out this tax and phasing-in the payment of the premium tax. It is not known at this time how this might affect this tax.

(3) **Public service companies' property tax assessments.** Property taxes are assessed against the operating property, non-operating tangible property, and non-operating intangible property of public service companies. Public service companies include utility companies, such as electric, gas, water, telephone, and cable television, and transportation companies, such as railroads, air carriers, pipelines, and water transportation. Revenues from this tax are approximately $1.7 million. Public service companies are exempt from the corporation license tax; however, they do pay a significant amount of corporate income tax. House Joint Resolution 89 was enacted by the General Assembly in the 1998 Regular Session to create a task force to study how public service companies are taxed and to report its findings and recommendations, with enabling legislation, to the Governor and the Legislative Research Commission by December 1, 1999.

BANKING AND INSURANCE

HEALTH INSURANCE

Prepared by Greg Freedman

Issue

Should major changes to the health insurance system be enacted or should the current law be given more time to work and attention focused on other issues such as solvency and liability of managed care plans?

Background

The 1994 Kentucky General Assembly enacted major health insurance legislation in response to Kentuckians who claimed that repeated large premium increases were making health insurance unaffordable. Kentucky was not alone; the issue crossed state lines and the Clinton Administration was proposing major health care reform legislation at the federal level. From 1993 to 1994, 44 percent of Americans who lost their jobs reported loss of health insurance and almost half of fully employed persons with incomes below the poverty line had no insurance. Even before the health insurance reforms took effect in Kentucky in July, 1995, opposition was being voiced to the changes, and soon more than 40 insurance companies that provided some form of health coverage in the state stopped doing business in the state. The 1996 General Assembly responded by, among other things, loosening the provisions on community rating and standard plans. Even with the legislative changes, choices declined in the individual market and premiums rose, particularly for the chronically-ill persons who benefited under a community rated system. A special session was called in 1997, but the legislature adjourned without enacting legislation. In 1998, the General Assembly pulled back further on the 1994 changes by, among other things, abolishing community rating and the Health Purchasing Alliance, permitting companies to sell any policy in the individual and small group markets, in addition to one standard plan, and creating the Guaranteed Acceptance Plan for persons with high-cost health conditions.

America's trillion-dollar health care system, employing 9 million persons, is a vast, complex system that increasingly requires government subsidies or health insurance to access it. While the legislatures in Kentucky and other states have wrestled with the complex health insurance issue, and Congress has enacted the Health Insurance Portability and Accountability Act, the number of uninsured persons in the United States has steadily risen, from 14.2 percent of the population in 1995, to 15.3 percent in 1996, and to 16.1 percent in 1997. This percentage is actually higher at different times during any year because many Americans find themselves without health insurance for part of a year. And it isn't just persons of low income who lack coverage. Eight percent of Americans with incomes in excess of $75,000 were uninsured in 1997. While the uninsured population has risen, the number of physicians treating patients has risen from 115 per 100,000 in 1970 to an estimated 203 per 100,000 in 2000.

Although it appears physicians are more accessible, 20 percent of Americans live in rural areas and those areas are served by only 9 percent of the nation's physicians. Complicating this issue further is the debate over managed care. While Congress debated a patients bill of rights, Kentucky enacted its own protections in 1998 in response to concerns that managed care was restricting treatment patients needed. That itself is a debatable issue. Nearly 70 percent of 6000 physicians surveyed nationwide in 1998 said they were against managed care. From 1986 to 1992 the growth in the incomes of physicians was 7.2 percent, but from 1993 to 1996 it was only 1.7 percent. Only one-third of health maintenance organizations in the United States recorded a profit in 1997; in Kentucky, 12 of the 14 domestic HMOs lost money in 1997. In 1998, four HMOs failed in the United States and over 400,000 Medicare patients were dropped by HMOs. Although managed care successfully rid the system of huge costs in 1995 and 1996, trends in utilization and cost of services have returned to the pre-reform levels of the early 1990's. Small businesses, the fastest growing sector of American employers, are also hard hit by this complicated issue and find themselves having to drop or reduce coverage for employees and shift from full-time employment to part-time employment. Rate increases averaged between 5 and 15 percent for 1998 and 1999 on group business coverage, while individual rate increases were higher. With unemployment rates near a 30-year low, it is apparent that the health insurance problem will be exacerbated with the next recession. While hospital spending still consumes the largest part of the health care dollar, growth in such spending has slowed. Now the fastest growing component of personal health care expenditures is prescription drugs.

Discussion

The 2000 Kentucky General Assembly can make minor changes to the state's health insurance laws, enact major changes, or take no action. Some persons contend that the health insurance issue can only be adequately addressed at the national level. They point to Kentucky's experience in enacting statewide changes. Proponents of major changes argue that the latest effort of the legislature, the 1998 passage of HB 315, has not made health insurance more available nor affordable. The Guaranteed Acceptance Program (GAP) was created in 1998 to provide access to insurance for persons with high cost conditions. From July 1, 1998, through March, 1999, a total of 1,443 persons have enrolled in GAP. This number was reduced to 1,245 when 203 persons were removed for nonpayment of premium. Losses for the six-month period ending December 31, 1998, amounted to $1,621,770.96. Proponents of major change contend that GAP is not a true high risk pool and that Kentucky should scrap GAP and replace it with a pool similar to the ones established in Illinois or Mississippi. Proponents of major change also note that rates continue to climb even with the statutory rate bands. Some persons propose widening or eliminating the bands and question the role the Attorney General should play in rate regulation. Proponents of major change point to the failure of past legislative enactments to draw insurance companies back to the Commonwealth, referring to the return of two companies to the large group market and one to both the small and large group market, while the individual market remains served by only two domestic insurers. Some proponents of major change argue for the removal of guaranteed issue, as allowed by the federal Health Insurance Portability and Affordability Act. Opponents of major changes contend that such significant changes will contribute to the problem, not to the solution. They contend that insurers will not return to Kentucky if they believe each time the legislature convenes it will make major changes in the rules they must operate under. They argue for fine-tuning of current laws and letting the market have a fair chance to work under the current system.

It has been argued that statutory **health insurance mandated benefits** are drivers of health insurance costs. Kentucky has 23 mandated health insurance benefits and four mandated offerings of benefits. Some contend that an insured should be given the option to waive those mandated coverages. Opponents counter that the purpose of insurance is to spread the cost and that if a waiver is allowed only persons in need of the mandated benefits will buy them and the cost will be high due to the small pool of persons purchasing such benefits. The Department of Insurance has reported that the mandated benefits enacted in 1998 increased premiums by about 2 percent.

Another health insurance issue is the **solvency of health maintenance organizations** (HMOs). Kentucky has a property and casualty guaranteed fund and a life and health guaranteed fund, which requires insurers to pay claims of persons insured by a company that becomes insolvent. There is no such fund for HMOs that become insolvent.

Finally, there is the issue of holding managed care plans liable for medical malpractice. Texas passed the first **"right to sue your HMO"** law in 1997. A U. S. District Court in September, 1998, upheld an enrollee's right under the Texas law to sue a health plan for damages that results from the plan's failure to exercise ordinary care. It also struck down the ban on "hold harmless" clauses. Georgia has enacted legislation allowing patients to sue HMOs that deny or delay needed medical care. At least 30 states are considering over 90 bills relating to HMO liability.

INDEPENDENT EXTERNAL REVIEW PROCESS

Prepared by Judy L. Fritz

Issue

Should the General Assembly enact legislation to establish an independent review process which would allow a patient to have an independent medical professional review denials of health services by health maintenance organizations (HMOs) and managed care plans?

Background

When an individual is denied medical services by their managed care plan or their HMO the individual has limited ability to appeal the denial. Several states have enacted and the Medicare Program provides for external review legislation and various health plans have taken the initiative to establish an external review system. External review is a formal dispute resolution process that requires an independent review of grievances between a health plan and a subscriber. Litigation has rendered large judgments against insurers after medical services were denied and the patients filed suit against their HMOs and their carriers.

Discussion

External review programs, whether voluntary or statutory, can be approached and structured in a variety of ways. These programs can apply to all health plans, or only to HMOs and managed care plans. All types of disputes can be resolved or the scope can be limited to the review of medical necessity issues or life-threatening denials. The decision of the external appeal can be binding or the decision could only create a rebuttable presumption in favor of the external review decision. The costs can be borne by the patient or the carrier, or apportioned among the parties equally.

Kentucky has enacted statutes (KRS Chapter 211) permitting the Cabinet for Health Services to conduct external reviews. These statutes could be amended to enhance the review process, and to reduce the amount of time necessary to conduct and to complete the reviews.

BR 74, which has been prefiled, establishes an Independent Review Organization to evaluate the clinical basis used by HMOs and managed care plans to limit or refuse services requested by patients or their physicians. The legislation requires insurers to set-up an internal review process for handling patient complaints and provides a time frame for their investigation. If an insurer denies services, it must inform patients of their right to appeal before an Independent Review Organization hired by the Department of

Insurance. Patients would have up to sixty days to file a request for an independent review.

An alternative to this legislation would be the establishment of voluntary external review programs by health plans. Health plans would establish their own guidelines and the program would be made available to members for services and treatments that are not specifically experimental or investigational procedures.

DEFERRED DEPOSIT TRANSACTIONS

Prepared by Judy L. Fritz

Issue

Should the General Assembly make deferred deposit transactions subject to the interest and usury laws of the Commonwealth?

Background

In 1992 the General Assembly enacted KRS Chapter 368, requiring check cashing businesses to be licensed by the Department of Financial Institutions and allowing them to charge a fee for cashing checks without being subject to the state's usury laws. Chapter 368 was amended during the 1998 Regular Session to bring deferred deposit transaction businesses under the provisions of KRS Chapter 368 and the regulatory authority of the Department of Financial Institutions. A law suit was filed in U.S. District Court, Eastern District of Kentucky in 1998 alleging that deferred deposit transaction businesses were in violation of the interest and usury laws of the Commonwealth. The Court of the Eastern District asked the Kentucky Supreme Court to answer the following question of law:

> When a check cashing company licensed under KRS 368 accepts and defers deposit on a check pursuant to an agreement with the maker of the check, is the service fee charged by the check cashing company a "service fee" and not "interest" under KRS 368.100(2), or is the fee "interest" which is subject to the usury laws and disclosure provisions in KRS Chapter 360?
>
> The high court rendered its decision June 25, 1999 and found:
>
> The 1992 act regulating check cashing businesses and allowing them to charge a fee for cashing checks without implicating usury laws held not to embrace deferred deposit transactions and so a check cashing company accepting and deferring deposit of a check was not exempt from the usury laws.

This would place deferred deposit transactions under the interest limitations of KRS Chapter 360.

Discussion

Currently, Kentucky statutes do not reflect the court's finding that deferred deposit transaction businesses are not exempt from the usury laws. The General Assembly could establish by statute that deferred deposit transaction businesses are subject to KRS Chapter 360 and codify the determination of the court. Or the Legislature could leave the statutes as they currently read regarding deferred deposit transaction businesses and let the case law which has resulted from interpretation of KRS Chapter 368 stand alone.

ECONOMIC DEVELOPMENT & TOURISM

SMALL BUSINESS REGULATION

Prepared by Kim Wilson

Issue

Should the General Assembly simplify the regulatory process for small businesses?

Background

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA) in an effort to protect small businesses from overly burdensome regulations. This law is the latest in a long line of regulatory relief efforts and provides small businesses with new ways to participate in the federal regulatory process. Specifically, it requires:

- Federal agencies to develop written guidelines in plain English to help small businesses understand how to comply;
- Congress to review all new major rules;
- Federal agencies to provide for the reduction and waiver of penalties imposed o n small businesses;
- The Small Business Administration to appoint ten small business regulatory fairness boards across the country;
- The creation of small business advocacy panels to review rules proposed by the Environmental Protection Agency and the Occupational Safety and Health Administration; and
- The enhanced authority for small businesses to go to court to challenge agency rules.

On the state level, the regional regulatory fairness boards are designed to serve as a vehicle for small businesses to register a complaint against a federal agency. These boards meet with small businesses personally after a complaint is received, report on significant enforcement issues, and reflect all concerns from their region to Congress. Though the fairness boards cannot directly adjudicate a case or reverse an agency decision, the fairness board can echo the concerns of the region's business community to Congress. In addition, and most important for the General Assembly, the regional fairness boards are also responsible for working with state legislatures to develop programs against unfair regulatory enforcement on the state level.

At the urging of the Chairman of the Region IV Regulatory Enforcement Fairness Board, the 1998 General Assembly passed House Bill 780, creating a Subcommittee on Small Business Regulation within the Interim Joint Committee on Economic Development and Tourism. Its purpose is to explore the need for a state level small business regulatory enforcement fairness act.

Throughout the 1998-1999 interim, the Subcommittee on Small Business Regulation listened to citizen complaints, agency programs, and presentations about small business friendly programs from other states. Over this time, the Subcommittee sought to learn what, if any, regulatory or enforcement problems existed on the state level and what solutions might be plausible.

Discussion

Testimony before the Subcommittee identified several problems that could be addressed in the next General Assembly. They heard that sometimes state and federal regulations either conflict in their requirements or that the state regulations are more stringent than the federal regulations. They heard that small business owners are afraid to appeal an enforcement decision because they fear retaliation from the agency. Finally, they learned that regulations and regulatory requirements can have an economic impact on businesses or cause financial distress. Currently, the Subcommittee is soliciting suggestions from trade associations and small businesses through a survey designed to further assess the magnitude of regulatory burden.

Recommendations that the Subcommittee may consider include:

- Require all state agencies to make small business owners aware of their rights under the federal Small Business Regulatory Enforcement Fairness Act (SBREFA);
- Encourage state agencies to ensure that state regulatory requirements are consistent with federal regulatory requirements when possible; and
- Develop a state level small business advocate program that provides an ombudsman for the small business community.

The 2000 General Assembly may want to consider recommendations made by the Subcommittee and passed through the Interim Joint Committee on Economic Development and Tourism in the form of prefiled bills.

HIGHWAY BILLBOARDS

Prepared by John Buckner

Issue

Should the General Assembly explore ways to allow an increased number of billboards adjacent to federal interstate highways?

Background

The Federal Aid Highway Act (P.L. 85-381, April 15, 1958), which is commonly referred to as the "Bonus Act," set forth initial standards to regulate directional, informational, and advertising signs that were located adjacent to interstate highways financed by the federal government. As it pertained to off-premise advertising devices (a.k.a. billboards), the Act provided for states that voluntarily agreed to control billboards located adjacent to federal highways by following the standards set forth in the Act to receive a bonus of 0.5% of the highway's cost of construction. After action was authorized by the General Assembly, Kentucky's Commissioner of Highways entered an agreement with the U.S. Secretary of Commerce on June 12, 1961, thus making Kentucky a "bonus state." To date, Kentucky has received approximately $2.58 million pursuant to the Act and is owed between $40,000 and $4 million (the Federal Highway Administration argues for the former, Kentucky's Department of Transportation for the latter). Since 1981, Congress has not made appropriations to pay what is owed to Bonus states and, according to testimony from various federal officials, is highly unlikely to do so in the foreseeable future.

States were allowed to implement two amendments to the Bonus Act that would exempt certain areas from the billboard prohibition. The first, known as the "Kerr amendment," enacted in 1959, allows states to exclude segments of the federal interstate system that were used for commercial or industrial purposes or any segments that were within the boundaries of incorporated municipalities as these boundaries existed in September 1958. States were not eligible for bonus money for highways within incorporated municipalities regardless of the permissibility of signage. Kentucky implemented the provisions of the Kerr Amendment.

The second amendment to the Bonus Act is k nown as the "Cotton amendment." This amendment allowed states to permit billboards to be erected in areas adjacent to federal interstate highways if any part of the land on which a federal highway was built was acquired as a right-of-way prior to 1956. If a state chose to allow signs in "Cotton areas," that segment of the interstate would not receive bonus money. Kentucky did not implement the Cotton amendment.

Finally, the Highway Beautification Act of 1965 mandated federal standards for billboards located adjacent to federal interstate highways. One of the key differences between this act and the Bonus Act is that states were not required to comply with its provisions. In contrast to the Bonus Act, financial incentives for compliance were replaced with potentially heavy sanctions for noncompliance. The Highway Beautification Act imposed *fewer* restrictions upon billboards, in that billboards were allowed in areas regardless of their zoning or past usage as a commercial or industrial area. Finally, a state was allowed to continue participating in the Bonus Act if it agreed to comply with both acts. If a conflict between the two existed, compliance with the more stringent provision was required.

Discussion

Since Kentucky's adoption of the Bonus Act in 1961, controversy surrounding billboards adjacent to federal highways has been on-going. Opponents of existing state laws and regulations, chief among them being persons involved in tourism- and travel-related businesses, contend that current restrictions preclude them from reaching millions of visitors who pass through Kentucky on the interstate highway system. Since many of Kentucky's tourist attractions are located in rural areas, which are affected by more stringent and restrictive regulations, opponents argue that most travelers pass by their businesses without knowing that they are there. They argue that outdoor advertising is the most cost-efficient way to reach potential visitors and that the lack of signage opportunities places them at a competitive disadvantage with businesses in surrounding states that often place fewer restrictions on billboards. Further, opponents often argue that current state regulations exceed what is allowable under Kentucky and federal statutes and regulations, particularly in regard to how "commercial or industrial areas" are defined in state regulations.

Supporters of existing state laws and regulations counter by arguing that many polls show that travelers dislike a plethora of billboards because they distract from natural scenic beauty and vistas. They argue that in many states in which tourism is a key economic sector, billboards have been completely banned and that the tourism industry continues to thrive in their absence. Moreover, in states that do permit greater numbers of billboards, most are used for non-tourism and travel-related businesses, such as liquor and tobacco advertisements. Finally, they contend that if Kentucky were to relax billboard regulations, the state could face a 10% reduction in federal-aid highway dollars, based upon provisions in the Highway Beautification Act.

ECONOMIC DEVELOPMENT

Prepared by John Buckner

Issue

Should the General Assembly explore ways to allow greater flexibility in the Local Government Economic Development Program?

Background

The Local Government Economic Development Program, set forth in KRS 42.4588, was established in 1992 as a means to assist counties with efforts designed to attract new industry. More specifically, the program was designed to assist counties in which coal production played a dominant role in the economic environment, and drew from coal severance taxes to return money back to the region in which coal production occurred. This assistance is provided through grants to counties which, within specific limitations, are to be used for industrial development projects and debt service on bonds issued for industrial development projects. According to the statutory definition of the term "industrial development project," grant money is typically limited to acquiring real estate and making infrastructural improvements to land that will be used by firms engaged in manufacturing, processing, or assembling. This includes such things as site tests and inspections, removing surface obstructions, providing for drainage, the installation of utilities and utility extensions, and constructing buildings, rail facilities, and roads. The definition was later amended to include expenditures for workforce training.

In general, the legislative body of an eligible county may apply individually to the Cabinet for Economic Development for a grant under this program or, if an industrial development project is to benefit two or more counties having accounts in the program, a joint application may be submitted. In either situation, the secretary of the Cabinet determines whether the proposed industrial development project may be reasonably expected to create jobs for the residents in the county or counties applying for a grant. The criteria used by the secretary to evaluate a project include the number of jobs to be created or preserved; the estimated taxes to be generated; the size, nature, and cost of the project; the needs of the local units of government that will be affected; the needs of the business that would benefit from the grant approval; the amount and kind of assistance available to the business from other government agencies; private financing that is available to the business; and, finally, the economic feasibility of the project.

Grants in thi s program have been used to lure and assist a wide variety of industrial firms, and in recent years the secretary of the Cabinet for Economic Development has instituted a plan to use money from the "multi-county" fund to construct a number of regional industrial parks, which are designed to benefit two or more counties. Joint grant applications were sent by numerous counties, and, after a careful evaluative process, six multi-county industrial parks were funded: MMRC Regional Industrial Park in Rowan County, Four Star Industrial Park in Henderson County, Coalfields Regional Industrial Park in Breathitt County, East Regional Industrial Park in Greenup County, Honey Branch Regional Industrial Park in Johnson County, and Southeast Kentucky Regional Industrial Park in Laurel County. In addition, two regional industrial parks are planned: the West Kentucky Regional Industrial Park in Ohio County and the Pine Ridge Regional Park, whose site has yet to be determined.. According to the secretary, industrial parks are needed so that when industrial firms are contacted, they can be shown areas that have the necessary infrastructure to support a manufacturing, processing, or assembling facility. In conjunction with other incentive programs utilized by the Cabinet, this strategy is supported in a survey by Area Development magazine, the availability of land sixth among the most important site-selection factors (the top ten factors were, in descending order: highway accessibility, availability of skilled labor, occupancy or construction costs, labor costs, availability of telecommunications services, availability of land, state and local incentives, energy availability and costs, environmental regulations, and tax exemptions).

Discussion

A neutral observer, Site Selection Magazine, ranked Kentucky third in the nation for new job creation, fourth in new and expanded facilities, and ninth in regard to business investment per one million population. Yet questions about the limitations of existing programs in regard to their ability to direct investment toward economically-distressed areas have been raised, particularly by those in counties that have remained mired in double-digit levels of unemployment and rates of poverty. The local government economic development program, with its emphasis upon providing assistance for firms engaged in manufacturing, assembling, and processing, is sometimes criticized for placing too much of an emphasis upon large-scale industry and ignoring other viable means of creating jobs and economic opportunities for persons living in coal-producing or coal-impact counties, particularly small-scale entrepreneurial firms. Kentucky's Long-Term Policy Research Center published a study that found that "firms with fewer than 500 employees created all of the *net* new jobs from 1992 to 1996 while businesses with fewer than 20 employees created 52.6% of the small business job growth or 67,744 jobs." In addition, the study found that "genuinely small businesses" (those which employ fewer than 20 employees) represent 85.7% of all firms and employ 26% of Kentucky's workforce. The study also surveyed small business owners in regard to their perception of public sector support, and was told by nearly one-third of the respondents that "state government" made it more difficult for them to start a business. Moreover, only 2% of the respondents sought help from the Cabinet for Economic Development. Finally, the study suggested that government programs that appreciated the divergent needs of small business were better able to provide assistance targeted to specific concerns.

In light of these and other similar findings, the General Assembly may want to explore ways to refine existing programs or to establish new ones that may better assist small businesses. One possibility might be to allow local governments to have greater control over how money in the local government economic development program is utilized. Other possibilities might include developing low-interest or guaranteed loan programs designed to assist small businesses that need capital to expand operations in economically-distressed counties.

TOURISM MARKETING

Prepared by Mary C. Yaeger

Issue

Should the General Assembly provide additional funding for tourism development?

Background

During the 1998 regular session of the General Assembly, Senate Concurrent Resolution No. 88 was passed, which created a Task Force on Funding for Tourism Development. The 17 member Task Force, appointed by the Legislative Research Commission, includes representatives of the legislature, the Tourism Cabinet, and tourism related industries. The Task Force was directed to study the long-term funding needs and options for tourism in the Commonwealth.

In the last few sessions, the General Assembly has made a significant commitment to tourism, especially through funding improvements and expansion at the state park system, and through passage of the 1996 Tourism Development Act, an innovative tax incentive program to promote the development of larger tourism attractions. The Task Force is attempting to find ways to capitalize on these investments to ensure that tourism is a viable economic concern in Kentucky.

According to the Secretary of the Tourism Development Cabinet, tourism is Kentucky's third largest industry, but expenditures in this area have been leveling off in the last five years, after several years of steady growth. The Secretary stated that the main factors contributing to the slowdown in the tourism economy in Kentucky are: the parks renovation program (disruption of fully operational facilities), lack of new or improved attractions, increased competition from other states, and the inability to match advertising dollars of other states. Privately owned attractions, such as Kings Island, Gatlinburg, Dollywood, Opryland, Branson, Missouri, and casinos in neighboring states, not only attract travelers away from Kentucky, but have multi-million dollar advertising budgets that complement their state marketing budgets. Additionally, marketing in Kentucky is hindered by the fact that four of the five top attractions are publicly operated by federal or state agencies. The state advertising budget is limited and the federal park system has no advertising budget.

There are numerous ways to attract tourists to Kentucky. Some of these strategies include: developing targeted markets to specific sites or interests (such as, golf and bike trails, cultural heritage, nature preservation sites, antique corridors); developing more attractions through the use of the Kentucky Tourism Development Act and other economic incentives; attracting foreign markets; ensuring that the convention and visitors bureaus promote local attractions and have adequate budgets for marketing; and making sure that tourist destinations and state highways present a clear and positive message to interested tourists.

For any of these strategies to be successful, however, tourism destinations must be advertised to those outside Kentucky's borders. This role in state government belongs to the Department of Travel, in the Cabinet for Tourism Development.

Discussion

The Department for Travel has the mission to conduct research in the area of marketing and to market all of Kentucky as a destination for leisure travel. The Department accomplishes its mission through a coordinated media and public relations campaign that utilizes print and electronic media, targeting key geographic regions in Ohio, Indiana, Illinois, Michigan, and throughout the Commonwealth.

In an effort to learn more about these markets, in the spring of 1998, the Department undertook consumer research, which showed that Kentucky is a getaway location for trips of two or three days. The primary activities of those who visited were touring and sightseeing, visiting family and friends, and shopping. When asked what Kentucky could do to get the respondent to visit here, the most frequent response was "send information," followed by "offer special package deals."

According to the 1998-99 *Survey of State Tourism Offices*, Kentucky ranked 28th in projected state tourism office budget, at $6,992,400. While this is a 10% increase over the 1997-98 budget, it falls short of some neighboring and competing state budgets. The largest state budget is Illinois', at $40 million; Florida's, at $27 million is fourth largest. Several competing states have larger budgets than Kentucky's, including Missouri ($14.8 million); South Carolina and Tennessee ($13 million); Arkansas ($10.5 million); North Carolina ($9.6 million); West Virginia ($9.2 million); Alabama ($8.7 million); and Georgia ($7.3 million). Of the neighboring states, only Ohio ($6.3 million) and Indiana ($4.5 million), of the neighboring states, have smaller budgets than Kentucky.

Kentucky's domestic advertising budget projected for 1998-99 ranks 23rd, at $2.5 million. Neighboring states that spend more on domestic advertising include Illinois ($8.5 million), Missouri ($7.4 million), Tennessee ($4.2 million), and Virginia ($3.5 million). Bordering states that spend less than Kentucky include West Virginia ($2.4 million), Ohio ($1.3 million), and Indiana ($1 million).

The Task Force on Funding for Tourism Development is considering other states' approaches to promoting tourism. Some of the states' initiatives that were reviewed include Missouri and Washington, which dedicate a percentage of revenue growth in specific types of businesses to tourism; Arkansas which has a 2% state tourism tax on lodging and recreation; Florida, which created a marketing corporation as a private/public partnership, funded by 15% of a $2/day rental car surcharge, and South Carolina, which has a 5% tax on professional entertainment activities and general fund appropriation. Other discussion included earmarking lottery proceeds for tourism marketing and limiting the hotel/motel tax to tourism related activities.

The General Assembly could consider additional budgetary allocations to advertise Kentucky attractions and become more competitive with other states. Additionally, the General Assembly could consider ways to attract additional development and provide resources to enhance specific targeted markets.

ENTREPRENEURSHIP

Prepared by Mary C. Yaeger

Issue

Should the General Assembly promote entrepreneurship and small business as a means of creating economic opportunity in Kentucky?

Background

Economic development in Kentucky has been synonymous with industrial recruitment during the last decade. With the opening of the Toyota plant in Georgetown, automobile related plants began dotting the map along interstate highways. The state and local economic incentive programs have attracted various manufacturing companies to Kentucky, and neighboring states have envied and imitated our incentive statutes. The Kentucky Rural Economic Development Act (KREDA) was created in 1988 to attract manufacturers to counties with long-term high unemployment, the Industrial Development Act (KIDA), created in 1992, provided incentives for those wanting to locate in non-KREDA counties, and the Kentucky Industrial Revitalization Act (KIRA), also created in 1992, was designed as an incentive to existing manufacturers in imminent danger of closing continue their operations in-state.

While most of the state incentives were direct ed to manufacturing plants, two are directed at related companies. One, the Kentucky Economic Development Finance Authority (KEDFA) direct loan program, offers a mortgagee loan program designed to allow non-retail businesses to utilize very low-interest loans, and the other, the Kentucky Jobs Development Act (KJDA), allows new or expanded businesses that are not retail or manufacturing to gain tax credit and employee job assessment fees, attracting corporate headquarters and product distribution centers. In all these programs, the goal is to attract companies that would be creating a minimum of 15 or 25 new jobs.

Over time these efforts have produced the intended effect. At a recent Interim Joint Committee on Economic Development and Tourism, the Secretary of the Cabinet for Economic Development reported Kentucky's rank among the 50 states. In *Site Selection Magazine*'s 1996-98 rankings, Kentucky ranked third in the country for job creation for one million population, fourth for new and expanded facilities, and ninth for investment. For total new and expanded facilities in 1998, the Secretary reported, Kentucky ranked 13th.

However, the bright picture of the Kentucky economy does not exist for all its citizens, as reflected in President Clinton's recent visit to Appalachia. Nor will manufacturing necessarily continue to grow at the rate it has in the recent past. The *1999*

Kentucky Annual Economic Report, published by the University of Kentucky, predicts a slower growth for Kentucky. The "Quarterly Forecast for the Kentucky Economy, 1999-2001," as reported by Eric C. Thompson, shows an average employment growth to 29,000 new jobs each year, but most of these are service sector or retail trade employment. Manufacturing employment is forecast to increase by only 500 jobs in 1999.

A growing segment of policy leaders are looking outside of traditional manufacturing for opportunities to enhance the economy of Kentucky. These economic opportunities are diverse, both geographically and by type of industry. The main theme discussed is a common desire to improve the economy from within and a belief that entreprenuership is the answer to many of Kentucky's remaining economic woes.

The role of small business in Kentucky communities is best seen whe n reviewing the employment numbers. As stated in the Kentucky Long-Term Policy Research Center publication, *Entrepreneurs And Small Business—Kentucky's Neglected Natural Resource*,

> In Kentucky, firms with fewer than 500 employees created all of the net new jobs from 1992 to 1996 while businesses with fewer than 20 employees created 52.6 percent of the small business job growth or 67,744 jobs. Genuinely small businesses, those with fewer than 20 employees, represent 85.7 percent of all firms and employ 26 percent of Kentucky's workforce.

The benefits of promoting entrepreneurs are summarized in the Center's publication: creation of high-value jobs, greater equity in the distribution of benefits, greater potential for innovation, greater economic diversity, reinvestment of wealth in the local economy, and a catalyst to further entrepreneurship.

Discussion

State government has had a limited role in supporting entrepreneurs and small businesses. Within the Cabinet for Economic Development is the Small and Minority Business Division. This staff consists of a director and three business development officers, who maintain a working relationship with agencies throughout the state that have related missions. They also have a role in sponsoring educational workshops and coordinating specific seminars on public sector purchasing assistance. The Minority Business Enterprise includes all ethnic minorities and excludes female-owned businesses that are not ethnically minority owned. In 1999, the Governor created an Office of Minority Affairs in his Cabinet to provide additional assistance to minorities.

In 1998, women in Kentucky started businesses at twice the rate of men, yet little is known about these small businesses. The issue of assistance of women-owned business was the subject of a 1994 Task Force on Women in Business, created by the General Assembly by SCR 68. Because the recommendations of that Task Force were not implemented, in March, 1999, the Subcommittee on Small Business Regulations and the Task Force on Economic Development of the Interim Joint Committee on Economic Development and Tourism sent a letter to the Governor asking him to seriously consider establishing an Advisory Council for Women's Business Issues.

One of the findings from al l the speakers before the Task Force and Subcommittee, relating to women-owned businesses in Kentucky and small businesses in general, is that despite their large numbers, government knows little about them and what their needs are. At the same time, small businesses report knowing little about what is available from government.

Government assistance to small businesses in Kentucky is primarily through the sixteen Small Business Development Centers (SBDC) that are funded through the US. Small Business Administration, with some funding from the General Assembly. The SBDCs hold about 400 entrepreneurial seminars each year and counsel individuals, but the program director testified that they need more consultants in the field, so the demands can be met.

A recent publication, *Kentucky's Science and Technology Strategy 1999,*listed ten recommendations to help guide education, business and government to achieve a stronger, entrepreneurial economy and qualify of community life. These recommendations available for the General Assembly's consideration, are based on the belief that Kentucky needs more innovative, growth-oriented enterprises, developed from within. These recommendations include making a limited portion of state pension funds available for investing in business ventures, creating research and development vouchers for small and medium-size firms, and establishing of the Kentucky Commercialization Fund.

The General Assembly could consider these and other areas which have been identified as needing a stronger governmental support role. These include extending tax incentives to smaller tourism projects in scenic, but poor, areas of the state; allowing funds reserved for industrial development projects to be used for infrastructure projects beneficial to the larger community; creating incentives for research and demonstration activities that hire fewer than 15 employees; providing assistance and seed capital to high-tech start-up companies, so that they may advance to the venture-capitol stage; providing non-collateralized loans to small micro-enterprises that allow individuals to move out of poverty, particularly in areas where manufacturing plants do not locate; and creating an office of small business advocacy to support the small business sector in Kentucky's economy.

EDUCATION

TEACHER QUALITY

Prepared by Audrey Carr

Issue

Should the General Assembly enact legislation to enhance the quality of teaching in Kentucky?

Background

In response to the 1989 Kentucky Supreme Court ruling that found the state's entire system of public schools unconstitutional, the 1990 General Assembly created a new system of schools. In addition to providing significant new state funds for all school districts, the law called for high standards for all Kentucky students, and a strong accountability component, to ensure that schools make progress toward meeting those standards. It provided a number of new initiatives, including, but not limited to, support for teaching and learning, an increased emphasis on professional development, and a significant investment in technology. It also created the Education Professional Standards Board, to establish the standards for teacher preparation and certification, and to approve teacher preparation programs with authority over licensure, relicensure, and revocation of certificates.

In 1998, the General Assembly enacted legislative changes to increase the Education Professional Standards Board oversight of the qualifications of persons entering the teaching profession and to require the board to make it possible for talented persons to enter the teaching profession through alternative routes. The General Assembly also revised the statutes dealing with professional development of certified staff, and provided additional funds for minority recruitment.

Discussion

While Kentucky has made major changes since the mid-'80s in its teacher preparation and certification requirements, the Kentucky Education Reform Act's focus on student results has spotlighted the importance of the quality of teaching. Evolving research has documented the strong connection between teacher quality and student achievement. A series of state studies, such as the Long-Term Policy Center's "Kentucky's Teachers: Charting a Course for KERA's Second Decade," as well as national studies and reports from policy organizations, such as the National Commission on Teaching for America's Future, the Southern Regional Education Board, the Education Commission of the States, and the National Conference of State Legislatures have brought the issue of "teacher quality" to the forefront.

In January, 1999, an eighteen-member task force was established to look at the status of teacher quality in Kentucky and to determine what changes are needed to enhance the teaching profession. The task force has reviewed research and gathered information from a variety of national experts, Kentucky practitioners from public and private universities and colleges, state agency personnel, education special interest groups, students, teachers, administrators, parents, and citizen groups.

A cumulative list of recommendations which address the broad spectrum of issues relating to teacher quality is being maintained. Recommendations include policies relating to teacher education institutions and universities and colleges as a whole; recruitment and retention of high quality, diverse teachers; teacher preparation curriculum and standards; teacher certification, licensure, and relicensure; induction and support for new teachers; continuous assessment of the teaching professionals; professional development; and professional compensation. In addition, the task force has solicited public input through a survey available on the LRC website and linked with the Kentucky Department of Education website and teacher listserves.

The task force will provide recommendations for consideration by the General Assembly aimed at enhancing the teaching profession, to ensure that all students have competent, caring teachers.

ADULT EDUCATION

Prepared by Audrey Carr

Issue

Should the General Assembly enact legislation designed to increase the literacy and education attainment of Kentucky's adult population?

Background

In 1997, the General Assembly enacted HB 1, known as the Postsecondary Education Improvement Act of 1997. The Act addressed the need to increase the number of Kentuckians who complete a postsecondary education credential, in order to ensure a more highly trained workforce, to provide a higher quality of life for all Kentuckians, and to enable Kentucky to compete economically with the rest of the nation. As a part of the study of postsecondary education in 1997, it became apparent that Kentucky's undereducated adult population is an over-arching problem.

Studies indicate that states that progress economically, socially, and culturally have high levels of literacy. Kentucky's capacity to raise the per capita income of its citizens, improve the quality of life, and increase the state's economic competitiveness is seen to be tied directly to the literacy and skills levels of adults in all of Kentucky. An estimated 40% of the working age population in Kentucky functions at the two lowest levels of literacy—not being able to read at all or reading at a very limited to moderate level. In addition, disparities in literacy continue among various regions of the state.

Recognizing that the low level of educational attainment of Kentucky's adults is a major barrier to prosperity, the General Assembly has taken several steps. During the 1997 Extraordinary Session , the General Assembly provided moneys for the research and development of model programs to serve undereducated adults, and in the 1998 Regular Session, the General Assembly adopted Senate Concurrent Resolution 126, which created the Task Force on Adult Education to further address the issue.

Discussion

The Task Force on Adult Education has studied the status of adults in Kentucky, examined the demographic detail illuminating the regional disparities within Kentucky, and gathered input from business, industry, citizens, students, adult education practitioners, and community agencies. In addition, the task force members have visited programs in eastern, western, and central Kentucky and have heard testimony from all regions of the state.

The task force is considering recommendations that address: the need to have an effective statewide policy and leadership strategy for addressing the educational needs of adults; comprehensive services to serve all counties in the state; resources to support the professional preparation, development, and certification of adult educators; client-driven services that are well-coordinated and communicated; incentives for employers and performance-based incentives for adult learners; strategies to alleviate the high school dropout problem; adequate resources to educate incarcerated adults; and an adequate financing system, including performance incentives.

The task force recommendations will provide the General Assembly some proposals to address solutions to Kentucky's critical problems associated with having an undereducated adult population.

EDUCATION OF STUDENTS WHO ARE DEAF OR HARD OF HEARING

Prepared by Jonathan Lowe

Issue

Should the General Assembly enact legislation relating to improving the literacy and academic achievement among students who are deaf or hard of hearing?

Background

In the 1998 Regular Session of the General Assembly, the Senate passed Senate Resolution 164, which encouraged the Interim Joint Committee on Education to study the methods of teaching deaf and hard of hearing students to read and write, in order to improve literacy for Kentucky's deaf and hard of hearing public school students. In response to SR 164, the Subcommittee on Elementary and Secondary Education has held a series of meetings addressing this topic.

With coordination, direction, and monitoring by the Department of Education, all local school districts must operate special education programs to ensure that students with disabilities receive a free, appropriate public education under the federal Individuals with Disabilities Education Act, as amended (1997). Implementation of that directive is difficult for school districts that have students who are deaf or hard of hearing because the incidence of the disability is very low, the needs of the students require teachers with specialized training, and students frequently have additional learning disabilities.

In 1998, there were approximately 800 students who were hearing impaired in the Kentucky public school system. Twenty-two percent of those students attended the Kentucky School for the Deaf, but the rest were scattered across the 176 school districts. Most districts have no or only a few hearing impaired students, often in different grade levels. Smaller and rural school districts struggle with providing the required services and finding appropriately trained staff to teach deaf and hard of hearing students. Moreover, approximately 42% of hearing impaired students in Kentucky public schools have one or more other disabilities that must also be addressed by the schools.

Literacy is a particular problem for students who are deaf, and it is a problem seen nationwide. Studies indicate that nationally, students ages 17 to 20 with severe to profound hearing loss and no reported mental retardation read at only the fourth grade level. Addressing the literacy issue is difficult, since most children who are deaf have significant barriers to early language acquisition. They have no access to the sounds of language, which form the basis of language development for hearing children. By the time they reach school age, they are frequently significantly behind their hearing peers. Literacy as well as content knowledge suffer as a result. Early identification of deafness or hearing loss and early intervention are considered the cornerstones of effectively addressing this issue.

Several different modes of communication and educational strategies have been developed for deaf and hard of hearing students. American Sign Language, “cued speech”, “oral communication”, and “total communication” are some of the various ways that deaf children are trained to communicate. Students who are deaf and hard of hearing are also placed in different educational settings—from schools devoted entirely to the education of deaf students to being mainstreamed in public school classrooms, with the use of interpreters and assistive devices. The diversity of intervention strategies used by different students creates further difficulties for school districts working to provide educational opportunities to these students.

Discussion

The Subcommittee for Elementary and Secondary Education has held several meetings in which the issues of the education of students who are deaf and hard of hearing have been discussed. Members have heard from a broad range of people interested in the subject of deaf education: teachers, students, parents, school administrators, the Kentucky Department of Education, the Educational Professional Standards Board, the Kentucky Commission on the Deaf and Hard of Hearing, and university faculty who train teachers and interpreters.

A report based on the testimony and recommendations heard by the subcommittee and additional research will be prepared and submitted by September 1999. The subcommittee will review the report, testimony, and recommendations for possible legislative action in the 2000 General Assembly. Some possible areas for recommendation include: universal screening for hearing impairment in infants; strengthening existing early identification and intervention programs; and establishing regional programs and encouraging inter-district partnerships to provide services for deaf and hard of hearing students.

SAFE SCHOOLS

Prepared by Ethel Alston

Issue

Should the General Assembly revise the current school safety laws?

Background

Kentucky experienced two unfortunate school tragedies in 1993 and 1997, which brought to the attention of the state and the nation issues of youth violence and school safety. To each of these crises, the Kentucky General Assembly responded by taking different approaches to legislation.

After the 1993 tragedy in Grayson, Kentucky, at the East Carter High School, where a 16-year-old student killed a teacher and a school custodian, the 1994 General Assembly passed legislation strengthening the criminal code by establishing new crimes for criminal violation on school property and increasing penalties for firearms and weapons violations by minors. In the area of juvenile justice, children 14 years of age and older who commit felonies in which a firearm is used can be tried as adults in circuit court. Legislation also passed that requires parents to report a student's conviction of designated crimes and expulsion from school for certain offenses to school officials prior to the student's admission to any school. School officials are also required to report to law enforcement agencies crimes which take place on or near school grounds.

During the 1996 Session of the General Assembly, the juvenile justice system was expanded, with the creation of the Department of Juvenile Justice, and provisions were also enacted directing courts to share findings of delinquency with schools, and declaring the records of violent juvenile offenders to be public. Student suspension and expulsion statutes were further modified to conform with the federal Gun-Free Schools Act of 1994, to require school districts to adopt a policy to expel for a period of one year those students who bring weapons to school.

After the close of the 1996 Session of the General Assembly, legislators and others considered laws and developed strategies that shaped several versions of legislation on school safety. Then, on December 1, 1997, the state and nation witnessed the aftermath of the Heath High School shootings in Paducah, Kentucky.

With these vivid images in mind, the 1998 General Assembly passed House Bill 330 as a comprehensive system to provide and maintain safe and secure schools that are conducive to learning, through the prevention of violence and the establishment of effective intervention services. Major provisions of House Bill 330 include the following:

- *The Kentucky Center for School Safety*, governed by a 12-member board, is established to provide data analysis and research; to disseminate information about successful school safety programs; collaborate with the Department of Education and others to provide technical assistance for safe schools; and distribute grants to local school districts and schools in the development of alternative education programs and innovative programs addressing school safety.

- *The Kentucky Department of Education* shall establish and maintain a statewide data collection system by which schools report data by sex, race, and grade on incidents of violence and assault, and possession of weapons and drugs, the number of arrests, suspensions, and expulsions and corporal punishments.

- *Local schools and school decision making councils* should have conducted an assessment of school safety and student discipline during the 1998-99 school year; shall develop discipline and classroom management techniques as a part of the comprehensive plan; and may remove threatening or violent students from classrooms or district transportation, pending any further disciplinary action.

- *Local School Districts* shall have completed by May 15, 1999, short and long-term strategies to address school safety and discipline; shall formulate a discipline code of acceptable behavior to apply to all students; shall provide educational services to expelled students in an appropriate alternative program or setting; shall limit suspension of exceptional children and primary school students only in cases where safety of the child or other students is an issue; may contract with local law enforcement agencies to provide school resource officers to work with youth at school sites; may provide intervention services by agreement with state or community agencies; and may pay hazardous duty pay supplement to teachers who work with alternative programs for violent and assaultive students.

- *School Principals* shall report criminal actions on school property to the appropriate law enforcement agency and are required to share notice of adjudication with school employees having responsibility for instruction of the child and with other appropriate personnel.

- *The Department of Juvenile Justice* shall provide a day treatment program combining therapeutic and academic services that are accessible to every school district in each judicial region.

- *The state court system* is required to notify principals of schools when students are convicted of charges related to violence, sexual offenses, firearms/weapons or drugs within five days of the order.

Implementation of House Bill 330

The Board of Directors for the Center for School Safety was organized by the summer of 1998 and, in collaboration with the Department of Education, considered criteria for the competitive process to select a university contractor to operate the center. In December 1998, the Board of Directors named Eastern Kentucky University (EKU) as the contractor, based on the proposal offered by EKU in cooperation with the University of Kentucky, Murray State University, and the Kentucky School Boards Association.

In October 1998, the Department of Education awarded $4 million in grants to 40 programs involving 59 school districts with programs that focused on operating alternative education programs during FY 1998-99. Grants ranged from $38,000 to $232,000. For FY 1999-2000, the Center for School Safety has awarded grants totaling $9 million among 90 programs, involving 125 school districts. Grants range from $34,410 to $500,000. The highest priority was given to those programs that reapplied for funding alternative programs; and 37 grants represent second year renewals of program applications. Thirteen projects involve two or more school districts conducting joint programs, and 53 grants were awarded for new programs.

Discussion

The causes of youth violence are very complex societal and community issues. The recent tragedies occurring in rural and urban communities have fueled a national debate on why youth resort to violence and what actions can be taken to ensure that schools are safe and secure. Although research indicates that schools still remain among the safest places for youth on a day-to day basis, communities across the nation are calling for measures to increase the supervision of children, conduct psychological assessment of students, install security systems, and impose stiffer penalties for school-related crimes.

Kentucky's safe school legislation is founded on multiple effective approaches to prevent school violence and involves community partnerships among juvenile justice, health service, and law enforcement agencies in the design of school safety plans and in the care and supervision of our students.

The comprehensive system of maintaining safe schools is under development, and schools and local districts are implementing policies and procedures to maintain safe environments. How effective these strategies are in preventing violence is yet to be determined.

The General Assembly has the option of staying the course and permitting the new system to develop, while providing resources for the enhancement of existing prevention programs and intervention services. The initial statewide collection of data of school incidents of violence is underway and is expected to provide understandable and meaningful analysis regarding the nature and scope of school violence in Kentucky.

School officials should then be able to base allocations to programs and services on need and positive outcomes.

The General Assembly may reconsider the propriety of the funding mechanism for safe school initiatives. The question of whether to determine funding according to a competitive grant process or based on a per pupil count is evidenced in the 1998 legislation, HB 330 and HB 321, the Budget Bill.

Section 7 of HB 330 provided that after the percentage of funds is allocated to the Center for School Safety for its operation and for grants for exemplary programs in local school districts, the remaining funds shall be distributed to local school districts on a per pupil basis, for the purpose of improving school safety and student discipline through alternative education programs and intervention services.

HB 321, the Budget Bill, in Part IX, 14f., changed both the purpose and method of distributing the funds. For 1998-99, funds were to be distributed as grants to local school districts by the Department of Education for the purpose of supporting appropriate alternative education programs, based on qualitative criteria and guidelines. The remaining funds for the 1999-2000 school year were to be distributed by the Center for School Safety, based on an application process established in collaboration with the department and approved by the center, that included eligibility guidelines and funding levels for grants and gave first priority to applications for alternative programs.

With two cycles of grants almost completed, distribution of funds through a competitive application process has provided funding to 125 of the 176 school districts. The remaining 51 districts have no specific state support to implement or improve school safety initiatives, even though safe schools are a priority, both locally and statewide. This competitive grant process also exacerbates the issue of equitable funding among local school districts. Conversely, funding on a per pupil basis would allow every school district to receive funding to support or upgrade programs.

The General Assembly also may consider establishing new school-related crimes, such as those proposed in prefiled legislation. One prefiled bill, concerning terroristic threatening in the first and second degree, would make it a Class B felony, punishable by a term of imprisonment of ten to twenty years, for any person to intentionally make false statements a weapon of mass destruction has been placed on school property, a school bus, or the site of a school sanctioned function, or that a counterfeit weapon of mass destruction has intentionally been placed at any of the locations or on any object in those locations. The prefiled legislation also classifies a threat to commit any act likely to result in death or serious bodily injury to any student, teacher, volunteer, or employee of a public or private school or postsecondary institution as a Class C felony punishable by a term of imprisonment of five to ten years.

ENERGY

CONSOLIDATING SMALL WATER UTILITIES

Prepared by D. Todd Littlefield

Issue

Should the General Assembly strengthen incentives to consolidate small water utilities?

Background

In 1996 by executive order, the Governor created the Water Resource Development Commission (WRDC). The Governor's initiative calls for potable water to be available to all Kentuckians by the year 2020. The WRDC estimates that 275,000 Kentucky homes are currently unserved.

One of the barriers to expanding service identified by WRDC is the large number of independent water districts and water associations which create a patchwork of infrastructure, administration and responsibility. Concerted effort is made more difficult if resources and authority are diffused, even in small counties. Within counties, efficient, well-run districts may exist side-by-side with districts that have outdated treatment facilities, deteriorating pipelines or insufficient customer bases.

The issue of consolidating water districts is not new to Kentucky lawmakers. As early as 1972, the General Assembly made a finding of fact that:

> Reduction of the number of operating water districts in the Commonwealth will be in the public interest, in that mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the general public; and that public policy favors the merger of water districts wherever feasible. *KRS 74.361(1)*

In March of 1998, Moody's Investors Services released a report which found that the credit rating of some small water utilities may deteriorate as they face the high costs of meeting mandated safe drinking water requirements. Moody's believed that the $1 billion revolving loan fund established by the 1996 Safe Drinking Water Act is insufficient and that small water systems lack the financial resources to access capital markets to fund high-cost water treatment and filtration facilities. Consolidating water systems within counties or even among several counties is seen as a step toward leaner, more efficient administration of water utilities and, in turn, toward expansion into unserved areas. The increasing stringency of federal water-quality regulation, the increasing technical complexity and expense of building and running state-of-the-art treatment facilities and the difficulty in hiring qualified engineers to operate them all support seeking economies of scale.

Discussion

The Public Service Commission (PSC) is empowered by KRS 74.361 to make determinations concerning water districts that should be consolidated and "propose by order that a merger of water districts be accomplished." For a variety of reasons, this power has been used sparingly. Expensive and lengthy lawsuits, local resistance, and power struggles are among the difficulties involved in removing or changing established local institutions. Care needs to be taken that working relationships in local government remain intact after mergers, whether forced or voluntary. Other reasons offered by PSC personnel for the light use of this power are understaffing and focus on other issues.

Voluntary consolidations would seem to be a more palatable course but, to date, there have been few such mergers. The WRDC Chair has said that consolidation or regionalization is a priority for the commission and that grant or loan funds for system expansions will be directed first toward districts that are or who have consolidated. WRDC views recent mergers in Logan/Todd Counties and Perry/Letcher/Knott/Floyd Counties as positive models for similar consolidations in the future.

One of the leading sources of funding for water expansion and upgrading is the Community Development Block Grant program. "Preference points" are given to applicants with more efficient, financially sound systems. The Kentucky Infrastructure Authority, whose revolving loan fund is another major source of financing for water projects, also looks more favorably on applicants who have larger, stronger, customer bases. Money could also be directed to assist new districts in upgrading equipment and facilities or retiring debt acquired in mergers.

RESTRUCTURING ELECTRIC AND GAS UTILITIES

Prepared by Tanya Monsanto

Issue

How should the General Assembly respond to growing competition in the electric and natural gas utility industries in Kentucky?

Background

In 1998, two bills introduced in the House would have deregulated the electric (HB 443) and natural gas (HB 766) utility industries. HB 443 would have allowed customers to choose electric suppliers after 1/1/2000. HB 766 would have permitted a gas utility to allow customer choice in its service territory. Neither bill was passed out of committee, and the question of utility deregulation was referred to two interim task forces: the Utility Tax Policy Task Force, and the Special Task Force on Electricity Restructuring. These inter-related task forces were charged with studying the implications of deregulation on taxation and the implications of electricity deregulation on Kentucky, respectively.

The essence of deregulation, both in other states and as embodied in HB 443 and HB 766, is to deregulate only one segment of the delivery chain: the commodity sometimes referred to as the energy supply. The commodity or energy supply is the actual production of electricity or natural gas. The two remaining segments, distribution and interstate pipeline transportation/transmission, transport the commodity across state boundaries or to the final customer, respectively. These two segments would remain regulated by the state and federal regulatory commissions.

If Kentucky chose to deregulate either industry, retail customers would be able to select their energy supplier and to purchase energy at market-driven prices. Customers might also have access to competitive metering and billing services. Twenty-two states have initiated state-wide gas competition or pilot programs that allow customer choice. Twenty-three states, either through legislation or regulatory action, have introduced retail competition in electricity.

The natural gas and electric utility industries have long been considered natural monopolies. That means, in both industries, a single provider of service is presumed to be more efficient than multiple, competing providers of service. This longstanding presumption is being challenged at both state and federal levels. The deregulation of supply is considered to be the final measure in a series of federal initiatives to make the utility industry more competitive. The Federal Energy Regulatory Commission (FERC) took initial steps to restructure the natural gas industry, first by de-controlling the well head price for natural gas, and later by creating a common carrier system for inter-state transportation of gas. By the early 1990s, the electric industry began to restructure too. The 1992 Energy Policy Act (EPACT) encouraged the growth of both non-utility generation and a competitive wholesale market for electricity. In 1995, FERC issued Order 888 and 889 which, as in the natural gas industry, began to rework the transmission system to act more like a common carrier.

Discussion

While retail competition would allow customers to select their energy supplier, there are a number of questions to be addressed if Kentucky is to maintain affordable rates and retain current levels of customer service. Kentucky already has some of the lowest electricity rates in the nation, and natural gas rates are just above the national average. JD Power, a company that is renowned for its customer satisfaction ratings for automobiles, recently conducted a similar rating of electric utilities. JD Power ranked Kentucky Utilities, one of Kentucky's largest investor-owned electric utilities, first in the nation for customer satisfaction.

Deregulating the supply segment will subject the commodity—electric generation or natural gas—to market forces. Since the supply cost is the largest component of the customer's bill, deregulation is favored as a way to cut customer costs by making utilities more efficient and by bidding down the cost of the energy supply. It is also favored as a measure to bring customer purchasing responses in line with market conditions for energy supply. As customers take a pro-active role in the energy market, proponents of deregulation contend utilities will become more responsive to customer needs.

Deregulation is also favored as a measure to bring the decision-making practices of a utility in line with economic rationality. This is particularly important as utilities build new capacity in Kentucky to satisfy growing regional demand for energy In deregulated states with some of the nation's highest electricity rates, consumers have had to pay off utility investments in high cost electric generation that cannot compete in deregulated markets. This illustrates the fact that regulation does not always respond to the economic disincentives underlying an investment decision; therefore, tomorrow's customers could be obligated to pay for a utility's unwise investments in today's regulated market.

Critics of deregulation point out that subjecting the supply cost to market forces will remove the certainty about future supply costs. Analysts cannot predict with certainty whether customer bills will rise above or fall below the expected regulated rate. Critics also highlight the fact that rates will no longer be fixed as they currently are under regulation. Customer bills may vary considerably in conjunction with seasonal changes and energy supply conditions. In other words, gas customers may pay more for the gas they use during the peak winter heating season, and electricity customers may pay more for their electricity when supply becomes tight during the summer cooling months.

While deregulation may lead to better investment decisions by utilities, that same economic rationale may compel utilities to concentrate on the "bottom line," to the detriment of more customer-oriented practices. For example, gas or electricity suppliers may provide service contingent upon credit checks, leaving low income customers or those with poor credit histories to more expensive suppliers. Utilities may also be less willing to re-capitalize old plant and infrastructure or to build new plants if stockholders do not expect to realize a sufficient rate of return on the investment. In other words, stockholder expectations may not harmonize with customer concerns of maintaining a stable supply of energy sufficient to keep prices low and prevent service disruptions.

Additional concerns arise from deregulation's impact on state and local revenues. Deregulation will open Kentucky's market to out-of-state suppliers that are not subject to Kentucky's current NEXUS standards. Kentucky's NEXUS standards require a utility to have a physical presence in the state before it is subject to state corporate income tax. Suppliers may also be able to avoid other types of state and local taxes, such as sales, property, and school gross receipts taxes, by manipulating sales locations or locating offices out-of-state.

Due to the uncertainty surrounding the possibility of pre-emptive action by the federal government to mandate retail competition, a number of states have decided to implement legislation that would ease the transition to a competitive market without legislating statewide retail competition. These steps could be taken as pre-market opening measures or market transition measures.

1. Rate Unbundling. The legislature could require regulated utili ties to unbundle their rates for purposes of disclosure on customer bills. Rate unbundling separates and discloses to the customer various charges that apply to different segments of the energy delivery chain. These charges are then listed separately on utility bills so utilities and customers are sensitized to the amount paid for the commodity, for transmission/pipeline transport, and for distribution.

2. Changes in NEXUS standards. Legislation could revise Kentucky's tax laws so that any entity doing business in the state would be subject to Kentucky's tax laws.

3. Establishing a Code of Conduct and Affiliate Transaction Guidelines. Legislation could require the PSC to review and establish a code of conduct for energy suppliers and affiliate transaction guidelines. Additional legislation could address the affiliate use of the regulated utility's company name and logo.

4. Customer Service Standards. Legislation could establish minimum standards for utilities regarding reliability of service, billing, marketing, and disconnection practices.

5. Market Monitoring. Legislation could require the PSC to monitor and make a report concerning market share concentrations and any other activities that would lead to market power problems in Kentucky.

6. Pilot programs. Legislation could permit a utility to engage in a retail competition pilot program. Pilot programs are limited in scope and duration. They are popular methods of offering limited market opening and collecting additional information about how customer choice would work in the state.

7. Promoting Use of Performance-Based Ratemaking. Legislation could require the PSC to encourage the use of performance-based ratemaking by energy utilities as a way to promote greater efficiency. Performance-based ratemaking, sometimes called alternative ratemaking, provides price caps along with economic incentives for utilities to encourage cost containment.

911 EMERGENCY TELEPHONE SERVICE

Prepared by Linda Kubala

Issue

Should there be a single statewide authority to coordinate 911 emergency telephone service?

Background

States differ markedly in how they establish, coordinate and oversee 911 emergency service. In some states, all local 911 emergency number systems are approved or operated by a central state coordinating agency, and must conform to a myriad of organizational and operational standards. In Kentucky, 911 service is locally controlled. The standards that apply to all 911 services, found in KRS 65.750 to 65.760, are minimal, requiring that (1) every service provide connections at least to police, fire, and emergency medical assistance; (2) the system operate 24 hours a day; and (3) it be established with the approval of the local city or county governing body. The law also allows local governments to establish a joint service through interlocal cooperation agreements.

Several factors seem to be moving Kentucky towards stronger central coordination of 911 emergency services. The explosive growth of cellular and other mobile telephones creates a pool of mobile 911 users who expect to dial 911 anywhere in the state, and get assistance. Today's more sophisticated technologies create needs for shared expertise and coordinated training. Efforts to develop uniform requirements for customers from place to place, such as standards for private switchboard systems, also require centralized coordination and organization of the project.

The growth of wireless telephone use, and the desire to upgrade response capabilities for these callers, led to the establishment of Kentucky's first statewide 911 agency. House Bill 673, enacted in 1998, created the Commercial Mobile Radio Services (CMRS) Board. The board deals solely with wireless (cellular) 911 service. The board administers a fee levied on all cellular phone users statewide, disbursing it to both the cellular telephone companies and the local 911 systems to fund improvements in their equipment, so that emergency personnel can pinpoint a caller's location. The board is also required to develop standards and regulations for wireless emergency services.

The need for uniform standards to address technical issues is another factor in the move towards stronger central coordination of 911 emergency service. In 1998, the General Assembly created the DPTS/911 Task Force to study difficulties experienced by private switchboard systems within the E911 network. A key recommendation of the task force was to establish a statewide 911 coordinator position in state government. The task force recommended that a centralized 911 coordinator should develop uniform operational and technical standards, education and training, and technical assistance for local emergency dispatch centers and private switchboard system owners and operators throughout the state. The task force also recommended that the 911 coordinator could track technological innovations in the telecommunications industry and provide guidance and assistance concerning these changes. The task force did not envision the statewide 911 coordinator as having direct authority or monetary control over local 911 systems, but rather as coordinating information and assistance to these local entities.

Discussion

The existing state 911 agency, the CMRS Board, deals solely with wireless 911 service If it is determined that the state should undertake other 911-related activities as well, then questions of the most appropriate location and organization of these functions arise. The mandate of the existing Commercial Mobile Radio Service Board could be broadened to include wireline 911 service as well. Alternatively, another 911 program might be placed elsewhere in state government. The Kentucky State Police presently provide limited technical and coordination assistance to local emergency dispatch centers. Additional duties could be assigned to that agency. Other agencies that deal with 911 systems include Eastern Kentucky University, Kentucky Information Resources Management Commission (KIRM), and the Division of Disaster and Emergency Services. Additional duties could also be assigned to any of these state agencies.

Statewide regulation of any aspect of 911 service is a significant change from the way 911 services have traditionally operated in the state. Any attempt to impose performance standards or coordination requirements on systems statewide needs to accommodate differences between existing systems, which stem from the tradition of local control and local funding.

CITY-OWNED TELECOMMUNICATIONS

Prepared by Linda Kubala

Issue

Should the General Assembly set fair business practices, or establish regulatory oversight, for cities that provide telecommunications services to the public?

Background

Cities have provided various utility services to their residents for many years. Water and sewer services are the most common, but many cities also operate electric or natural gas utilities. These municipal utilities coexist with private and investor-owned companies, cooperatives, and special districts established by local governments. All of these entities, except the cities, are regulated by the state Public Service Commission.

Kentucky cities have not traditionally provided telephone service, although the statutes do not prohibit this practice. Kentucky's local telephone companies, called Incumbent Local Exchange Carriers (ILECs), are all either private companies or cooperatives. All are regulated by the state Public Service Commission.

The federal Telecommunications Act of 1996 abolished exclusive telephone service areas and opened local telephone markets to competition. Since then, several hundred new phone companies (called Competitive Local Exchange Carriers, or CLECS) have announced their intention to market in Kentucky and have registered with the Public Service Commission, and several dozen actually have begun to offer service. Some cities, especially cities that already operate an electric utility or Cable TV system, also have entered or plan to enter this new market. Most plan to leverage their existing utility infrastructure and expertise so they also can offer telephone, Internet access, and related telecommunications services to their residents.

Many regulated telephone companies view competition from cities with great alarm. Shortly after passage of the 1996 Telecommunications Act, bills to ban cities from offering telephone service altogether were enacted in a few states, including Texas and Missouri. The Texas law recently was upheld by the U.S. Court of Appeals [City of Abilene, Texas v. F.C.C., 164 F.3d 49 (D.C. Cir. 1999)]. A bill introduced during in the 1998 session in Kentucky, HB 772, would have required city-operated telephone services generally to follow the same rules that apply to private companies, and to charge rates to cover all the costs a private company would have. This bill did not pass, but the issue continues to be debated and legislation in 2000 is likely.

Those who propose stricter rules for city-owned telecommunications argue that cities now operate under very different rules from everyone else, and that this gives them unfair advantages over competitors, including the incumbent local exchange carriers. Some of the differences they cite are as follows:

- Unlike the incumbent telephone companies or other CLECS, cities do not have to register with the Public Service Commission or meet state-imposed regulatory requirements. Incumbent telephone companies still are regulated in a comprehensive way. CLECS have to register, show they are financially sound, meet certain service standards, and use a uniform accounting system.

- A city could price telephone service below cost, and subsidize it with revenues from other city services, or even from taxes. The ILECS cannot do this. In fact, most city utility services make money and offset taxes for city residents, but a city could subsidize its telecommunications to gain market share or dominance.

- Cities can use their governmental powers to hinder or exclude competitors. The power to franchise, tax, control streets and roads, and regulate land use makes a city a regulator when it is simultaneously a competitor.

Cities contend that public services do not have the same costs for taxes, regulation, or profits that private companies do. According to cities, these are essential differences, not unfair advantages. Cities also assert that the only way they can bring better service and superior technology to their residents is to compete with the local incumbent. They note that competition between private companies is concentrated so far in the biggest cities, bypassing smaller towns. In this case, cities themselves must be the competitor that offers improved service. Finally, cities point to their long history and broad statutory authority to build projects and provide services for their citizens. They charge that any limitations diminish the right of citizens to act on their own behalf.

Discussion

Competition for local telephone customers potentially brings together very different entities that have operated under different rules. Telephone utilities, electric utilities, long-distance and cellular companies, Cable TV, satellite services, local governments and others are positioning themselves to test this market. No one knows which of several available technologies for transmitting messages will dominate the future industry, or whether several will coexist. These technologies include copper wire, coaxial cable, radio- or micro-waves beamed to towers, and transmissions via satellite.

Setting the powers and duties of cities that choose to enter this marketplace is one part of the larger job of creating fair rules for all of the entities so that they can compete. Where uniform rules are developed for other players, the General Assembly may consider whether these rules also should apply to city services.

The 1998 General Assembly created a Utility Tax Policy Task Force to recommend fair and uniform methods of taxing the commodities and services that were once be provided solely by utilities but no longer are exclusive. That group's recommendations with respect to telecommunications services may apply also to local governments.

The Public Service Commission administers several programs designed to be available to and funded by every telephone subscriber, regardless of his or her provider. These include operator and translation services for the hearing impaired (TDD), the Lifeline and LinkUp programs for low-income customers, and the state Universal Service Fund. The latter is being established under Telecommunications Act guidelines to subsidize service to rural and other high-cost areas, so that rate disparities between places do not grow too large in the competitive environment. The Commission also requires all CLECS to meet certain requirements as a condition of doing business, such as providing full 911 access. The Public Service Commission has no authority over cities, so it cannot compel cities to contribute to any fund or comply with any requirements. If the General Assembly wants city-operated services also to contribute and participate, then it could direct them to do so by legislation.

The 1998 Kentucky legislation proposed to make city telecommunications services comply with any rules and pay any fees and taxes that the city imposes on its competitors. This would apply, for example, to the city's charge to attach wires to its electric poles. In the areas of franchising and land use regulation, however, a broader solution may be needed, one that deals with the very disparate treatment of all the competitors under today's laws. If some competitors have to pay franchise fees while others are exempt; if facilities using one technology must obtain zoning approval while those supplied via another technology do not, then the "playing field" may not be leveled simply by adding cities to the group that must pay or must get permits.

UTILITIES AND UNREGULATED AFFILIATES

Prepared by Tanya Monsanto

Issue

Should the General Assembly legislate relationships between regulated electric utilities and their unregulated programs or affiliates?

Background

Kentucky's regulated electric utilities are expanding their unregulated business holdings at unprecedented pace. Louisville Gas & Electric (LG&E) reported to the Special Task Force on Electricity Restructuring that it now has one hundred unregulated affiliates in a variety of energy-related services. Energy utilities are also diversifying their unregulated holdings. Electric cooperatives have recently become involved in a limited number of unregulated activities, including telecommunications services, home security, cable and satellite television services. Electric utilities are increasingly in direct competition with small vendors and contractors. Utilities now offer a number of competitive services through unregulated affiliates, including propane sales, energy efficiency services, and heating, ventilation and cooling (HVAC).

The proliferation of unregulated affiliates increases existing concerns that ratepayers may be subsidizing affiliates through regulated utility rates. In Kentucky, unregulated affiliates can operate under the regulated utility's name and logo. In some instances, unregulated affiliates also have access to the regulated utility's marketing lists, advertising resources, such as billing inserts, and billing through the customer's utility bill. These same services are not available to unaffiliated competitors. While regulated utilities are permitted to invest their return on equity from the regulated asset base into unregulated affiliates, their competitors claim that this constitutes a form of cross-subsidy.

Cross-subsidy is not the only concern. Small businesses argue that unregulated affiliates are gaining an unfair advantage in already competitive markets. Small vendors and contractors contend that well capitalized affiliates are able to underbid contracts and offer attractive financing and repayment options through the regulated utility's billing. The Federal Trade Commission (FTC) is concerned that use of the regulated utility's name and logo by an unregulated affiliate may constitute a form of deceptive advertising. According to the FTC, consumers may erroneously ascribe the regulated utility's financial backing and customer service rules to the unregulated affiliate.

As the electric industry restructures, new concerns arise over the potential abuse of marketing relationships between the regulated utility and affiliated suppliers of competitive services, such as generation, marketing, and metering. One potential abuse in a deregulated energy market could occur when the unregulated generation supplier and the regulated distribution utility are able to create barriers to market entry by new firms. This situation can result when the consumer responds to the regulated utility's "goodwill" by favoring goods and services from the affiliate rather than a cheaper, unaffiliated competitor. The FTC is concerned that regulated utilities may favor their unregulated affiliates when making purchases of goods or services (abusive transfer pricing) or in providing marketing information to affiliates (cross-subsidy) that is unavailable to its competitors. This type of assistance behavior imposes costs on the regulated utility which it can then pass on to final consumers, or an unrealized gain from which consumers will fail to benefit.

While the Kentucky Revised Statutes (KRS) sets forth guidelines, and some prohibitions for the conduct of business between regulated telecommunications utilities and their unregulated affiliates, the same restrictions are not applied to other utilities. KRS 278.512 gives the Public Service Commission (PSC) the authority to consider the extent of competition in telephone services and to develop safeguards to ensure that regulated rates do not subsidize exempt services of the telephone utility. KRS 278.514 prohibits telephone utilities from using the revenues gained from the regulated side of the utility to subsidize or give advantage to any person providing competitive services. There are no comparable statutes which govern relationships between regulated electric utilities and their unregulated programs or affiliates.

A number of legislative attempts have been made to establish rules governing transactions between regulated electric utilities and their unregulated affiliates. The most recent attempt occurred in the 1998 session of the General Assembly. HB 619 set forth guidelines and restrictions on transactions between regulated utilities and their unregulated affiliates. Among other things, HB 619 prohibited the transfer of revenues, goods, or services derived from the regulated side to unregulated affiliates. Since then, the focus has turned towards efforts by state regulatory authorities to proscribe relationships between the two.

Currently, the Public Service Commission (PSC) is investigating the need for a written Code of Conduct and limitations on affiliate transactions in Administrative Case 369. A Code of Conduct contains cost allocation guidelines that govern how the regulated utility may price, transfer and apportion revenues and expenses over the regulated and unregulated sides. Additionally, a Code of Conduct normally contains auditing and reporting requirements. In July 1999, the National Association of Regulatory Commissioners (NARUC) adopted a resolution on Cost Allocation and Affiliate Transaction Requirements for the energy industry. NARUC asserts that the resolution recognizes that deregulation of the energy industry is fostering relationships between regulated utilities and affiliates that could lead to market power problems and abusive pricing relationship between the two.

Discussion

Action by the PSC alone to establish a code of conduct and affiliate transaction rules may be insufficient to prevent utilities from engaging in uncompetitive practices, deceptive marketing or in abusive transfer pricing. First, a code of conduct and affiliate transaction rules may not apply to non-energy-related affiliates, such as HVAC and small contractors. The concerns of small vendors and contractors about affiliates gaining an unfair advantage in competitive markets may not be addressed. The General Assembly should determine whether it is necessary to broaden the scope of affiliate transaction rules to cover non-energy-related services.

Second, a code of conduct and affiliate transaction rules may not address the issue of affiliate use of the regulated utility's company name and logo. Some states, like Arizona and Nevada, have allowed affiliates to continue the use of the name and logo if it is accompanied by a disclaimer. Other states, like California and Maine, give the regulatory commission the authority to prohibit the affiliate from using the name and logo of the regulated parent utility. The General Assembly may want to consider whether affiliate use of a regulated utility's name and logo constitutes a form of advertising that needs to be restricted or regulated.

Finally, if the gains from affiliation which are either subsidized by the ratep ayers or sufficient to create market barriers are substantial, then a Code of Conduct and Affiliate transaction rules may be insufficient to protect or to promote market competition. A Code of Conduct normally contains behavioral rules. Specific "behavioral rules" include requiring utilities to conduct transactions with affiliates on an "arm's length" basis or making information from the regulated utility available to the competitors of the affiliate. When behavioral rules have been deemed insufficient, states have utilized structural remedies to prevent cross-subsidy between regulated utilities and their affiliates. Common structural remedies include divestiture and requiring that competitive businesses be owned and operated through wholly-owned subsidiaries. Other structural remedies include requiring affiliates to purchase the parent utility's name and logo or requiring utility purchases from unregulated affiliates to be restricted to contracts won through an objective bidding process. Regulators also have established price limits for asset transfers.

Regardless of whether the legislature prescribes structural remedies or additional behavioral rules for transactions between utilities and their affiliates, the General Assembly may consider which instruments are the most expedient for the given policy objectives. In all instances, third party evaluation and periodic review are options to help ensure that transactions between affiliates and the regulated utility are in compliance with all applicable statutes and regulations.

HEALTH AND WELFARE

SCHOOL NURSING

Prepared by Robert Jenkins

Issue

Should the General Assembly fund school nurse positions at the statewide level in the Department of Education, at the local level in each school district, or not at all?

Background

Student Health Needs

Of Kentucky's 623,000 school children, approximately 85,000 children have educational disabilities, some of whom have complex needs requiring an Individual Education Plan (IEP) or 504 plan. [2] Many of these children—as well as many children who do not have educational disabilities—have health care needs while at school. These needs may include emergency first aid, medication (both prescription and over-the-counter) administration, routine physicals, head lice screenings, and countless other health services that require attention during school hours. Medication doses can total many thousands per school district per *month*. Federal law requires that health care services be provided to students if those services are necessary for the student's disability and can keep the student in school.

Responsibility for Student Health Needs

Everyone would agree that health care services should be provided to students by competent and qualified individuals. Nurses, teachers, teachers aides, health aides, school administrators, and volunteer health care professionals provide them, but their training and qualifications vary. Procedures requiring specialized knowledge or training generally are delegated by nurses to school personnel whom they have trained. The difficulty is that there are too few nurses in the schools to train, and there are no required statewide standards for health care services and no required statewide standards on medication administration.

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[2]An IEP is a written plan of action that is specially designed to meet the instruction and related services needs of a child or youth with a disability. A "504 plan" is a written plan of action to meet the education needs of students with disabilities to comply with Section 504 of the Federal Rehabilitation Act of 1973, which prohibits discrimination that is based upon disability for any programs or activities receiving federal funding.

146 of Kentucky's 176 school districts have at least one nurse under direct employment or contract, with the number of nurses totaling 342. All districts request that teachers assist, to some extent, with the rendering of services.

Who Pays?

Funding for school health services varies. While 65 districts are reimbursed under Medicaid, 111 districts do not seek that reimbursement because of the extensive paperwork, insufficient administrative support, lack of knowledge of its availability, or low reimbursement rates. (Medicaid dollars are available if services are delivered to Medicaid-eligible students and if reporting requirements are met.) Medicaid is matched at a 70% federal rate, meaning that for every dollar spent in Medicaid benefits, only 30 cents is Kentucky's portion. With 43,000 children currently eligible for Medicaid, it is important to note that school districts are already pressed to provide health services. If the additional 55,000 children who are eligible for KCHIP actually are enrolled in that program, schools partnering with the program would be able to provide services at the schools and be paid for them.

Districts set aside varying amounts of money to staff nursing positions, and this money may come from general funds, local health care provider grants, federal programs, or other state programs. Many services are performed by local health department nurses who contract with the district; today, there are not only problems with districts having sufficient funds to pay for these contracts, but there are also problems with health department nurse availability, because of statewide reductions in health department staffing.

Family resource centers also contract for nursing services. Funding for the centers exists for school districts with significant numbers of students in the free lunch program. In 1998-1999, there were 602 family resource and youth services centers serving 963 schools. These centers often have innovative programs for health services, such as mobile dental agreements with the University of Kentucky or telemedicine projects. There are 400 public health service delivery sites, 200 of which are in elementary and middle schools, where nurses provide the services. Funding for family resource centers for the upcoming school year is $2.3 million.

Current nursing levels in Kentucky range from 1 nurse for 600 students, to 1 nurse for 12,000 students. National recommendations from the School Nurses Association suggest a ratio of 1:750. Considering all current funding sources and staffing, the average total dollars allocated for *salary* is $22,000 per nurse. To fund additional nurses to match the SNA recommendations would require an appropriation of approximately $8,000,000.

Discussion

Several options have been discussed to solve the problems associated with the delivery of health care services to students in schools by qualified health professionals. With any of these options, opponents have argued that flexibility of the school districts will be jeopardized, that any mandate will be too expensive for already-distressed districts, and that the delivery of services is best left the responsibility of parents. Proponents argue that standardized guidelines should be explored, that these guidelines can be developed within state nursing law requirements, that "healthy children" means increased school attendance and more funding for schools, and that a comprehensive array of school health services will benefit children in ways that cannot be measured by examining pure funding totals alone.

Options include:

· Funding a state school nursing position within the Department of Education or Department of Public Health. This nurse would help establish guidelines to be used by all school districts, would help train nurses and teachers across the state, and would be available to answer questions by school personnel about complicated health procedures. A statewide position would require a nominal investment, compared to the funding of additional nurses in all districts, but would not guarantee sufficient training for health services and would not increase the number of nurses in schools. However, a state school health nurse could provide "on-call" recommendations to the districts to answer any health questions that arose.

· Funding a nursing position within each school district. Because 146 districts already have at least one nurse, only 30 additional positions would be necessary. Funding for the additional positions could require exploring alternative funding methods, to supplement the general fund allocation.

· Funding nursing positions to establish the 1:750 nurse-to-student ratio recommended by the School Nurses Association. This option would require an appropriation in the range of $8 million.

· Requiring Medicaid managed care partnerships and KCHIP administrators to contract with local health departments and school-based health clinics for the provision of health care services to students while at school. This option would increase the availability of nurses and eliminate the need to transport students to a physician's office, but it could increase the cost of Medicaid and KCHIP, if contracted rates are not consistent with those of other clinics and providers, or if the services cannot be delivered as efficiently.

COORDINATION OF SERVICES FOR PERSONS LIVING WITH HIV OR AIDS

Prepared by Robert Jenkins

Issue

Should the General Assembly require better coordination of services for persons living with HIV or AIDS?

Background

Statistics

HIV and AIDS continue to be problems in Kentucky. There were 287 newly reported AIDS cases to the state health department in 1998. It is estimated that people living with HIV total 10 times the number of those with AIDS. Combined with those diagnosed with AIDS prior to 1998 and who are still living, there are approximately 13,000 Kentuckians living with HIV or AIDS.[3] In Kentucky, the prevalence rate for Kentuckians living with AIDS increased from 24.9 per 100,000 in 1997 to 30.4 per 100,000 in 1998. The prevalence rate in the African American Community is estimated at nearly 40 per 100,000, which means that HIV and AIDS are progressing more rapidly among African Americans.

Other important facts to consider:

- According to the CDC, AIDS is the #1 killer of African-Americans aged 24-44.
- Nationally, in 1995, for the first time, African-Americans and Hispanics represented the majority of AIDS cases among men and women.
- HIV infection is spreading more rapidly among women than men. Since 1991, AIDS incidence has decreased slightly among males, while for most years, it has risen among females.

Services

The cost of HIV drug therapy ranges from $15,000 to $20,000 per year. People are living longer with HIV before they develop AIDS. After the progression to AIDS, treatment requires visits to family care physicians, infectious disease specialists, other

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[3]Kentucky does not report HIV positive cases to the Centers for Disease Control and Prevention and is believed to have significantly higher numbers of *actual* infected HIV positive persons. The lack of an exact accounting of HIV positive individuals increases the difficulty of planning for future AIDS care.

medical specialists, nurses, nutritionists, rehabilitation therapists, social workers, and pharmacists, with care also rendered by home health agencies and other providers. Referrals to these providers requires travel to many different offices, the risk of transportation problems, increasing costs associated with numerous office visits, and necessitating many missed days from work each month (if the patient is not too sick to work).

Problems with care are compounded by cultural differences in rural and urban areas, not to mention language barriers, with the increased incidence among the Hispanic population. Coordinated care must account for all barriers faced by potential service clients.

Under the HIV care coordinator program run by the Departmen t for Public Health, state assistance in coordinating care is given to individuals with limited resources, yet the geographic area covered by each coordinator is large, and social services and case management are not easily accessible to all persons with HIV/AIDS. In rural areas, patients and service clients are covert; the prevalence of HIV/AIDS misunderstanding makes many fearful that revealing their HIV status will result in lost jobs and diminished access to services after providers learn that they are treating an AIDS-related condition and not just an isolated medical problem. Some parts of the state do not have the required medical specialists; for example, there are no infectious disease physicians in Owensboro, Bowling Green, or many other small urban and rural areas.

There are few HIV/AIDS community-based organizations (CBOs) in Kentucky. CBOs have difficulty accessing necessary financing for operations and service programs. Grants are difficult to obtain, and they generally provide only start-up funds. There is no coordinated effort or team leadership among the existing agencies and programs providing HIV/AIDS services.

Discussion

Proponents of better coordination of services argue that the time saved with the convenience of offering services at a consolidated location means that clients miss less time from work and increase their chances of retaining employment, retaining health insurance, and retaining the ability to pay for treatment. It is more cost-effective for the patient and the physician if all services are offered under "one roof" and the expenses can be shared.

Opponents argue that there are too few persons living with HIV or AIDS to make any state investment in better coordination a cost-effective one. There are more people living with cancer or other diseases; money could be better spent on those other conditions. Opponents also assert that money spent on HIV or AIDS would condone behaviors that may lead to the disease.

Potential legislative actions include:

1. Creation of a state office that would offer oversight of all HIV/AIDS prevention and treatment efforts. Grant opportunities would be monitored, and information about them would be disseminated to appropriate local organizations. Assistance would be given to health care providers who would seek to consolidate the provision of services at one location.

2. Creation of a center of excellence that would contract with managed care organizations, which would consider the center the patient's medical home for AIDS treatment purposes and thus not require preauthorization for each referral or prescription.

3. Funding of additional case management positions within local health departments. These individuals could provide additional coordination in the communities.

4. Encourage collaboration between public health agencies and faith-based organizations, to assure that all segments of the population are reached with prevention and treatment efforts.

ROLE OF LOCAL HEALTH DEPARTMENTS IN MEDICAID MANAGED CARE

Prepared by Robert Jenkins

Issue

Should the General Assembly require the Department for Medicaid Services to partner with local health departments for the provision of health services?

Background

Historically, local health departments have sought reimbursement through Medicaid for various health services, most notably Early Periodic Screening Diagnostic and Treatment (EPSDT) program screenings and immunizations. As the shift toward Medicaid managed care has taken place through the 1990s, there has been a shift in the provision of these services from health departments to private physician offices, as physicians recognize the need to accept more "managed care" patients in order to make Medicaid participation profitable.[4] Health departments have seen a corresponding decrease in funding, causing cutbacks in health department staffing and programs.

To better understand the problem, it is necessary to understand the history of Medicaid managed care in Kentucky. In 1993, the state faced uncontrolled increases in health care costs. There were 450,000 Kentuckians without health insurance. To offer health care to as many people as possible was the goal; it was thought that managed care would do just that, while saving the state $682 million over 5 years. The indigent trust fund, created by 1994 HB 250, was to be funded by these savings, which were to be used exclusively to expand the Medicaid eligibility base. The bill also directed the expansion of managed care throughout the Medicaid program.

The Cabinet for Human Resources received a waiver in 1995 from the federal government to establish a Medicaid managed care system through 8 regional partnerships. The first 2 partnerships, in Louisville and central Kentucky (including Lexington), were established in 1997. By that time, the numbers of uninsured had grown to 585,000.

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[4]Traditional Medicaid reimbursed on the "fee-for-service" basis, meaning that health care providers were paid as a result of fees that they charged for services rendered. If the doctor had 50 patients but only saw 2 of them for office visits, the doctor was paid a fee, subject to limitations, for each of the 2 visits. Medicaid "managed care" pays the providers a set fee for *managing* the care of their patients. For example, if the doctor has 50 patients but only saw 2 of them for office visits, the doctor is paid a set fee each month for the care of each of the 50 patients.

Despite the professed ongoing efforts of the Department for Medicaid Services and the Department for Public Health to involve regional and local health departments in the managed care structure, the conviction remains among some observers that those efforts have been too few and that the budgets of health departments have been significantly affected. In regions with Medicaid managed care, health departments lost over 10% of Medicaid revenue for preventive services in 1997 and 1998.

With less money, the health departments have employed fewer health professionals. If the only benefit of health departments were to serve Medicaid patients, the problem would perhaps not be as significant. However, health departments used Medicaid money to fund the traditional health prevention functions that are statutorily mandated as well, to provide other health assistance in their communities. Health departments previously provided low-cost or free medical care to the medically indigent and immunizations for children. Health department nurses participated in health fairs; they provided prevention, surveillance, early detection, and disease control services; they contracted with local schools for the provision of direct health services. If health departments no longer employ nurses or sufficient numbers of other personnel, then their ability and availability to provide more affordable services in the communities and the schools is diminished.

Discussion

As with any new program, it takes time to fully analyze effects. Proponents of Medicaid managed care argue that the state will enjoy significant savings each year, that costs will be controlled as recipients seek care in physician offices rather than emergency rooms, and that Medicaid recipients will enjoy better health care as a result of its management by a physician. Opponents argue that any savings come at a cost, and that it is the costs, not the care, that have been managed, all to the detriment of the state's indigent.

If Medicaid managed care is to continue, a possible option is to require the regional partnerships to establish contractual relationships with local health departments, to ensure a continuing source of Medicaid dollars. One problem with this proposal is that too few Medicaid recipients might choose treatment at the health department to make their participation profitable. Health departments would continue to struggle to find their niche in the local Medicaid environment.

Another possible solution is to require schools and health departments to work together to form a single medical home for children. If these entities could become the provider of record for schoolchildren, they would enjoy a large base of potential patients. Many parents might choose to allow treatment of their children at school if doing so would prevent children from having to miss several hours of school for a minor service that would otherwise be obtained at the doctor's office.

The 2000 General Assembly may need to explore the roles and needs of local health departments under Medicaid managed care and take appropriate action to provide for the desired services to citizens.

EARLY CHILDHOOD CARE AND EDUCATION

Prepared by DeeAnn Wenk

Issue

Should the General Assembly enact legislation relating to Early Childhood Care and Education initiatives in Kentucky?

Background

In 1998, legislation was enacted creating the Kentucky Early Childhood Advisory Council. The governor also created the Office of Early Childhood Development, in April 1998, to provide advice on policy related to early childhood development. The office is working with a task force to develop a 20-year plan that addresses all the issues related to early childhood development. The Early Childhood Task Force and it six working groups have been meeting since March 19, 1999 to assess the current state of child care and education in Kentucky and to study ongoing initiatives in other states. Recommendations for legislation are expected in August 1999.

The new research on early brain development claims that 90 percent of the infrastructure of a child's brain is developed by the age of three. A majority of all children will spend some of this time in a child care or preschool setting. Studies show that most child care, especially for infants and toddlers, is mediocre in quality and makes minimal contribution to children's emotional and intellectual development. High quality child care has been shown to lead to gains in emotional or cognitive development, improvements in educational process and outcomes, increased economic self-sufficiency, reduced levels of criminal activity and improvements in other health-related indicators, such as child abuse and maternal substance abuse.

The major factors indicating quality child care are low staff-to-child ratio, low staff turnover, small group sizes consistent with ages of children, staff qualifications and training, and developmentally appropriate activities. Kentucky falls short of recommended levels in many of these areas. Nationally recommended staff-to-child ratios for infants are 1 to 3 or 1 to 4, with a group size of 6 to 8. Kentucky's ratio is 1 to 5, with a group size of 10. Teachers in Kentucky's child care centers are only required to be 18 years of age and have 6 clock hours of training. Head Start programs require a CDA or AA for teachers. National recommendations require pre-service training, on-going training, and a bachelor's degree.

Kentucky currently has several strong initiatives for early childhood development. The Kentucky Education Reform Act preschool programs for three- and four-year-old children are continuing to expand. Public and private schools, Head Start programs, Family Resource Centers, and other community resources, such as YMCAs, are providing in-kind, program, and financial support for before and after school care. Other agencies that support quality care statewide through training include the Child Care Resource and Referral Agencies, Cooperative Extension Services, Kentucky Educational Television and Early Childhood Educators, and the federal adult and child nutrition program.

Young children cared for only in home settings benefit from early childhood education and intervention programs. Home visiting programs, such as HANDS (Health Access Nurturing Development Services), the Kentucky Early Intervention System (FIRST STEPS), newborn screening programs, and other public health and department of education programs, all are aimed at dealing with early childhood development activities.

However, current programs are not universally accessible or adequately funded. For this reason, Kentucky is consistently ranked near the bottom relative to other states in the quality of child care, the learning environment for children, and the economic status of children.

At the same time, studies do not provide support for the outcomes of all early childhood initiatives. Most evaluations and recommendations suggest that support of one single improvement, such as child/staff ratios reduction, will not be enough in the long term to improve outcomes for children. A successful initiative must address several aspects of the childhood education delivery. Child/staff ratios need to be reduced, but centers also need higher subsidies for operation costs, teachers need more training, and salaries and benefits need to be improved. Children still need adequate hearing, vision, and language exams, as well as other health care attention, in order to benefit from increased quality care.

Discussion

Given the complexity of this issue, there is a broad array of possible legislative initiatives. One strategy is to focus on strengthening or expanding existing programs that benefit early childhood care and education.

- **Family and Youth Resource Centers.** The funding mechanism for FYRCs may need to be stabilized. Currently funding is tied to the proportion of children eligible for free school meals. This number is falling because eligibility is tied to receipt of public assistance (K-TAP). K-TAP caseloads have declined by over 40% since 1996.

- **Child Care subsidies.** While continued accessibility for parents and children is important, support for increasing subsidies to enhance wages and training of providers may improve quality. The Child Care and Development Fund Block Grant is the major source of child care subsidies Additional funding is available from the TANF Block Grant, due to declining caseloads and the Social Services Block Grant. An estimated total of $102.8 million will be available for child care in federal fiscal year

2000. The Cabinet for Families and Children recently raised income eligibility from 150% to 160% of poverty and decreased co-payment rates for low-income families. Kentucky has one of the lowest costs for child care in the country, $61 to $64 per week.

- **Home visiting programs.** These programs could be expanded. Over 20 counties have no access to home visiting programs and less than one-half of the counties have full access.

- **Head Start and Early Start.** These programs could be expanded statewide. There are 33 Kentucky Head Start Grantee Programs serving about 16,000 of Kentucky's 312,000 children.

- **Strengthening administrative regulations.** Staff-to-child ratios and group size could be reduced. Training requirements for providers and teachers could be increased. Licensing standards and penalties could be revamped to improve mechanisms for increasing center quality.

The Kentucky Early Childhood Task Force may offer further recommendations.

Additional Strategies not currently used in Kentucky:

- **Wage and training subsidy programs.** These could be used to increase teacher qualifications and occupational retention. North Carolina, Georgia, Florida, Illinois and others have these incentives.

- **At-home Parent subsidies.** Minnesota has a program providing state child care subsidies for one year to one stay at home parent. Other states have implemented tax credits for one parent to stay at home.

IMPROVING SOCIAL SERVICE DELIVERY

Prepared by DeeAnn Wenk

Issue

Should the General Assembly enact legislation to improve service delivery and accountability of case managers working for state social service agencies?

Background

Kentucky began implementing the Personal Responsibility and Job Opportunity Reconciliation Act of 1996, P.L. 104-193, in October of 1996. Aid for Families with Dependent Children (AFDC) was replaced with Temporary Assistance to Needy Families (TANF) in the form of a block grant. Kentucky's program implementing the provisions of TANF is called Kentucky Transitional Assistance Program (K-TAP). Major reforms in the service delivery system in Kentucky have taken place through legislation and administrative regulation. The Cabinet for Families and Children has undergone major changes, including a reorganization.

By most accounts, Kentucky has made a smooth transition. Caseloads have declined by over 40% since August 1996, from 172,193 families to 41,159 families. The Cabinet for Families and Children claims that a large proportion of mandatory recipients are participating in Kentucky Works or are employed. The Cabinet has initiated programs to assist recipients viewed as the "hardest to serve" (i.e. those with multiple barriers to employment).

The Subcommittee on Welfare Reform has heard one major concern repeatedly from advocates and recipients at committee meetings during the 1998-99 interim. The quality of service available to many recipients continues to be inconsistent and inadequate. Conflicting and incomplete information on programs, eligibility requirements, and benefit amounts are received, the variations seemingly depending upon the case worker, the location, or the day of service.

Case managers have become increasingly important to the poverty and low-income population of Kentucky. They have become essentially one-stop brokers for most information, application, and processing of available services and programs. The case manager in the local Community Based Services office is responsible for providing information on food stamps, child care assistance, transportation assistance, medical care, domestic violence counseling, substance abuse treatment, child protection, foster care, child support enforcement, social security income, housing subsidies, educational opportunities, job training and employment opportunities, and K-TAP eligibility. The case manager is required to input on to a computer application hundreds of data items related to recipient eligibility, a process taking about an hour and a half, depending on how well the computer is working. Case managers are also responsible for updating all information on recipients as they change child care, earn more income, marry, or move.

K-TAP recipients are not the only ones eligible for case management. Case managers also work with applicants for assistance to help keep them off of K-TAP and they help former K-TAP recipients obtain assistance to keep from returning to K-TAP.

The management of cases is also more challenging. There are a broader array of services offered. For example, the Cabinet for Families and Children now offers new Kentucky Works Supportive Services, including a job retention bonus, a work incentive bonus, an education bonus, car repairs and new Family Alternatives Diversion assistance, including employment retention assistance and relocation assistance. There is also more for the case manager to consider in terms of the number of months the recipient has been receiving assistance, the number of hours they are required to work, and their eligibility for assistance programs. Each recipient can have a different time line, participate in a different combination of activities, and be eligible for a different set of services. Regulations are continuously being modified and case managers are responsible for being informed of all changes.

The result is that total benefits are complicated to compute and can vary considerably with increased earnings or any other change in status. Case managers with high caseloads do not have the time or institutional incentive to assist recipients in considering multiple benefit options. These challenges make it difficult, if not impossible, for many recipients to make the best use of the time and benefits available to them to become self-sufficient. In the long term, many recipients will find it difficult to move off and stay off public assistance.

While the state caseloads have declined considerably, pressure has not been taken off case managers. Their caseloads are still high, they have increased data reporting requirements, and they are inundated with policy changes. Job turnover for case workers is high and positions are difficult to fill.

Discussion

The Cabinet for Families and Children has committed to hiring 100 new family service workers and to raising salaries for some. However, there is no guarantee that these workers will be case managers or that they will be assigned in the places most needed.

- **Expand current caseload requirements**. KRS 199.461 requires that family service workers in the area of foster care, child protection, juvenile services, or adult protection not be assigned more than 25 active cases. This caseload requirement could be expanded to include family service workers with K-TAP or K-TAP eligible cases. Funding for additional positions would have to be appropriated.

- **Caseload reporting. T**he requirements for reporting on the number of cases and type of cases by the different classes of family service workers could be strengthened.

- **Incentive system.** A system of incentives for family service workers to use innovative methods of determining benefit options for K-TAP and K-TAP eligible recipients could be developed. Oregon recognizes workers by empowering them to make decisions about creative benefit packages to assist the individual needs of recipients. A worker's performance is not evaluated just by how closely it follows procedure manuals but by how well it helps recipients become self-sufficient.

MEDICAID MANAGED CARE

Prepared by Barbara Baker

Issue

Should the General Assembly delay the expansion of Medicaid managed care to additional regions pending a comprehensive evaluation of the cost, quality, utilization, and access of services within the current partnerships?

Background

Medicaid managed care has been implemented in most states in an effort to reduce the high cost of fee-for-service health care. Medicaid expenditures grew from $53.5 billion in 1988 to $152 billion in 1995. This growth was due to increased enrollment, increased health care prices, growth in utilization, and the aggressive use of provider taxes and disproportionate-share hospital payments. From 1991 to 1997, national enrollment in Medicaid managed care grew from 2.7 million to 15.3 million beneficiaries.

The Kentucky Medicaid budget jumped from less than $1 billion in 1990 to more than $2.5 billion in 1997. In addition, Kentucky had approximately 450,000 individuals without health insurance. In response to these concerns, Kentucky implemented a fully capitated Medicaid managed care demonstration project in 1997. It was envisioned that community providers would come together to form eight health care partnerships. Two such partnerships were implemented in November, 1997, in Regions 3 and 5 (Louisville and Lexington areas respectively).

The original mission for the Kentucky Medicaid managed care program was to increase Kentuckians' access to health care while controlling the costs. It was envisioned that implementation would result in savings that were to be placed into the Indigent Care Trust Fund created in 1994 HB 250. Approximately $682 million was anticipated to be saved over 5 years. Although the 1998-2000 biennial budget reflected a $188 million avoidance in costs to the state, savings were anticipated before they were experienced; therefore, the Indigent Care Trust Fund has maintained a $0 balance from its beginning.

The vision that community providers would form a health care partnership in all eight regions has not been realized. Representatives from the Department for Medicaid Services have indicated plans to expand Medicaid managed care statewide by October, 1999. However, providers in several regions are struggling to form partnerships due to the financial burden associated with startup costs. Regions 6 and 7 (Northern and Northeastern Kentucky) have discussed forming one partnership, and Regions 1 and 2 (Western Kentucky) have discussed merging with Region 3 (Louisville area). In Region 8 (Eastern Kentucky), the bidding process resulted in two groups, Region 8 Medicaid

Managed Care Health Partnership and Mid-South Healthcare, Inc., submitting a proposal to the Cabinet for Health Services. Instead of bringing the providers together as a cohesive whole, the bidding process resulted in divisiveness among the providers and both parties filing lawsuits against the Cabinet for Health Services. The cabinet stopped the original bidding in Region 8 and asked the two parties to develop a joint proposal within 30 days, which did not occur. On August 27, 1999, the cabinet selected Region 8 Managed Care Health Partnership as the entity to negotiate a contract for the Region 8 partnership.

Implementation of partnerships in Regions 3 and 5 has raised several contentious issues of cost, quality, and access. A brief summary of these issues is presented:

Cost versus Savings

Whether the costs of Medicaid managed care (as compared to traditional Medicaid) will be decreased remains to be determined. Very little data is currently available regarding the cost, utilization, or access to services provided by Medicaid managed care partnerships, although a report from the University of Kentucky found overall satisfaction among consumers and providers in the traditional Medicaid program prior to implementation of the Medicaid managed care.

Although cost data is limited, it is clear that administrative costs in regions with Medicaid managed care partnerships have been higher (9%) than administrative costs in regions with traditional Medicaid (2%). It is important to consider that administrative costs in managed care typically range from 9% to 10%. Each partnership was designed to have a separate administrative body, which increases the overall cost of administering the Medicaid program statewide. Some people believe that the additional administrative dollars have decreased the amount of Medicaid funds available for direct patient care. It is important to note, however, that the role of the Department for Medicaid Services has changed from being a payor for services to a purchaser of health care for Medicaid recipients. One of the key functions as a purchaser of health care is the monitoring of quality of care. Partnerships are required to conduct on-going quality assurance activities, which account for some of the increased administrative costs.

Kentucky Health Select and Passport have experienced pharmacy overruns. Partnerships were designed to be full risk-bearing entities. Yet both have received additional funds from the Department for Medicaid Services to offset overruns and to return a portion of the withhold to providers. Collectively, these additional funds totaled almost $20 million for 1998.

Providers in Region 5 have voiced concern that there is a 20% withhold on primary care providers, specialists, and hospitals. Physicians are assigned to a pool of doctors. The pool's experience in controlling costs determines how much of the withholds will be returned. For 1998, approximately one-half of the withholds were returned to providers in Region 5.

Access

The effect of Medicaid managed care on access to services is yet to be determined. There is little information available regarding the access of services in Medicaid managed care partnerships. It is anticipated that the finding of a study from the University of Kentucky will be available soon. Representatives from Kentucky Health Select reported that their Provider Adequacy Survey identified five counties with an insufficient number of primary care providers. Patients in those counties are permitted to use the health department for services without referral from a primary physician.

Medicaid managed care adversely affected local health departments. Historically, health departments have provided low-cost or free medical care for the indigent in a variety of community and school-based sites. In addition, health departments provide immunizations for children in school health programs, and play a significant role in surveillance, detection, control, and prevention of disease. Although there has been a decrease in Medicaid revenue for health departments across the state, the decrease has been greater in health departments located in regions with Medicaid managed care partnerships. Between fiscal years 1997 and 1998, health departments in Regions 3 and 5 collectively lost over 10% of their Medicaid revenue. This loss threatens the viability of health departments and the access to health care for the indigent and uninsured.

Quality

The Department for Medicaid Services has a Continuous Quality Improvement Program to monitor and evaluate the health outcomes of individuals receiving services through Medicaid partnerships. As a part of the quality assurance initiatives, the Department for Medicaid Services has adopted a set of national standardized HEDIS (Health Plan Employer Data and Information Set) measures developed by the National Committee for Quality Assurance. Contracts with partnerships require the collection of data on four HEDIS measures. Both regions are in the process of designing studies on childhood immunization, birth weights, pediatric asthma, diabetes, and prenatal care. Currently, only limited baseline data has been collected. The Department for Medicaid Services is also planning four studies: appendectomies, hysterectomies, tuberculosis, and emergency room visits. Also, regions are required to become accredited by the National Committee for Quality Assurance. To be eligible for accreditation, partnerships will be required to collect data on additional HEDIS measures.

Although the Department for Medicaid has a quality control program in place, the department has not completely assessed the full need for quality assurance studies. Utility of the HEDIS measures is limited because the partnerships are not required to collect data on the same HEDIS measures. Therefore, the Department for Medicaid Services cannot compare outcomes across partnerships. Each region designs its own studies, thereby preventing the findings from being generalized to other regions.

Discussion

Over the past few years, legislative activity in many states created managed care programs. The most recent legislative activities were directed toward monitoring or expanding current programs. In 1999, state legislatures focused on ensuring that Medicaid managed care programs clarified reimbursement rates, expanded benefits or providers included in the program, and provided adequate care to enrollees.

In Kentucky, there is currently a lack of information regarding the effect of Medicaid managed care on cost, access, utilization, and quality of care. There are several options that the 2000 General Assembly could consider in deciding the best direction for Kentucky.

Many people argue for dissolving the Medicaid managed care demonstration project. The mission of increasing access to health care of Kentuckians while controlling Medicaid cost has not been realized. Although there were avoidances in costs of $188 million for fiscal years 1999 and 2000, these funds were not placed into the Indigent Care Trust Fund. Some people argue that the amount of Medicaid funds available for direct patient care has been decreased by to increased administrative costs. Employing multiple administrative entities across the state to provide Medicaid services adds to the administrative costs. This position is supported by the provider concerns on withholds of payments.

Another possible action is to halt all expansions of the Medicaid managed care demonstration project until the cost, utilization, access, and quality of care provided by Regions 3 and 5 have been assessed. Findings of most of the studies planned by the Department for Medicaid Services and the partnerships will not be available before the opening of the 2000 General Assembly. Therefore, it may be reasonable to slow down the expansions until the experiences with the current partnerships have been assessed. This would provide more information to policymakers on which to base further policy decisions.

Another option is to support continued expansion of the partnerships. The state is spending less on Medicaid services within managed care than it would under traditional Medicaid. Also, the partnerships are responsible for implementing quality assurance studies and collecting HEDIS data, which was not done as a part of the traditional Medicaid program.

Whether the General Assembly chooses to support the continued expansion of Medicaid managed care or to limit the expansion to partnerships currently in place, there are some specific legislative initiatives for consideration. Possible changes in policies primarily relate to requiring the Department for Medicaid Services to employ specific quality assurance studies and report findings to the Medicaid Managed Care Oversight Advisory Committee on a regular basis.

Some specific legislative actions for consideration are as follows:

- Require the Department for Medicaid Services to develop a comprehensive plan for evaluating the cost, access, utilization, and quality of Medicaid managed care compared to traditional Medicaid.

- Require the Department for Medicaid Services to complete a comprehensive research program to determine the effect of Medicaid managed care on access to services, cost of services, utilization of services, and quality of care, and compare the finding with traditional Medicaid.

- Require the Cabinet for Health Services to provide a copy of all study proposals, study findings, quality review studies, quarterly financial reports, and comprehensive plans and updates on evaluating the partnerships.

MENTAL HEALTH INSURANCE PARITY

Prepared by Murray Wood

Issue

Should the General Assembly require parity between mental health insurance coverage and other physical health insurance coverage?

Background

The issue of "parity" suggests that a "disparity" exists. Differences in insurance coverage between physical and mental health problems probably reflect historical responses to the insurer's risk, made many years ago before recent advances in neuroscience and psychopharmacology that have led to effective treatments of many mental disorders. Many health plans offer treatment for mental disorders; however, most have limits on the number and type of treatments covered, and lifetime and annual benefits are usually significantly less than benefit limits for physical health conditions.

Under current insurance law, disability or health care service plans may not discriminate based on race, color, religion, or national origin. Parity, as it relates to mental health and chemical dependency, would further prohibit insurers or health care service plans from discriminating between coverage offered for mental illnesses and chemical dependency, and coverage offered for physical health conditions. Parity would require insurers to offer the same level of benefits (co-pays, deductibles, out-of pocket expenses, number of treatment days) for mental illnesses as for other physical disorders and diseases.

The federal Mental Health Parity Act of 1996 was signed into law as part of th e Veterans Administration-Housing and Urban Development appropriations bill. The federal law prohibits group health plans that offer mental health benefits from imposing more restrictive annual or lifetime limits on spending for mental illness than on coverage for physical illnesses. The federal law does not: (1) require an insurer to offer or provide mental health benefits; (2) apply to cost sharing; (3) include benefits for chemical dependency treatment; or (4) apply to small employers (two to fifty employees). The law also does not apply if a health plan demonstrates increased costs of at least 1 percent as a result of providing this coverage. The law will sunset on September 30, 2001, if Congress takes no action to extend it. Several congressional bills have been introduced to amend and extent the current mental health parity law. Since January, 1999, mental health parity legislation has been introduced in thirty-four states. As of July, 1999, twenty-seven states have enacted some form of mental health parity legislation.

Discussion

The debate over mental health parity includes three major issues: financial effect, inclusion of chemical dependency, and inclusion of all mental illnesses, versus severe mental illnesses only.

Financial Effect: Opponents argue that including mental health and chemical dependency coverage will drastically increase the already rising costs of health care. Proponents argue that treating mental illness and substance abuse reduces secondary conditions, such as HIV and fetal alcohol syndrome, and that these conditions, left untreated, increases costs to the overall health care system.

An April, 1998 report by the U.S. Department of Health and Human Services estimated that premiums for private insurance would increase by an average of 3.6 percent to 4.2 percent, depending on the extent to which care is managed. For example, fee-for-service and PPO plans would experience a five percent increase, while HMO members would have a 0.6 percent increase. In 1996, Blue Cross/Blue Shield reported that in five states where mental health benefits (but not parity) were mandated, the average monthly premium increased from 4 percent to 10 percent. Several national associations have indicated opposition to mandated parity because: surveys conclude that employees place a low priority on mental health coverage; additional mandates for coverage limit the affordability and the types of plans offered by employers; increased mandated benefits often substitute for increased wages; and mandates create insurance dependency, increase utilization, thus increasing cost, thereby forcing employers and individuals to cancel coverage, resulting in more people being uninsured.

Studies of premium cost increases have been conducted in six states where parit y has been enacted. Since adopting parity in 1994, Maryland's most experienced managed care company showed that the proportion of the total medical premium attributable to mental health decreased by 0.2 percent and that length of stay in psychiatric hospitals and psychiatric units declined during the first year of parity. In Minnesota, the largest insurer, with 460,000 members, reported parity would add $.26 per member per month. The remaining states report similar effects from the enactment of parity. A 1997 study by the RAND Corporation, published in the Journal of the American Medical Association, concluded that equalizing annual limits between mental health and physical health would increase premiums by about $1 per employee per year under managed care and that more comprehensive changes, such as removing limits on inpatient stays and outpatient visits, would increase costs by less than $7 per enrollee per year.

Chemical Dependency/Substance Abuse: Diagnoses and treatment for chemical dependency are not as clearly defined as those for mental illness. Questions remain about whether treatment works, how to demonstrate that treatment works, and, whether failure to remain sober is a failure in treatment. Many debates continue about whether chemical dependency is a behavior/lifestyle problem or a biological disease. Those that raise the lifestyle issues are often asked about comparisons to physical health insurance coverage for AIDS, lung cancer, and heart disease.

A 1999 study by the RAND Corporation concluded that providing unlimited substance abuse benefits under managed care would have little effect on the cost of health insurance. Claims data from 25 managed care plans were compared in 1996 and 1997. The plans provided comprehensive benefits, including outpatient, day, residential and inpatient treatment and recovery homestays. The results showed that the cost difference between providing limited substance abuse benefits or unlimited benefits was $.06. The total increase to employers' costs, based on an annual premium of $1,500, was 0.3 percent per member. It should be noted that these results are based on services provided through managed care and this may contribute to the low cost of the benefits.

Mental Illness Versus Serious Mental Illness: Serious mental illness is usually defined in literature and in mental health parity legislation as schizophrenia, schizoaffective disorder, delusional disorder, bipolar affective disorder, major depression, and obsessive-compulsive disorders. These illnesses are seen as "biologically-based," in that science has determined chemical imbalances and specific brain activity associated with the conditions. Some experts suggest that these, and only these conditions, should be covered by parity, because they are physical health conditions. Others fear that including all diagnosable mental health conditions will open the door to abuse of the benefit for the less serious, but more prevalent mental health conditions, thus escalating the cost of premiums.

It is possible that providing coverage for all diagnosable mental conditions, not just the biologically-based mental illnesses, could have the effect of providing access to treatment for all persons with mental disorders.

JUDICIARY

GANGS AND GANG VIOLENCE

Prepared by Norman W. Lawson, Jr.

Issue

Should legislation be passed punishing membership in gangs and participation in gang violence?

Background

While criminal gangs have been part of American society for many years, the recent growth of adult and youth criminal gangs and associated violence between gangs and gang violence against the general public have raised calls for penalizing gang membership and participation in gang violence.

Discussion

Groups favoring antigang legislation feel that criminal gangs are increasing, more recently involve recruiting youth, and now extend to rural areas as well as cities, that existing legislation is insufficient to deter the threat posed by criminal gangs, and that increasing penalties would help deter membership in criminal gangs. Typical legislation would prohibit membership in a criminal gang and enhance penalties for criminal offenses committed in furtherance of gang activity. In Chicago, legislation was passed to prohibit loitering by gang members. Proponents cite the success of antigang prosecutions under new antigang legislation and the effect that the legislation has on incapacitating individual gang members through long prison sentences.

Groups opposing antigang legislation point out that it i s impossible to craft legislation which would properly identify membership in a criminal gang or engaging in criminal gang activity without ensnaring persons or groups not intended by the drafters. For instance, if the legislation were to say that a gang includes members taking a common name and wearing a "uniform," and include more than three people who have committed criminal offenses within the past five years, then sports teams, religious organizations, and corporations could be included, even though the actual purpose of these organizations is not criminal. These persons feel that existing legislation can handle the offenses committed by the gang members and that improperly crafted legislation could be unconstitutional, prohibiting freedom of association. They point out that the Chicago antiloitering ordinance, for example, was declared unconstitutional by the Supreme Court of the United States.

DRIVING UNDER THE INFLUENCE

Prepared by Norman W. Lawson, Jr.

Issue

Should new driving under the influence legislation be passed in an effort to reduce driving under the influence?

Background

Driving under the influence continues to be a problem, deaths from alcohol related traffic incidents are continuing, and the Congress of the United States has passed legislation requiring states to use 0.08 blood alcohol concentration as the measure of intoxication, prohibit open alcohol containers in vehicles, and seize the vehicles of drunk drivers or suffer the loss of federal road money.

Discussion

Proponents of enacting this legislation at the state level feel that existing approaches to curbing driving under the influence have not succeeded in eliminating the problem and that more effective measures are needed. These groups feel that the 0.10 blood alcohol standard is too liberal and that a reduction to 0.08 would result in more arrests, and would cut down on those persons who are driving under the influence of alcohol, and that the measure would save lives. Similarly, they feel that not having a prohibition against open containers of alcoholic beverages encourages drinking while driving and that the practice should be discouraged by legislation. The newest of the proposals is to seize the vehicles of drunk drivers. This, proponents argue, could be the most effective method of deterring drunk driving, letting the potential drunk driver know that he or she would lose his or her vehicle as a consequence of the offense.

Opponents of the legislation feel that existing legislation is working and that combining the existing legislation with vigorous enforcement has resulted in fewer highway deaths and accidents and fewer incidents relating to alcohol. Specifically, there is opposition to the 0.08 blood alcohol level because it may discourage casual drinking at restaurants, and opponents cite recent studies and a General Accounting Office report showing that the 0.08 standard will have little or no influence on reducing drunk driving incidents or deaths. Opponents maintain that this is a back door means of passing legislation which the Congress defeated in an open vote. Opponents of open container legislation indicated that having an open (and perhaps empty) container of an alcoholic beverage is not evidence that the driver has consumed the contents of the container, and could lead to liability for the driver for offenses committed by passengers. Opponents of vehicle seizure say that this legislation is vindictive and oppressive and is nothing less than legalized government theft. They point out that the legislation calls for seizure of not only the vehicle used in the offense but all vehicles owned by the drunk driver, and that this punishes family members who had nothing to do with the offense, would result in losses to banks and financial institutions on payments for vehicles which are seized, and that the costs of storing and disposing of thousands of vehicles would be a burden for government and for the police. Further, opponents feel that seizing the vehicle prior to conviction may violate the constitution, by presuming the defendant guilty prior to a trial.

SEX OFFENDER TREATMENT, REGISTRATION, AND INCARCERATION

Prepared by Norman W. Lawson, Jr.

Issue

Should sex offenders be subject to lifetime registration, treatment, and public notification?

Background

Sex offenders have been a continuing problem for society because of the propensity of some offenders to continue to commit offenses upon release from prison or treatment. Since many sex offenders resort to violence or to preying on children, there is much public fear of sex offenders. Recent proposals have called for mandatory treatment, lifetime registration for sex offenders, and public notification of the presence of sex offenders in neighborhoods.

Discussion

Proponents of these proposals feel that current sex offender treatment is ineffective in reducing recidivism by sex offenders, partly because the program is not mandatory. Recognizing that most sex offenders will ultimately be released from prison, many members of the public feel that lifetime registration of sex offenders with the police will help police keep track of offenders in the community and aid in solving sex crimes. At the same time, there are calls for public notification that a sex offender has been released into the community, so that parents may take proper precautions for their children.

Opponents of these proposals feel that sex offender treatment is working, that mandatory treatment would not achieve the same results as the encouragement of voluntary treatment through restrictions on release until treatment has been completed. These persons cite studies showing less recidivism by treated sex offenders. Opponents feel that lifetime registration of sex offenders make them lifetime suspects. Opponents feel that public notification is counterproductive and has often resulted in persecution of sex offenders, who are driven from community to community after they have "paid their debt" and are no longer committing offenses.

HANDLING OF DANGEROUS MENTALLY ILL PERSONS

Prepared by Norman W. Lawson, Jr.

Issue

Should laws be changed to allow for long-term or lifetime incarceration of mentally ill persons who are dangerous to others?

Background

Recent crimes committed by newly released mental patients have focused attention on the need for protecting the public from mental patients who have been released because they can no longer benefit from treatment or have been released based on the promise that they will continue taking medication which lessens their danger. Often they do not take their medication, and again become dangerous. These situations have resulted in proposals for long-term or permanent commitment of such persons, regardless of their treatment status. Many such persons have committed what would have been crimes but have never been tried, due to their mental illness.

Discussion

Proponents of long-term or lifetime incarceration cite the increasing number of crimes committed by recently released mental patients and the need for more restrictive legislation. Traditionally, mental patients must receive the least restrictive treatment and be released when they no longer need treatment or can no longer benefit from treatment. However many of these persons who must continue taking medication or treatment fail to do so following release. And they are not monitored. Thus, they become a danger to the public or to particular persons whom they dislike. Proponents want legislation calling for establishment of institutions for the criminally insane the removal of the least restrictive and other provisions relating to release, and the long-term commitment of such persons because of the danger which they pose.

Opponents of long-term or lifetime incarceration feel that existing laws work properly, that long-term incarceration of mental patients is counterproductive from a mental health viewpoint, and that less dramatic approaches are equally effective in preventing further violence. Opponents point out that Kentucky does not currently have a facility for the criminally insane, that building and operating such a facility would be unnecessarily costly and that traditional mental health approaches work just as well, do not "punish" the mentally ill, and obtain better results. Opponents feel that monitoring programs to ensure that persons take their medication would be just as effective and would be much less costly than what they feel is needless long-term incarceration of persons who have already successfully completed treatment and who are no longer dangerous, so long as they continue treatment and medication.

CHILD CUSTODY AND VISITATION

Prepared by Scott Varland

Issue

Should the General Assembly comprehensively revise the child custody and visitation statutes?

Background

During the 1998 Session of the Kentucky General Assembly, Senate Bills 290 and 386 were introduced calling for comprehensive revision of the child custody and visitation statutes. Neither of these bills was enacted into law. The 1998 Kentucky General Assembly did pass House Bill 319, which established a task force to study custody and visitation in Kentucky and submit recommendations to the Legislative Research Commission. The Special Task Force on Parenting and Child Custody consists of 19 members: 8 legislators, 4 judges, 2 attorneys, 2 domestic violence experts, 2 psychologists, and a children's advocate. The Special Task Force intends to submit recommendations, including a bill draft, to the Legislative Research Commission no later than October 18, 1999.

Discussion

Proponents of comprehensive revision desire a legal system which reduces hostility among parents and other parties during and after divorce and fosters cooperation with regard to promoting the best interest of the child. They argue for the following proposals: Judges and Domestic Relations Commissioners should receive family law training, and divorcing parents should receive education concerning divorce's impact on their children and how to arrive at amicable settlement of child custody and visitation disputes. Judges should order mediation when necessary in the course of custody and visitation litigation. The Kentucky Supreme Court should promulgate Rules of Procedure to govern family law proceedings. The courts should be required to first consider the awarding of joint custody but might award any form of custody in the best interest of the child. Courts and parents might develop parenting plans to establish guidelines for carrying out joint custody. (A parenting plan explains parental responsibilities following divorce.) Each divorced parent should have full and equal access to education, medical, and other records of a child, unless a court orders to the contrary. When one parent unjustifiably interferes with the custody or visitation of the other parent, the latter parent should be able petition the court for enforcement of the custody or visitation. If either parent relocates, that parent should be required to provide notice of the relocation to the other parent. While the above proposals are written in terms of "custody" and "visitation" for ease of understanding, proponents of comprehensive revision would replace these words with "parenting responsibilities" and "parenting time," which they believe more accurately describe parenting and are less likely to foster conflict.

Opponents of these revisions argue that the revisions fail to take into account the realities of divorce, custody, and visitation. They say that during and after divorce, many parents are hostile and struggle to cooperate to resolve issues of child custody and visitation. In the most severe cases, domestic violence and child abuse have occurred or may occur. They say that no parent should cooperate if the price of that cooperation is violence or sexual abuse perpetrated against that parent, a child, or other family member. They raise the following questions: Even assuming that following divorce, parents can cooperate in raising their child, how far should this cooperation go? To what extent does a child benefit from joint custody, which may involve the child's moving back and forth between two residences, where each parent applies a different child rearing method?

ALTERNATIVE SENTENCING

Prepared by Louis J. Pierce

Issue

Should Kentucky implement alternative sentencing for nonviolent felony offenders in order to ease prison overcrowding and the burden on the criminal justice system?

Background

Currently, nonviolent felony offenders, like violent offenders, are generally sentenced either to prison or to probation. However, because of perceived problems in the criminal justice system, some jurisdictions have begun to experiment with alternative sentencing.

Alternative sentencing can mean either or both of two things. First, it can be sentencing that is imposed outside of the traditional criminal justice system. In one Vermont city, for example, sentences are imposed by groups of volunteer citizens rather than by judges. In cities in Pennsylvania and Texas, the families of juvenile offenders meet with the offenders' victims and negotiate sanctions. Second, alternative sentencing can simply be sentencing that differs from the traditional options of probation and parole. Such sentences can include restitution to the victim, community service, or drug and alcohol treatment.

Although most experiments in alternative sentencing have occurred at the municipal level, the state can act by creating a separate nonviolent felony offense and mandating alternative sentences for such offenses.

Discussion

Many people see problems in the current criminal justice system. First, they claim that the cost of keeping people in prison is excessive. In Kentucky, the cost is anywhere from $13,000 to $20,000 per inmate per year. And because the prisons are becoming overcrowded, the state could incur additional costs in building new, or expanding old, prison facilities. Meanwhile, prison overcrowding itself contributes to additional costs in the form of disturbances and prisoner lawsuits.

Second, many claim that the criminal justice s ystem is overburdened. Whether they go to prison or not, offenders must still go to court, and sometimes undergo supervision by probation officers. This means higher costs, victims waiting longer to see justice done in their cases, and violent offenders often being able to plea bargain for reduced sentences because the courts are pressured to dispose of their cases quickly. Finally, they claim that the current sentencing system neither rehabilitates offenders nor fairly compensates victims or communities for offenders' crimes.

Proponents of alternative sentencing claim that alternative sentences would reduce prison costs and overcrowding. They also say that such sentences can better rehabilitate offenders. In Vermont, for example, a man "who drove 105 mph down a residential street was sentenced to work with brain-injured adults, some of them survivors of high-speed crashes." This, they allege, was more rehabilitative than sentencing the man to probation.

Proponents also claim that alternative se ntences are fairer to victims and the community. They point to the victim restitution, the victim and community involvement in sentencing, and the community service which are often parts of alternative sentences. Additionally, they say that by removing many nonviolent cases from the criminal justice system, alternative sentencing would allow the system to concentrate on locking up and monitoring violent offenders.

Opponents of alternative sentencing claim: that such sentences are not tough enough on offenders; that they would result in grossly unequal penalties for similar violations; that it would still be expensive to implement the treatment programs or to monitor offenders' compliance with their sentences; and that some ways of imposing the alternative sentences, such as by citizen judges, would either be unconstitutional or unethical.

PARENTAL LIABILITY FOR JUVENILE CRIME

Prepared by Norman W. Lawson, Jr.

Issue

Should parents be held liable for crimes committed by their children?

Background

Many experts cite the breakdown of the family as a source of juvenile crime; thus, as juvenile crime has increased, demands for more controls over parental involvement with juveniles have increased. Traditionally, a parent who sat by and did nothing to protect a child was liable for permitting the child to become neglected, needy, or dependent. Kentucky many years ago decided to hold parents liable for juvenile vandalism and for shoplifting. However, in recent years there has been a call for holding parents liable for more offensive acts committed by their children, even if they did not participate in or know of the act. Following the lead of Florida, Montana, and other states, Kentucky will now hold parents liable if a juvenile obtains a handgun and commits a crime with it, even if the parents were merely negligent in storing the firearm. The 1994 General Assembly was presented with legislation which would have held parents liable if a juvenile violated a municipal curfew ordinance. The curfew legislation did not pass. Questions arise as to what parents may and may not legitimately do to control delinquent children, particularly those who are continually delinquent and cannot be controlled, even by the court system.

Discussion

Proponents of such legislation feel that parents are lax in the control of their children and that parental control can be encouraged by holding the parents liable for the child's acts. A typical proposal made at the 1994 session of the General Assembly would have set a curfew for children and made the parents liable for each offense of violation, but no action would have been taken directly against the child until the third offense.

Opponents offer the proposition that many children who get into trouble are in conflict with their parents and would use any opportunity to get the parent in trouble, either alone or along with them. Some parents feel that they are limited in their ability to discipline or control their children because of the threat of being labeled as child abusers. A bill introduced in 1996 would have defined parental rights in the control of their children.

One possible compromise involves the use of the "one free bite" approach for certain offenses where a parent who had no prior knowledge that the child was committing an offense would be held liable after the first offense. Another compromise involves not holding a parent liable when the parent has first turned the child over to the juvenile court as beyond parental control, or when the parent was the one who reported the offense.

INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Prepared by Scott Varland

Issue

After serving a prison sentence for a violent sexual offense, should a sexually violent predator face involuntary civil commitment which lasts until the committed person is no longer likely to engage in predatory acts of sexual violence?

Background

Some individuals suffer from a mental abnormality that makes them likely to engage in predatory acts of sexual violence. To address this situation, fourteen states have enacted involuntary civil commitment legislation to confine sexual predators for treatment after they have served a prison sentence for a violent sexual offense. The commitment occurs only after a hearing to establish probable cause and a trial to establish proof beyond a reasonable doubt. The sexual predator is then confined for treatment until such time as the person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts of sexual violence. Periodically, a court determines whether commitment should continue.

Discussion

The Kansas statute pertaining to the involuntary civil commitment of sexually violent predators has been litigated up to the United States Supreme Court in the case of Kansas v. Hendricks, 117 S.Ct. 2072 (1997). Three constitutional concerns were raised about the Kansas statute. First, since the statute was applied to Hendricks' behavior prior to the statute's enactment, was it an ex post facto criminal law which established a new criminal punishment not in existence when he committed his crime? Second, did the statute place Hendricks in double jeopardy for the same crime? Third, did the civil commitment proceeding provide Hendricks with due process? In a 5 to 4 decision, the United States Supreme Court rejected the constitutional concerns and upheld the Kansas statute.

The public policy debate continues on whether Kentucky should enact an involuntary civil commitment statute for sexually violent predators.

Proponents of such a statute argue that the public has demanded legislation to lengthen the prison sentence of a sex offender and, when imprisonment ends, to provide for community notification of a sex offender's presence (Megan's Law). State legislatures have responded with legislation to achieve these goals. The legislation is consistent with statutes which require the involuntary civil commitment of sexually violent predators. Fourteen states have enacted these statutes while twenty-one other States have considered them. The statutes target a small number of sexually violent predators who are likely to commit acts of extreme sexual violence if not confined to a treatment facility. As a consequence, only the worst sex offenders face involuntary civil commitment, and the cost of confinement and treatment is thus relatively small. If extra secure housing is needed in Kentucky for the treatment of sexually violent predators, that housing may be available in the proposed facility for treatment of the violent mentally ill.

Opponents of such a statute argue that sex offenders are best dealt with through the criminal justice system. Kentucky criminal laws have already been amended to reduce the threat posed by sex offenders. Like other violent criminals, violent sex offenders may be sentenced to life without parole. Violent sex offenders who do not complete treatment in prison serve 100% of their sentences, and even if the most violent sex offenders complete treatment, they still serve 85% of their sentences. On release from prison, sex offenders are subjected to community notification (Megan's Law). Furthermore, sex offenders must meet the requirements of three years of conditional discharge after completion of sentence or regular parole.

The Kentucky General Assembly can further amend the criminal laws to reduce the threat posed by sex offenders. At the same time, there are problems associated with involuntary civil commitment of sexually violent predators. Psychologists have some difficulty determining which sex offenders are sexually violent predators who should be subjected to involuntary civil commitment. There are various costs associated with an involuntary civil commitment program which can run as high as $100,000 per person per year. A new secure facility may have to be built to provide for the treatment of sexually violent predators. Additional costs arise from the annual hearings to determine whether involuntary civil commitment should continue.

LABOR AND INDUSTRY

WORKERS' COMPENSATION

Prepared by Linda Bussell

Issue

Should the General Assembly revise the workers' compensation law?

Background

In December, 1996, the General Assembly met in Extraordinary Session to once again reform the Kentucky workers' compensation law. The Governor called the Extraordinary Session following several months of study by the Governor's Advisory Council on Workers' Compensation. The extensive benefit, administrative, and financial revisions made in that session became effective on December 12, 1996, and have been extremely controversial. The controversy over the 1996 revisions, unsuccessful attempts in the 1998 Regular Session of the General Assembly to partially restore benefit cuts made in 1996, and a newspaper series alleging cheating in coal dust sampling in the coal fields provided the impetus for a legislative committee to hold several public hearings on workers' compensation around the Commonwealth during the summers of 1998 and 1999.

The major revisions made in 1996 included narrowing the definition of injury; replacing the occupational disability standard for determining disability with a medical impairment model; reducing benefits for black lung; requiring presumptive weight on evaluations done by university physicians in the decision making process for disability; limiting the time for reopening a case to 4 years, with 2 intervening years required before reopenings; reducing attorney involvement in the workers' compensation claims process; instituting a new arbitrator system in the claims and adjudication process; repealing the workers' compensation board effective July 1, 2000; and shutting down the special fund (second injury fund) for any future liability.

The 1996 revisions were significant and the impact has been obvious in some areas of the law, especially in the benefit structure for injuries and black lung, and in legal representation of injured workers. Adding to the controversy is the fact that the 1996 revisions came on the heels of major workers' compensation legislation enacted by the 1994 General Assembly. In addition to significant modifications, including reductions, made in the benefit structure for both injuries and black lung, the 1994 legislation created the Kentucky Employers' Mutual Insurance Authority (KEMI) in an effort to revitalize the workers' compensation insurance market. KEMI began operating in September, 1995 and has dominated the workers' compensation market since shortly after its inception. Shortly after the 1994 legislation (HB 924) became effective, competition returned quickly to the workers' compensation market and employers' workers' compensation rates dropped markedly. This trend has continued aggressively since enactment of the 1996 workers' compensation revisions.

Praise by the business community for the 1996 workers' compensation revisions has been strong and consistent. The business community strongly supported the 1996 revisions, on the premise that the revisions made in 1994 did not go far enough to solve the cost problems of the workers' compensation system. That praise has been equaled or surpassed by opposition from injured workers and coal miners. These workers contend the 1994 revisions were extremely effective in restoring competition to the workers' compensation marketplace and reducing employers' workers' compensation rates. Injured workers further contend that the cost savings potential of the 1994 workers' compensation legislation was not given sufficient time to be fully realized, and therefore, the 1996 benefit cuts were premature, unnecessary and far too extensive.

Discussion

Based on testimony presented by injured workers and their attorneys during public hearings on workers' compensation, and the continued controversy that has resulted from the 1996 revisions, it is highly likely that legislative attempts will be made in the 2000 General Assembly to partially restore some of the benefits eliminated in 1996. Legislative proposals that seek to undo the 1996 revisions to the workers' compensation law will also very likely be aggressively opposed by the business community, on the grounds that any expansion of workers' compensation benefits will result in increased costs to employers, which will diminish attempts by legislators and the Governor to maintain existing jobs, especially in the ailing coal industry, or to create new jobs in all industries.

LICENSING AND OCCUPATIONS

CASINO GAMBLING IN KENTUCKY

by Michael Greer

Issue

Should the General Assembly legalize some form of casino gambling in Kentucky?

Background

In recent years there has been a virtual explosion of legalized gambling in the United States. Casino gambling is the fastest growing, most popular, and most lucrative form of gambling, with most of its growth coming in the last ten years. In 1990, only two jurisdictions, Nevada and Atlantic City, New Jersey, permitted casino gambling. Then in 1991, Iowa legalized riverboat casinos, hoping to stimulate tourism by recreating the glamour of the old Mississippi riverboats. About this same time, the old west town of Deadwood, South Dakota, authorized limited casino gambling for essentially the same reason. The casino gambling movement snowballed from there.

The national gambling proliferation finally caught up to Kentucky in 1988, when the voters approved a Constitutional Amendment to establish a state lottery. In 1992, the Constitution was again amended by an even greater voter margin to legalize charitable gaming. Suddenly the horse racing industry, which had for years enjoyed a monopoly on legal gambling in Kentucky, was facing competition from within as well as from new forms of gambling, such as riverboat casinos, being legalized in surrounding states.

Casino advocates interpreted these expansions of legal gambling as evidence of a momentum shift in Kentucky. Just prior to the 1994 General Assembly, gaming interests, including several Kentucky race tracks, organized to push legalization of casino gambling at race tracks. This group, called "Kentucky to the Front", mounted an intense lobbying effort but was only able to get hearings held on the subject.

Another attempt was made during the 1996-97 interim, when a proposal was offered to legalize video lottery terminals (VLT's) at Kentucky race tracks, to be operated by the Kentucky Lottery, with the revenues being split between the racing industry and a college scholarship fund. This proposal could not garner sufficient support even within the racing industry. Most tracks supported the concept but could not agree on who should regulate the VLT's and how revenues should be split. The proposal was subsequently dropped and the sponsor successfully shifted his efforts in the 1998 session to funding scholarships through existing lottery revenue.

In early 1999, the Governor was quoted in the press as being concerned that Kentucky was losing a substantial amount of revenue to the Indiana riverboats. He also expressed concern about the long-term viability of Kentucky racing as a result of these losses, and he suggested that legalizing some form of casino gambling should be seriously discussed. Although the Governor did not endorse any specific proposal, he suggested as one option to be explored the construction of 12 to 14 casinos at strategic border locations.

Shortly after the Governor's statement, the National Gambling Impact Study Commission released its final report. This nine-member commission was created by Congress to conduct a three-year, comprehensive study of the effects of gambling in America, the first such study since 1975. Commenting on the long-term effects of rapidly expanding gambling on the country, the Commission recognized that sufficient research had not been conducted to assess the real economic impacts and social costs. The Commission recommended that states impose a moratorium on further expansion of gambling until the necessary research can be conducted.

Shortly after the release of the Commission's final report, the Governor issued a Request for Proposals to conduct an economic impact study for Kentucky. A contract was awarded to the accounting firm of PricewaterhouseCoopers. The casino gambling study will be conducted in three phases. Phase I will look at the economic impact on Kentucky's economy of gambling in border states, focusing particularly on the impact on horse racing and breeding. Phase II will assess the economic benefits to Kentucky of three different expanded gambling options: (1) VLT's at race tracks; (2) Keno at age-controlled locations; and (3) Land-based casinos at strategic locations, with a maximum of 12 to 14 casinos. In Phase III, the social impacts and costs of the three previously listed options will be calculated. The study began on August 1, 1999, with the final report due to be submitted by December 1, 1999.

The VLT's at tracks option has already been endorsed by Kentucky race tracks. In a recent memo to legislative leadership, tracks supported authorizing up to 9,550 VLT's to be operated at the eight licensed tracks by the Kentucky Lottery. All Kentucky tracks seem to now be in support of VLT's at tracks.

Discussion

The VLT's at tracks proposal represents one end of a wide range of casino gambling options that may be considered by the 2000 General Assembly, and the option of up to 14 casinos at strategic locations generally represents the other end of the range.. With all the factors that enter into the equation, types and number of games, types and size of facilities, location of facilities, regulatory control, approval mechanisms, and revenue splits, the variations that fall within this range are virtually unlimited. With any option that is proposed and considered, however, there are common policy issues that will need to be examined.

Constitutional Amendment or Legislative Enactment: There is considerable debate over methods which might be used in legalizing casino gambling. Some experts contend that an amendment to Section 226 of the Kentucky Constitution is the only way any new gambling can be approved. Others feel that new forms of gambling can be legalized under the lottery amendment, if the enabling legislation is drafted appropriately. The Constitutional amendment approach is supported by an Attorney General's opinion based largely on the supposition that casino gambling through the lottery is not what the public had in mind when they voted for the lottery amendment.

Proponents of the lottery approach contend that what the public may or may not have had in mind has no bearing on this issue, and that the actual language of the lottery amendment is broad enough to permit casino gambling, if the gambling is conducted by the lottery for the benefit of the state. They point to a specific casino prohibition that was added to the lottery statutes in 1992 as evidence that the lottery has the ability to engage in casino gambling if the General Assembly so chooses. They also reference case law in other states which has upheld the operation by state lotteries of VLT's at tracks under similar constitutional circumstances. There is a high probability, however, that any attempt to legalize casino gambling by legislation will be challenged in court, and both sides agree that the financial and political risks are important considerations.

A related issue is whether local approval should be incl uded in enabling legislation, should some form of casino gambling be legalized. Many feel that local approval is an important issue, particularly in areas that have not previously had any legal gambling. They argue that gambling may be offensive to community standards, and the citizens of a community should, therefore, have the final say in regard to the introduction of gambling into the community. Some who support the Constitutional amendment approach feel that voter approval of an amendment is a sufficient test of public acceptance, and that further demonstration of public approval is not necessary. Other amendment supporters feel that a local approval provision should still be included in any proposed amendment.

Economic Impact: Researchers disagree on whether casino gambling has a positive or negative effect on the market in which it is conducted. One of the main arguments of casino gambling proponents is that casinos create jobs and are clean economic development generators. The National Study Commission directed a study of economic impact as part of its research effort and the author concluded that the degree of economic impact depends on the specific circumstances, but that all casinos provide some positive economic benefits. This analysis did not, however, factor in attendant social costs.

Other experts take issue with the contention that casino gambling has a positive economic impact. They contend that when the social costs are factored in, casino gambling generally has a negative net effect. One noted researcher concluded that casinos have a positive economic effect only when they are destination resorts, such as Las Vegas, or when they are located in highly distressed areas, such as Tunica, Mississippi.

Otherwise, casinos are simply redistributing resources within a market by taking money from movie theaters, restaurants, and other retail businesses and shifting it to casino owners.

While the full economic impact of casino gambling in Kentucky awaits completion of the Governor's study, the Kentucky Lottery recently issued a report that estimates direct revenue that may be generated by various forms of expanded gaming, including two of the options to be explored in the Governor's study, VLT's at tracks, and Keno at age-controlled locations. The report estimates that 6,400 VLT's placed at the eight tracks would generate between $400 and $500 million in annual revenues (total handle minus prizes paid out), and Keno at age-controlled locations, defined as social establishments with retail alcoholic beverage licenses, between $89 and $118 million in annual revenues. The revenue stream from land-based casinos would depend on the number of casinos, their sizes, and their locations, but as a general rule, revenues generated by land-based casinos and riverboats are greater than those from the previously discussed options.

Increases in Government Revenues: The prospect of huge windfalls for government revenue coffers has been an effective argument for legalizing gambling, particularly casino gambling. This argument was especially effective in the late 1980's and early 1990's, when many states were facing budget shortfalls and looking for additional sources of revenue in lieu of raising taxes. In addition to the moral arguments against gambling, however, opponents cautioned that gambling revenue was "soft" money, unreliable as funding for state programs, and that estimated revenues from gambling were inflated.

The Kentucky Lottery, in its May, 1999, report, projected tax revenues for the VLT's at tracks option at $144 to $189 million per year, and for the Keno option, $27 to $35 million annually. By comparison, the Kentucky Lottery contributed $153 million to the general fund in 1998 and racing added another $20.5 million. Tax revenue received from charitable gaming amounts to approximately $3 million per year, but it does not go into the general fund. This revenue is dedicated by law to be expended only for the regulation of charitable gaming.

The four Indiana riverboats paid $149.8 mill ion in taxes for 1998, even though the "Glory of Rome", the world's largest riverboat casino, docked in Harrison County, Indiana, was only in operation the last month and a half of the year. For 1999, Indiana will realize a full year of revenue from the "Glory of Rome" and, in addition, a license has recently been issued for a fifth casino boat in Switzerland County. Tax revenues in excess of $200 million are projected.

Increases in Gambling Disorders: Research shows that the percentage of problem gamblers has remained relatively constant over the years, but the total affected does increase as opportunities increase and more people gamble. A 1997 Harvard Meta-analysis documents that the vast majority of people can gamble without adverse consequences, and the study concludes that past year and lifetime prevalence rates in the

United States for pathological gambling were less than for other major adult psychiatric disorders. The range of "pathological gamblers", those with serious gambling disorders, often referred to as "compulsive gamblers", is relatively small, approximately 1.35% to 1.85% of the population. "Problem gamblers", those who experience a gambling disorder at some point, represent 2.94% to 4.76% of the population.

Where a state falls within these prevalence ranges depends to a great extent on the types of gambling and opportunities to gamble that are available. Opponents of casino gambling argue that gambling disorders will increase significantly with the legalization of casino gambling in Kentucky. Proponents point out that Kentucky already has casinos on the Ohio River across from major population concentrations, and that moving the gambling to this side of the river will increase the problem only marginally, if at all.

Social Costs: One of the most elusive issues is quantifying the social costs of gambling. The National Opinion Research Center at the University of Chicago computed annual and lifetime costs for pathological and problem gamblers, as part of the national study effort. Annual costs included such factors as job loss, unemployment benefits, welfare benefits, and physical and mental health costs, while lifetime costs factored in bankruptcy, arrests, imprisonment, and legal fees for divorce. Using commonly accepted prevalence rates, NORC estimated the annual cost of problem and pathological gambling nationally to be around $15 billion. By way of comparison, they also reported that the annual cost of alcohol abuse is approximately $166 billion and heart disease $125 billion.

Protection of the Racing Industry: Supporters of horse racing feel that protection of the industry is justified because of the unique role it has in Kentucky. Horse racing and breeding are signature industries for the Commonwealth of Kentucky. Kentucky is known throughout the world for the Kentucky Derby and the pristine fields and white fences of its horse farms. Unlike other forms of gambling, horse racing is a keystone of the economy, with direct and indirect connections to a host of other businesses from agriculture to tourism. For these reasons, they claim that the protection of racing is essential to protecting the economy and cultural heritage of Kentucky.

Not everyone in the state feels, however, that the racing industry should be protected. Other business interests argue that competition is an integral part of a free market economy and that the racing industry should not be given special treatment. They point out that by restricting new gambling to race tracks, parts of the state that do not have tracks will be unfairly restrained. They also contend that the need to protect the racing industry has not been demonstrated. The early prediction of a 20% to 30% decline in racing handle as a result of the riverboats, has not materialized. In fact, through aggressive marketing, some tracks have posted slight increases in handle. The only track to report substantial declines has also had to compete with legalization of whole-card simulcasting in Ohio, which many feel is the main cause of its losses.

Public Opinion: Finally, public opinion is an important element in determining the outcome for this issue in the next session. A recent Gallup Poll showed there is still a relatively high level of support for gambling nationally. Sixty-three percent of the adults polled approved of legal gambling, while only thirty-two percent did not. Kentucky statistics are not available.

COMPLEMENTARY AND ALTERNATIVE MEDICINE

Prepared by Vida Murray

Issue

Should the General Assembly regulate alternative medicine?

Background

In the 1998 Regular Session, four bills relating to alternative medicine were introduced. One bill would have licensed acupuncturists, another would have licensed naturopaths, and identical bills were introduced in the House and the Senate prohibiting the Medical Licensure Board from disciplining doctors solely because they used alternative practices. None of the bills passed as introduced, but the acupuncture licensing bill was amended to create a Task Force to study the benefits and effects of alternative medicine, naturopathy, acupuncture, and nonconventional medical treatment, and charged the Task Force to report its recommendations to the 2000 General Assembly.

A growing number of people are using alternative medicine. A survey conducted by Eisenberg et.al in 1997 on the prevalence, costs, and patterns of use of unconventional medicine found that four out of 10 Americans used at least one of 16 alternative therapies. Alternative therapies were used the most for chronic conditions, including, back problems, anxiety, depression, and headaches. In addition, the survey indicated that the majority of alternative medicine users consulted an alternative practitioner for only five alternative therapies, massage, chiropractic, biofeedback, acupuncture, and hypnosis, while unsupervised use remained the usual method of use for all other alternative therapies.

The survey also found that: almost half of the alternative medicine users saw an alternative medicine practitioner; approximately one of five who saw a medical doctor for a principal condition also saw an alternative practitioner; most of those who used alternative treatments did not disclose the treatment to their physicians; and approximately one of every five adults who took prescription medicine concurrently used an herbal product and/or vitamins.

Moreover, the survey found that out-of-pocket expenses for alternative therapies were estimated to be between $27 and $34 billion.

The rise in alternative medicine has been recognized on the federal level through the creation of the Office of Alternative Medicine within the National Institutes of Health in 1991. The Office's charges are to conduct and support basic and applied research and training, disseminate information on complementary and alternative medicine to practitioners, and provide public moneys for research. Among the Office's activities were the creation of a Clearinghouse and the establishment of 13 specialty research centers across the nation that are engaged in conducting ongoing research in such areas as pain management, women's health, and chiropractic.

In 1997, the National Institutes of Health also published a consensus statement that acupuncture was effective for adult post-operative and chemotherapy nausea and vomiting and post-operative dental pain. In addition, the statement concluded that there are other situations, such as addiction, stroke rehabilitation, headache, menstrual cramps, tennis elbow, fibromyalgia, myofacial pain, osteoarthritis, low back pain, carpal tunnel syndrome, and asthma, where acupuncture may be useful as an adjunct treatment or an acceptable alternative in a comprehensive management program.

The use of alternative medicine is becoming increasingly more popular. To date, 36 states license, certify, or register acupuncturists, 11 states license naturopaths, and 11 states have laws insulating physicians from discipline by the medical licensing board solely because of their use of alternative medicine. There are many types of alternative methods. The National Center for Complementary and Alternative Medicine has designated medical practices that are not commonly used, accepted, or available in conventional medicine as complementary and alternative medicine (CAM). In order to prioritize research grants, the Center has divided the CAM practices into seven categories: mind-body medicine; alternative medical systems; lifestyle and disease prevention; biologically-based therapies; manipulative and body-based systems; biofield; and bioelectromagnetics.

Discussion

In determining whether alternative medical practices should be regulated, the General Assembly will likely look at whether an alternative practice is effective, whether the practice presents a risk of sufficient harm to the public to warrant licensing, and whether the practice is already or would be better provided by existing licensed health providers.

Questions often arise concerning the efficacy of the various alternative medicine treatments. Proponents of alternative medicine say that alternative medicine has existed for thousands of years, and is deeply rooted in the early practices of various cultures, and assert that its effectiveness has been determined by its long-time use and the marketplace. Citing the 1997 survey, the proponents of alternative medicine note that the users of alternative medicine are generally well educated, and are well read on the effects of alternative medicine. Proponents of alternative medicine note that these users spend a tremendous amount of out-of- pocket money on alternative medicine, and deduce by negative inference that highly educated people would not spend this amount of money on ineffective alternative practices.

Opponents of alternative medicine counter that there is no sc ientific evidence to support the effectiveness of alternative medicine. They assert that much of the evidence supporting the practices' efficacy is largely anecdotal. The opponents of alternative medicine say that the positive results of some alternative modalities can be attributed to the placebo effect or happenstance. In addition, the opponents are concerned that a patient's condition may worsen if he or she foregoes or delays proven treatments for unproven and maybe ineffective treatment, or that alternative treatment may mask a serious condition.

Proponents of alternative medicine counter that alternative medicine presents fewer risks than conventional medicine. They argue that alternative or unconventional medicine has been tested and has withstood scrutiny, although not through controlled-double blind studies. The proponents of alternative medicine point out that some practices, such as acupuncture, are not conducive to double-blind studies, and that most of the practices used in conventional medicine have been proven by scientific methods other than controlled double-blind studies. Moreover, the proponents of alternative medicine point out that testing is very expensive, and that pharmaceutical companies have no incentive to sponsor such research, since many of the modalities are not patentable, and the companies would not be able to profit from their investment.

One argument in favor of licensing practitioners is to safeguard the public from incompetent practitioners. Proponents of licensing alternative medicine note that many of the procedures are invasive and have contraindications, particularly when used by those without sufficient skill. Moreover, the proponents of licensing point out that herbs and vitamins used in excess or in combination with prescribed medicines may be dangerous.

Another argument often asserted is that those opposing the licensing of alternative medicine do so to promote their own interests. The proponents of licensing assert that many of the opponents of licensing have a vested interest in conventional medicine and that their livelihood is threatened if patients opt for the more cost-effective alternative medicine modalities. The opponents of licensing, on the other hand, assert that those favoring licensing wish to capitalize on their training by creating a monopoly where entry in the profession is restricted.

Another issue that arises is who should practice alternative medicine. Some say that alternative medicine should be practiced by existing health care practitioners with biomedical or conventional medicine backgrounds. They believe that conventional practitioners are better able than alternative medicine practitioners to integrate the conventional and alternative practices and determine whether a condition is more effectively treated by conventional or alternative practices or a combination thereof. They further note that such practices as massage and hypnotherapy are already provided by existing licensed professionals. As to the licensing of some alternative modalities, the opponents of licensing assert that licensing gives the practices legitimacy, and conveys a message to the public that the practices are acceptable, when they may not be.

Other considerations that will likely affect the General Assembly's decision to regulate or not to regulate a given alternative modality are: the number of practitioners; the volume of complaints lodged against the practitioners or other evidence of any harm the practitioners impose upon the public; the adequacy of existing laws in protecting the public; and whether there are less restrictive means for insuring the public's protection.

LEGALIZING AND REGULATING THE PRACTICE OF DENTURISM

Prepared by Allison C. Weber

Issue

Should the General Assembly enact legislation to legalize and regulate the practice of denturism?

Background

Pursuant to House Concurrent Resolution 40, enacted during the 1998 Regular Session of the General Assembly, an interim research report is being prepared to address the issues relating to denturism and the need for regulating denturists. A denturist is one who provides dentures directly to the public, and when practice may include fabricating, fitting, altering, and repairing dentures. "Denturism," or "denturity," is the practice of a denturist. What follows are the main points addressed in that study.

Making dentures involves taking impressions of the upper and lower jaws, fabricating the dentures, taking into account the characteristics of the patient's mouth, selecting the size, shape, and color of the dentures to complement the patient's facial features, and fitting the fabricated denture in the patient's mouth. In this country, dentures are provided almost exclusively through dental offices. Most dentists make the impressions in their offices and then send them with instructions to a lab for the actual fabrication of the dentures. The dentist later fits the finished product, but any further alterations may require a return to the lab.

Alternatively, a denturist deals direc tly with the patient and fabricates the dentures. While denturism is a recognized component of health care delivery in most of Western Europe and Canada, only six states allow the practice. In the remaining states, Kentucky included, only a licensed dentist can make the impressions required to fabricate dentures and place or adjust a denture in a patient's mouth. Thus, to operate legally, Kentucky denturists, working out of shopfront denture service centers, must employ a licensed dentist to make the impressions and fit the finished dentures. Several denturists have been found making their own impressions and have been prosecuted for practicing dentistry without a license.

Discussion

State regulation of dental services is intended to protect the pu blic health. Yet, limiting the number of suppliers also limits competition and may help to keep prices higher than they would be otherwise. In considering whether Kentucky should allow the independent practice of denturists, there are three relevant questions: 1) Are the denture needs of Kentucky residents being met? 2) Would any savings be realized from legalizing denturism? and 3) Would such a change in policy likely have unacceptable effects on oral health?

Kentucky is second only to West Virginia in the rate of people without teeth. Forty percent (40%) of those between ages 65 and 74, and fifty percent (50%) of those age 75 and over have lost all their natural teeth. This ranking is most likely attributable to oral disease, patient attitudes, and availability and accessibility of dental care. There are also established relationships between tooth loss and education levels, race, lack of dental insurance, and cigarette smoking.

Opponents of legalized denturism note that Kentucky has two denta l schools and a relatively good per capita rate of dentists in its urban areas. They maintain that the competitive market already operates to keep down the price of dentures and that dentures also are available through pro bono programs. Further, the Kentucky Dental Association emphasizes, as a matter of public safety, that only dentists are qualified to provide dentures directly to the public. Their argument is that while dentistry is devoted to the preservation of natural teeth and preventive treatment, denturists' only function is to sell dentures—they have no other treatment options to consider. Instead of receiving comprehensive oral care, including the teeth, gums, jaw and related structures, cancer screening and health screening, a patient who walks into the office of a denturist is going to end up with dentures and nothing more.

The denturists argue that they can provide dentures directly, without the middleperson and without expensive dental office overhead, for up to half the price charged by a dentist. Studies show that approximately 40% of denture-wearing Americans have ill-fitting or incomplete dentures, and the vast majority have not obtained any care within five years. These persons may suffer the physical and mental discomforts of sores, reduced ability to chew food, and poor appearance; risk a great disability to wear dentures in the future; and forego the protection which might be provided by a screening for oral disease. One of the major reasons for this failure to obtain denture care is the high cost of such care, particularly for elderly and low-income persons. By substantially reducing the price, denture care would become accessible to a great number of consumers who cannot now afford it. If more people seek dentures, more otherwise unexamined mouths will be seen. In turn, more oral diseases will be discovered and referred to dentists or physicians. The denturists further note that any advantages gained by competition between dentists are nonexistent outside of the state's largest cities. Finally, providing dentures is only a small portion of a dental student's education and a licensed dentist's practice. In contrast, denturists say that the fact that they "specialize" in denture-making and fitting, suggests a higher level of competence and consumer satisfaction.

Consumer choice and lower prices are the two arguments behind the successful efforts in six other states to legalize denturism, four of those accomplished by public referendum. If denturism is legalized in Kentucky, the next step would be to establish the appropriate level of regulation—registration, certification, or licensure—and to decide whether the dental board or an independent board would oversee that regulation. Additional determinations would have to be made regarding educational requirements, grandfathering, and competency assessment.

LOCAL GOVERNMENT

LAND USE MANAGEMENT

Prepared by Mark E. Mitchell

Issue

Should Kentucky amend KRS Chapter 100 to provide more land-use management strategies?

Background

Since World War II, the living patterns of Americans have been changing, people have been moving away from city centers to the suburbs to live and to work. As more people move, more infrastructure needs to be built to accommodate them: water lines, sewer lines, schools, roads, gas lines and electric lines, police and fire protection, among others. Of course, when the people move from the city centers, the infrastructure remains. When population does not grow in concert with development, the density of the city decreases. If no one moves into the vacant apartments, houses, and businesses, the city is then left to support an infrastructure that is bigger than needed. When a significant number move to the edge of the cities, where there are no existing services, and build more houses, apartments, and businesses, they exacerbate the problem of underused infrastructure. The "coring out" of the city and the growth around the city perimeter in this inefficient manner is known as "sprawl."

Aside from the structural changes caused by "sprawl", there are also financial and social consequences brought on by movement from the inner-city to the outskirts of our towns. As people move out of the taxing districts, unless the government acts to increase taxation, the area's revenues decrease. A loss of tax revenue can also affect maintenance of existing infrastructure.

Studies have indicated that the biggest portion of people moving to the suburbs tend to be affluent and young. This can leave a disproportionate number of poor and elderly people in the city.

Another issue of the growth of the suburban areas is the loss of "green" space or undeveloped land. Many individual communities have been faced with this issue, but the state may be drawn into the arena as urban development moves beyond the traditional city and county boundaries to become more of a regional issue.

In various attempts to combat unnecessary development, and the wasting of brownfield areas, several states such as Oregon, Maryland, Georgia, and Tennessee have passed comprehensive land use legislation. Many of these states' larger cities are suffering under the problems of sprawl. Atlanta, Georgia, for example, has been identified as having some of the worst commute times in the U.S. Embroiled in litigation over existing annexation legislation, Tennessee seized the initiative and put in place far-reaching land-use reforms in the passage of Public Chapter 1101. Tennessee can provide a case study for Kentucky, since the two states share many demographic, geographic, and economic similarities.

After the 1996 Regular Session of the General Assembly, the Interim Joint Committee on Local Government established a subcommittee on planning and zoning. Acting on its recommendations, a bill was introduced in the 1998 Regular Session of the General Assembly to create a task force for revising KRS Chapter 100. It was defeated. Subsequently the co-chairs of the Interim Joint Committee on Local Government agreed to form a subcommittee on planning and zoning for the 1998 - 99 interim.

Discussion

During the 1998-99 interim, the Subcommittee on Planning and Zoning has been focusing primarily on four issues relative to KRS Chapter 100: Land Use Planning, Urban Sprawl, Greenspace Preservation, and Landowner Rights.

Land use planning is currently mandated by the Kentucky Revised Statutes; however, only a few areas of Kentucky have created planning commissions. One option for upcoming legislative action is to "put teeth" into the legislation for creating planning commissions. It is said by proponents that simple planning can curb many of the effects of sprawl. However, many smaller communities do not feel the need to expend the money necessary to create the planning commissions, because of their relatively slow growth. Many of those same communities say they do not have the financial resources necessary to carry out a planning function and slow growth in their communities does not justify it. Legislation could offer financial help to strapped communities to implement planning, or it could mandate penalties for noncompliance.

Regarding the issue of urban sprawl, one of the preliminary questions that needs to be answered is: "How much of Kentucky is suffering under urban sprawl?" It seems that most of the larger urban areas in Kentucky will be dealing with sprawl in some manner. Once the places are identified as being affected with sprawl, the question is then how to curb it.

Several states are enacting preservation statutes with incentives to preserve existing, historic structures within the city boundaries. Others are encouraging tax incentives for developers to rebuild brownfields—places within cities that have been developed at one point and are either run-down, empty, or overgrown—basically unused areas within the cities. Another issue is whether to encourage the use of urban growth boundaries, or urban service areas. This is perhaps the most controversial of the tools. This can be described as a city's or county's decision on where to stop the extension of infrastructure over a certain time period. Lexington already has established one. This tool could be used by a city or county to ensure that its infrastructure grows at a controlled rate, and that it maintains control over its expenses. Opponents of urban service boundaries say that once the boundaries are established, they are rarely changed, and that this stifles growth. Opponents also say that the mere fact that they exist unduly raises the price of land and housing within the urban service district out of the reach of many people due to the simple rule of supply and demand.

Of course, when a city or urban area expands, green space is consumed in some manner—either through construction of roads, businesses, or housing developments. The expansion can have many effects on the land, from simply "paving" over it, to pollution, or creating watershed problems. The development can have severe consequences to the ecosystem. As stated earlier, many programs to conserve green space exist. Purchase of Agricultural Conservation Easements (PACE), Purchase of Development Rights (PDA) and Transfer of Development Rights (TDR) programs are some of the most prevalent. The common denominator among these programs is that the development rights are made severable from the rest of the property, and then are bought by either a private or most, often, a government entity. Other ways to conserve green space are to encourage development strategies which cluster houses within a development, while making the most of the untouched land within the parcel of land being developed. Each of these strategies has proponents and opponents. Some people would prefer the state put in money in other efforts than a PACE program (which Kentucky already has). Others see this as a viable alternative to what is sometimes perceived as the community controlling the will of the landowner by refusing zoning changes, subsequently making it harder for a landowner to sell land.

Some citizens wish to have no controls whatsoever placed upon landowners. They feel that any infringement on a property owner's will, in regard to the disposition of his or her land, is improper. Proponents of more controls say that the state has reached, or soon will reach a point when the effects on the region must be considered when disposing of any property. It would be prudent to point out that a government cannot legally simply "appropriate" land. This comes under the federal constitutional issue of "takings". When a government in some manner condemns land without compensation, or, to a court's satisfaction reduces the value of the land beyond reason, this is termed a "taking".

These represent the most prominent issues regarding land use regulation being brought to the Legislature's attention for the 2000 General Assembly. The Legislature will be asked to decide which, if any, of these measures will benefit Kentucky as it moves into the 21st century.

INSURANCE PREMIUM TAX

Prepared by Donna G. Weaver

Issue

Is there a need to improve the accuracy and efficiency of the collection and distribution of the local insurance premium tax in Kentucky?

Background

KRS 91A.080 allows local governments, including cities, counties, and urban-county governments, to impose license fees or taxes upon insurance companies for the privilege of doing business within the jurisdiction of the local government. The fees or taxes are based on the amount of premiums collected by insurance companies issuing policies within the taxing jurisdiction. The insurance premium tax is considered an important source of revenue for local governments, especially with current budget restraints and the constitutional and statutory limitations on other forms of local taxation. The Department of Insurance reports that in 1998, 325 cities and 21 counties had enacted this tax, with the amount of premium tax levied varying from a low of 2% in Jackson County to 12% in Junction City.

While the local insurance premium tax is considered an important primary source of revenue for many local governments, it is not without its problems. Over the years, the General Assembly has heard testimony regarding the collection and distribution of the insurance premium tax from both local government and insurance company representatives. Local government representatives have complained that tax dollars are not always accurately distributed because of confusion over city and county boundary lines and zip code problems. The problem occurs after the insurance premium tax is collected by insurance companies and remitted back to the city and county. In some cases, the tax is levied in a county or city within the same zip code and there is no way to determine what has been assessed from homeowners who live within the city or county, in order to remit them to the proper taxing jurisdiction. Meanwhile, the insurance companies argue that the current procedure for collecting the tax and making payments to the local governments is too cumbersome.

In response to these complaints, the Department of Insurance and a group of participants, including the Kentucky Association of Counties, the Kentucky League of Cities, the Department for Local Government, the Kentucky Revenue Cabinet, and representatives of the insurance industry, have been working on a plan to improve the accuracy and efficiency of the distribution of the local government insurance premium tax. This proposal was presented for discussion to the members of the Interim Joint Committee on Local Government by the Commissioner of Insurance at its April 28, 1999 meeting.

The proposal consists of the creation of a single clearinghouse for the receipt of funds from insurance companies and the distribution to the local taxing jurisdictions. According to the commissioner, this streamlined approach would allow for a more efficient and accurate distribution of funds to the local taxing jurisdictions and establish much easier and more appropriate auditing, to ensure that the local taxing jurisdictions are getting their fair allocation of funds.

The streamlined process would also benefit insurance companies. Briefly, it would require only one detailed filing a year sent to the clearing house, with the quarterly payments based on that filing, rather than four filings per year sent to each local government taxing jurisdiction. This change would result in a maximum of five checks per year, as opposed to as many as 1,500 checks per year for companies that do business statewide. The clearinghouse would then prepare a summary of all the company reports for each taxing jurisdiction and issue a single tax distribution check or direct deposit to each taxing jurisdiction. The clearinghouse would have authority to examine insurers to determine whether they are properly remitting the tax.

The clearinghouse proposal is not without its detractors. City and county officials have expressed concern to the Department of Insurance that a new system of collection might result in a loss of control and flexibility at the local level or even an eventual attempt to place a cap on the local tax rate. The Department of Insurance indicates that these fears are unfounded.

Discussion

Ideas on how to improve the accuracy and efficiency of the distribution of this tax to local governments have been considered since 1990. In fact, two bills were filed during the 1998 session that would have set up a clearinghouse, but neither bill was reported out of committee. At the next session of the General Assembly, legislators can expect legislation on the Department of Insurance's proposal to create a single clearinghouse. They also will have to resolve the question of which agency or organization could best serve as the collection agency for the clearinghouse. The agencies and organizations being mentioned for consideration include: the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Revenue Cabinet, and the Kentucky Department for Local Government.

Ultimately, the legislature must decide whether this proposal will provide a mor e efficient and accurate distribution of funds to the communities that levy this tax, and establish an easier and more appropriate auditing system to ensure that these local taxing jurisdictions are getting their fair allocation of funds. In addition, legislators must consider whether the plan will simplify the insurers' compliance and encourage more companies to do business in Kentucky.

SENIORS, MILITARY AFFAIRS, AND PUBLIC SAFETY

TROOPS TO TEACHERS

Prepared by Allison C. Weber

Issue

Should an alternative certification process be created to allow veterans leaving the military to become teachers in secondary schools?

Background

The Department of Defense Troops to Teachers program was established in January 1994 with three main objectives in mind: 1) To assist military personnel impacted by defense reductions in entering a new career in public education; 2) To provide positive role models—mature, motivated, experienced, and dedicated veterans—for the nation's public school students; and 3) To help relieve teacher shortages, especially in the subjects of math and science.

The primary function of Troops to Teachers is referral and placement assistance. Twenty-one states, including Kentucky, have created offices to help participants identify employment opportunities and teacher certification programs. Military personnel who have served a minimum of six years and have a bachelor's degree from an accredited college are eligible for this assistance. Any school district in need may participate and participants determine where they want to teach. There are some federal financial incentives available to both school districts and veteran participants.

While statistics vary, Troops to Teachers has placed approximately 2,000 teachers in academic classrooms across the country. Of these, half have entered teaching through an alternative teacher preparation and certification program and 46% through a traditional college-based program. Regardless of the type of teacher preparation program, Troops to Teachers participants reported that they learned best how to teach by doing it and through advice from other teachers.

The value of Troops to Teachers can be measured by the results of a survey which compares 1,200 participants with "traditional" teachers. The key findings are as follows:

	Troops to Teachers participants	All Teachers
Male Teachers	90%	74%
Minority Teachers	29%	10% (public schools only)
Inner-city School Teacher	24%	16% (public schools only)
Teachers aged 35 to 54	91%	70%
Math Teachers	29%	13%

Biology Teachers	8%	5%
Chemistry Teachers	5%	2%
Physics Teachers	3%	1%
Special Ed Teachers	11%	8%

Finally, 96% of Troops to Teachers participants report that they are satisfied with their relationships with other teachers; and 95% report satisfaction with their relationships with students.

Actual classroom performance of Troops to Teachers participants was measured in a 1995-96 survey sent to principals in 275 school districts in 35 states. The program participants were compared with other first-year teachers, based on ability to establish a positive learning environment; knowledge of subject matter; effectiveness in classroom management; willingness to learn from other teachers; ability to motivate students; and interest in students. Less than 6% of the Troops to Teachers participants were rated below average, 17% were average, 28.3 percent were above average; 26.2% were well above average and 22.7% were considered among the best.

Discussion

According to the Education, Arts and Humanities Cabinet, Kentucky has a shortage of math and science teachers at the secondary level. While there are currently 32 certified Troops to Teachers participants in secondary classrooms, other states have far greater numbers. One explanation for this is that, in the beginning of the program, Kentucky participants in Troops to Teachers were limited to traditional certification—usually involving one to two years of college work before being allowed in the classroom. In 1998, an alternative certification program that recognized the value of ten years exceptional work experience instead of a degree in education was enacted. While not directly aimed at veterans, this method of certification allowed two more veterans to qualify for immediate entry into the classroom. For the 2000 legislative session, there is growing support to fulfill the true intent of Troops to Teachers by creating an alternative certification route specifically for veterans with a bachelor's degree. Options being considered are a passing score on the national exam given to graduating education majors and enrollment during the first year in the state Teacher Internship Program.

KENTUCKY'S NATIONAL DEFENSE ROLE

Prepared by Mike Greenwell

Issue

How can Kentucky receive benefits from today's emerging military opportunities, and play a significant role in national defense?

Background

The last round of military base realignment and closures (BRACs), authorized by the Base Closure Act of 1988, took place in 1990. Kentucky lost over 13,000 jobs and an estimated $235,000,000 in payrolls alone due to facilities closings and missions transferred out of Kentucky. While Kentucky's remaining facilities appear more secure, state government should keep itself informed on anticipated changes in this realm. Alternatively, if military missions displaced by future closings of military installations in other states were relocated in Kentucky, additional jobs, economic opportunities and tax revenues could be realized by the Commonwealth.

U.S. Department of Defense (DOD) contracting has a substantial positive economic impact in Kentucky. Currently, defense contracts with Kentucky companies total over one and one-half billion dollars ($1,581,148,000), affecting over seventy counties, particularly Jefferson, Fayette, Christian and Hardin. These defense contracts have steadily increased over the last four years, at approximately 25% per year. These defense contracts create over 17,970 jobs and are equal to both the General Electric and Toyota Motor Corporations employment in Kentucky. They produce nearly $36 million in state and local tax revenues.

The Economic Development Cabinet has increased its efforts to help Kentucky businesses obtain U.S. Department of Defense contracts. They operate the Kentucky Procurement Assistance Program to help Kentucky firms obtain DOD and other government contracts. The Economic Development Cabinet has service centers in Somerset, Louisville, Hopkinsville and Frankfort which provide consulting on how to construct bid packages, identify contract leads by a computer bid match system, and organize regional training opportunities. Their efforts have contributed to an additional $313 million in defense contracts being awarded to Kentucky companies.

Discussion

The General Assembly may wish to consider ways to identify the benefits which can be made available by the evolution and transformation of national defense systems.

This focus could include legislative consideration of the efforts of the Kentucky Commission on Military Affairs, the Economic Development Cabinet, state and local Chambers of Commerce, industrial development commissions or task forces, in efforts to acquire and retain DOD contract dollars for Kentucky.

The National Guard is expanding into Homeland Defense Training and Consequence Management Training, and its Wendell Ford Training Center in Muhlenberg County has the capability to be expanded to a fully developed, urban assault/terrorist response homeland defense training facility. This expansion could bring additional military and civilian response teams to Kentucky for training. Several thousand acres of strip mine reclamation land adjacent to the Western Kentucky facility is available for expansion at low acquisition costs. The Kentucky National Guard will be requesting funding in their FY 2000-2001 budget request for this purpose.

Kentucky has obtained $3,000,000 of the $20 billion spent annually on research and development contracts by DOD. The Interim Joint Committee on Seniors, Military Affairs and Public Safety learned through testimony that more effort by Kentucky universities or Kentucky research and development firms could be expended to attract DOD research grants.

The Kentucky Commission on Military Affairs, with help from the University of Louisville and a consulting firm, has adopted a Strategic Plan that sets forth goals for establishing a partnership with the nation's military, and strategies for achieving those goals. The Interim Joint Committee on Seniors, Military Affairs and Public Safety is presently discussing these issues with the Economic Development Cabinet and other agencies and organizations to identify and propose facilitating legislation.

HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY

Prepared by Emily Fryer

Issue

Should the General Assembly increase funding for home and community-based services for the elderly?

Background

The 1996 *State Long Term Care Profiles Report* (University of Minnesota, R. Ladd, R. Kane and R. A. Kane) rates Kentucky as a potentially high-demand state for public long-term care services. This projection is based mainly on relatively large numbers of severely disabled (for the 65+ age group, Kentucky ranks fifth in the nation, at 8.2 percent, or about 40,300 persons) and a relatively high percentage of older persons living below the poverty level (for the 65+ age group, Kentucky ranks sixth in the nation, at 20.6 percent). In addition, 30.4 percent of Kentuckians over 65 live alone.

Kentucky is aging at an increasing rate. The 60+ population has increased by 18 percent since 1980; the 85+ group increased by 67 percent during the same time period. In the year 2000, there will be 667,000 people over 60 years of age in Kentucky. Today people 60 and over make up 17 percent of the total population in Kentucky; by 2020, almost one in four Kentuckians will be over 60.

Due to the growth in the aging population, Kentucky is experiencing a substantial increase in the need and demand for affordable (public) long-term care services that will enable older persons to live in the least restrictive environment, and to delay or avoid institutional care. Both goals will require increased availability and accessibility of in-home and community-based care. The Office of Aging Services, in the Cabinet for Health Services, administers the state's home and community-based services: Homecare, Adult Day/Alzheimer's Respite, and the Personal Care Attendant Program.

The Homecare Program is for persons 60 years of age or older who have functional disabilities and are at risk of long-term care institutionalization. Services include personal care, home management, home-health aide, home-delivered meals, home repair, doing chores, providing respite, escorting, and case management/assessment. Approximately 12,000 individuals are served per year on an annual budget of $14.6 million. State funding is approximately 94 percent, with local funds comprising 6 percent.

The Adult-Day/Alzheimer's Respite Program provides adult-day services for persons 60 years of age or older who are physically disabled or frail and in need of supervision for part of a day; also offered are center or in-home services for persons of any age with Alzheimer's Disease or other dementia. Funding is provided by the state each year in the amount of $2.6 million for approximately 1,500 clients.

The Personal Care Attendant Program offers attendant services for persons 18 years of age or older with a functional loss of two or more limbs, and who have the ability to hire and supervise an attendant. Funding is provided annually by the state in the amount of $2.4 million to service approximately 250 clients.

It is estimated that there are about 40,000 older people at risk of institutional placement and in need of community-based services. Current waiting lists number over 4,000 for the various community-based programs. Not counted are the many individuals who inquire about services but do not add their names to a long waiting list.

In fiscal year 1997, funding for programs administered by the Office of Aging Services were cut 8 percent, or $1.6 million, as a result of a general cutback in funding for the Cabinet for Families and Children. At present, the funding levels for in-home services and community-based programs are substantially below the identified need.

Discussion

The estimated cost of providing community-based services under the Homecare, Adult Day/Alzheimer's Respite, and Personal Care Attendant Programs, just the 4,000 people on the waiting lists, is $10.1 million. Additional coverage per person, would range from $1,100 to $2,000, depending on the extent to which each program is increased. (The current yearly average cost per person per program is: Homecare $1,100, Adult Day/Alzheimer's Respite $1,900, and Personal Care Attendant Program $9,400.) In order to restore the funding cut, various groups have advocated a 10 percent increase in the 2000 Biennial Budget, or 2 percent above the 8 percent cut two years ago.

The Special Advisory Commission of Senior Citizens adopted the following recommendation for the 2000 Session of the General Assembly at its May 1999 meeting: "Since there has not been an increase in state funding for home and community-based services for the elderly since 1991, and since the need has dramatically increased during that period, it is strongly recommended that state funding for these programs be increased by a minimum of 10 percent. The programs in question are the Home Care Program, Adult Day Care, Alzheimer's Respite and Personal Care Attendant."

ASSISTED LIVING COMMUNITIES

Prepared by C. Gilmore Dutton and Emily Fryer

Issue

Should the General Assembly require mandatory certification for assisted living facilities?

Background

Government certification laws, regardless of the activity being regulated, are typically composed of several common elements, including: definition of terms, minimum standards, permissible and prohibited activities, mandatory participation, and penalties for violations. Kentucky's law pertaining to certification of assisted living facilities follows the usual pattern, with one exception—in the Commonwealth certification is voluntary, rather than mandatory.

KRS 209.200, enacted by the General Assembly in 1996, defines "assisted living residence" as an apartment or home-style residential unit which provides housing for two or more adult persons who are not related to the owner or operator of the unit, and which provides supportive services within the residence or on the grounds of the residence. The usual living unit is a separate apartment with a lockable door and private bathroom. Clients in Kentucky are private-paying adults, of any age, who require assistance with activities of daily living (bathing, eating, dressing, grooming, toileting, transferring), as well as meals, housekeeping, transportation, and clerical services. Assistance with self-administration of medication is usually available upon request.

Assisted living communities in Kentucky are not permitted to provide health or medical care. However, an assisted living client may directly contract with a home health agency, private duty nurse, or another outside source for health or medical care.

Assisted living facilities serve as an alternative to a private residence, but at a significantly lower cost than institutional nursing facilities. Often, assisted living residences will be part of a large complex which includes health facilities offering personal or nursing home level care. Occupancy in an assisted living facility is usually under a lease agreement, which addresses available services, fees, client rights, a move-out policy, refunds, and a grievance policy. Existing fair housing and consumer protection laws apply to the lease agreements.

Discussion

Kentucky's voluntary certification program for assisted living facilities requires compliance with minimum standards for the residence and supportive services offered in the facility. To date only three assisted living facilities have been certified, although eight applications are pending or in process.

Arguments for mandatory certification include the assurance of a standard (and potentially high) quality of care, an incentive to raise minimum standards, and a monitoring system which serves as a safety net for the client. Presently in Kentucky, any business offering assisted living type accommodations can advertise as an assisted living facility. Only informed and observant consumers would likely distinguish between a certified facility, carrying the state's seal of approval, and a non-certified facility.

In a recently-released report, "Assisted Living: Quality-of-Care and Consumer Protection Issues in Four States" (April 26, 1999), the General Accounting Office found that more oversight of facilities is necessary, although that is often complicated by the fact that many states do not regulate assisted living. Most observers believe that there are no plans for federal legislation on assisting living.

According to testimony received by the Subcommittee on Seniors of the Interim Joint Committee on Seniors, Military Affairs and Public Safety, from the Executive Director of the Kentucky Assisted Living Facilities Association, a consensus has been reached among assisted living communities, state agencies, and consumer organizations regarding the need for mandatory certification of assisted living facilities in Kentucky. Certification would define those services which could be provided in assisted living communities, and would establish standards regarding legal disclosure, staffing, training, and physical plant specifications.

STATE GOVERNMENT

STATE PERSONNEL CLASSIFICATION AND COMPENSATION

Prepared by Joyce Honaker and Stewart Willis

Issue

Should the General Assembly enact legislation necessary to revise the state personnel classification and compensation system as recommended by the Hay Management Group?

Background

During the 1996 Regular Session, the General Assembly enacted HB 268, which directed the Personnel Cabinet to develop and propose a new system of classification and compensation for all employees governed by KRS Chapter 18A. In addition, the Governor wanted to examine the current status of the classification and compensation system, in order to ensure that the pay equity standards, as required by KRS Chapters 337 and 344, were being upheld.

HB 268 required the Cabinet to use a nationally-recognized system for evaluating job requirements. According to the Personnel Cabinet, the Hay Management Group was chosen through the required bidding process, because it has worked on classification and compensation issues in both the public and private sectors, in the U.S. and internationally; its system of comparing jobs has been found to be fair and to promote equity without regard to ethnicity, gender, or disability; and governments that have used the Hay system have been satisfied with the results.

As a result of the study, the Personnel Cabinet reports that the Hay Management Group found that:

(1) The state has not adequately maintained its pay sched ules, and, as a result, starting salaries are too low, making it difficult to recruit new employees when current employees retire or quit;

(2) State government has too many job classes, which allows for many workers to do the same tasks but have entirely different titles and pay grades; and

(3) To correct problems with low starting salaries, jobs have been assigned special entrance rates or partial changes have been made to the state's pay scale, which have resulted in only those newer workers below the new minimum salary receiving the raises.

Hay has offered 12 recommendations to address these problems. The recommendation are linked to each of the findings, as follows.

First, in addressing the low starting salary issue, Hay offered the following recommendations: (1) Start adjusting the salaries of all pay grades on a regular basis and in a way that is fair to all employees and not just for the new employees (Hay Recommendations 3 & 7); (2) Change the starting salaries at the same time employees get their annual increments, until the state's pay scale becomes more in line with what other employers are paying (Hay Recommendation 6); and (3) When the state's pay scale becomes reasonably close to what other employers pay, the entire pay scale should be adjusted every other year, based on what other employers are paying their employees to perform comparable tasks, rather than on a statutory percentage (Hay Recommendations 2 & 5).

The second finding by Hay addresses the issue of there being too many job classes. Hay has recommended: (1) State government job classifications should be rewritten to ensure that workers are paid according to the tasks performed and the level of responsibility they have (Hay Recommendations 1 & 4); and (2) The comparison of jobs should be based on four factors, which should be used to determine pay:

a) What the worker must know to do the job;

b) The types of problems the worker must solve to do the job;

c) The level of responsibility a worker is given to properly do the job; and

d) The danger, physical requirements, and working conditions of the job.

In its third finding, Hay stated that the newest workers are the ones who benefit the most from the current methods of making changes to the salary schedule. To address this finding, Hay has recommended the following: (1) Employee increments should be given on the same date and based on the midpoint of the pay grade, until the pay scale is reasonably close to what other employers in the job market pay. Then, the annual increments would return to becoming a percentage of the employees' base pay (Hay Recommendations 10 & 11); (2) Employees with salaries above the pay grade maximum should receive a lump sum payment instead of a raise to base pay until the pay scale catches up to their salaries. Hay specifically stated that each type of job has both a minimum and maximum worth in relation to other types of jobs; and by not recognizing that, the system could conceivably begin to pay some employees the same as the Governor, without them having the level of responsibility of that position (Hay Recommendations 8 & 9); and (3) Employees should be rewarded for their length of service by receiving lump sum payments of $100 per year of service at career milestones of 16, 20, 25, 30, and 35 years of service, in addition to increments or other salary increases (Hay Recommendation 12).

Discussion

Under current law, many of the Hay recommendations can be implemented by administrative action. Others would require legislative action, in the form of amending a statute or providing an appropriation.

The Personnel Cabinet has held public forums across the state in order to inform state employees of the Hay Report and its findings and recommendations. At the June 23, 1999, meeting of the Interim Joint Committee on State Government, Personnel Cabinet officials and representatives of employees' organizations indicated that the following Hay Recommendations had generated the most criticism from state employees to date:

HAY 5: Base annual individual salary adjustments (increments) on job market changes and available revenues rather than a statutory percentage.

> Employees have expressed concern that removing the 5 % annual increment requirement from KRS 18A.355 will result in lower annual increments or none at all.
>
> The Personnel Cabinet notes that, while KRS 18A.355 "requires" an annual increment of not less than 5%, employees have not always received a 5 percent increase under the enacted budgets.

HAY 8: Until the pay range catches up, do not add the increment to an employee's base salary if that salary is beyond the maximum of the pay range;

and

HAY 9: Provide lump sum increments to employees whose salaries are beyond the maximum of the pay range.

> KRS Chapter 18A presently requires that annual increments be added to an employee's base pay.
>
> State employees have expressed concern that failure to increase base pay will have a negative impact on retirement and Social Security benefits of longer-term employees. In response to the argument that an employee can improve his or her salary through promotion to higher-valued jobs, they question the availability of promotional opportunities in state government, particularly in field offices.
>
> On June 29, the Personnel Cabinet announced its decision not to propose legislation to the 2000 Regular Session to implement Hay Recommendations 8

and 9. In explaining the reasons Hay made these two recommendations, the Personnel Cabinet notes that each job has a maximum worth in relation to other jobs in the organization. Use of the lump sum payment acknowledges that a job has a maximum worth while providing an income incentive for those whose salaries are frozen beyond the pay range maximum.

HAY 10: As a transition measure, base employee increments on a percentage of the midpoint of the employee's pay grade, rather than on the base salary of the individual employee, until the salary schedule is at an appropriate width.

Increments are currently based on the pay of the individual employee. If increments are based on the midpoint of the salary range, employees with salaries below the midpoint will receive larger increments than they receive under the current system. Employees with salaries above the midpoint will receive smaller increments than they receive under the current system.

The Personnel Cabinet lists three reasons for this recommendation:

1) Any change in the personnel system must be made within budgeted costs.

2) All employees in the same class receive the same raise.

3) It reduces compression between minimum and midpoint salaries for tenured employees.

As of August 1, the Personnel Cabinet had not publicly stated which of the Hay recommendations it will pursue. As previously noted, the Cabinet has decided not to propose Hay Recommendations 8 and 9 to the General Assembly.

ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS

Prepared by Joyce N. Crofts

Issue

Should the General Assembly amend KRS 369.010 to 369.030 relating to electronic signatures and electronic records?

Background

The growth in Internet use by businesses, governments, and individuals has been phenomenal and is predicted to continue at an even greater rate. According to a number of experts, approximately 35% of U.S. households are on-line now, projected to reach 60% in 5 years and 90% in 10 years. The value of U.S.-based electronic commerce transactions was estimated to be $43 billion in 1998 and is projected to be $1.3 trillion by the year 2003. The Internet and electronic commerce are changing the way we live our lives—the way we shop, the way we bank, the way we run our businesses, and the way we communicate with and use the services of our governments.

As more transactions and communications that require security and authenticity travel on a network that has no inherent security, questions arise concerning the authenticity and integrity of electronic messages and documents. Traditional paper transactions have a variety of characteristics for establishing authenticity, but these are lost in an electronic environment. To be able to rely on the electronic messages they receive, governments and businesses alike need the assurance that those messages are reliable, provable, and enforceable.

Today, electronic signatures, digital signatures, and encryption are the technical means to verify the sender and assure that the information has not been altered. "Electronic signature" is the more general term and is generally defined as any letters, characters, or symbols manifest by electronic or similar means and executed or adopted by a party with an intent to authenticate a writing. Examples of electronic signatures include a name typed at the end of an e-mail message, a digitized image of a handwritten signature that is attached to an electronic document, a PIN number, a biometric signature, and a digital signature. "Digital signature" is one specific type of electronic signature that allows the recipient of a digitally signed communication to determine whether the communication was created by the purported signer, and that, when used with encryption, verifies that the content of the communication has not been damaged or altered in transmission.

Discussion

Within the last three years, there has been a wave of digital signature and electronic signature legislation across the country. Taking the lead over the federal government, 49 states have proposed and 44 have enacted some form of electronic signature or digital signature legislation.

The main concerns about the various state laws are the inconsistencies from state to state and the fact that the question of trust, a key issue in electronic transactions in business and government, is typically not addressed in most state legislation. Inconsistencies exist in such areas as what qualifies as an electronic signature and what type of transaction can be done electronically. The key requirements for message trust are authenticity (Who really sent the message?), integrity (Has the message been altered in transmission?), and nonrepudiation (Can it stand up in court?). Most state statutes don't address the trust issue at all. Some require attributes of security as a precondition to the validity of the signature itself. Others consider an electronic signature to be valid as an identifier but confer a legal benefit on only the more trustworthy forms of signatures, e.g., digital signatures (with message encryption), where identity and integrity are legally presumed. In addition, most state laws do not address these legal presumptions.

In the 1998 Regular Session, Kentucky's General Assembly passed an electronic signatures and electronic records Act. Codified as KRS Chapter 369, the statutes generally direct that electronic signatures have the same force and effect as manual signatures and that electronic records, with some exceptions, will satisfy any statutory or regulatory requirement that information be in "written" form. KRS Chapter 369 addresses an electronic signature as an identifier with the same effect as a manual signature. It applies to private sector transactions only when both parties agree to the use of an electronic signature or record, and to state or local government entities only if the entity agrees to accept an electronic signature or record. It does not require anyone to use or accept an electronic signature or electronic record, nor does it prohibit a recipient from establishing conditions of acceptance, unless the parties have agreed in advance of the transmission. It does not address the trust issues, even though one of the stated purposes of the Act is to "promote public confidence in the integrity and reliability of electronic records."

Traditionally, laws controlling contract and signature validity and Uniform Commercial Code statutes have been state-based. However, because of the problems being created by the inconsistent approaches in state legislation there is pressure for Congress to preempt the states, especially from industry, which does not want to have to deal with the different state rules. Others oppose federal legislation because they think a recently approved model law for states, the National Conference of Commissioners on Uniform State Laws' (NCCUSL) *Uniform Electronic Transactions Act,* will solve the problem.

Several bills pending in Congress would preempt states' legislation. While this provision is viewed by some as a way of achieving uniformity, it is of great concern to those who believe states should have the ability to set rules that, though they may not be completely uniform, will reflect the peculiarities of individual states. It is important to note, however, that many of those pending bills carve out provisions that say a state's law will be preempted unless it has enacted a law similar to NCCUSL's *Uniform Electronic Transactions Act.*

A national expert on the issue testified before the General Assembly's Task Force on Information Technology and recommended that any state legislation should cover all types of electronic signatures, not just digital, but that it should go another step and address the question of trust, at least at a certain level. Further, it should specify minimum default rules governing the conduct of the parties using electronic signatures—e.g., Who bears the loss in the event of a forged signature? What is the scope of liability for incorrect certifications? The Illinois legislation, for example, provides rules relating to electronic recordkeeping, the creation and control of signature devices, and the rights and responsibilities of parties using digital signatures. He also advised that, although this gets into the debate where some people say a statute should be "technology neutral," to the extent a particular technology raises a specific set of issues (e.g., unique legal issues raised by the use of a digital signature public key infrastructure), it is appropriate to look at whether those issues should be addressed.

Another expert who testified before the Task Force differed on whether law should mandate which electronic messages can be trusted. She maintained that trust is not a matter of law; rather, it is a matter of familiarity and building systems that can be tested to determine whether a message is actually from the purported sender. She also pointed out problems in Kentucky's definition of "electronic signature," noting that both NCCUSL's model act and the United Nations model law rejected those requirements because they are hard to meet and their interpretation presents a problem.

The national transition from a manufacturing-based economy to a knowledge-based economy, the phenomenal growth of the Internet, and the rapidly increasing statistics relating to electronic commerce are bringing a variety of changes and opportunities to the Commonwealth and a multitude of issues to the General Assembly. As the executive branch continues its work to put Kentucky government on-line, as state economic development efforts seek to grow information technology businesses, and as Kentucky businesses and state and local governments increasingly engage in on-line transactions, it seems crucial to look ahead at policy and legal issues that will need to be addressed. As a part of that, the 2000 General Assembly may wish to revisit the current statutes on electronic signatures and electronic records in light of recent developments in, and recommendations for, state electronic signatures legislation, and consider addressing issues of trust, rules for governing the conduct of parties using electronic signatures, and conforming Kentucky's current statutes to the NCCUSL model law.

PUBLIC FINANCING OF ELECTIONS

Prepared by Laura H. Hendrix

Issue

Should the General Assembly consider making changes to the law providing public financing of campaigns?

Background

In 1992, the General Assembly enacted the Public Financing Campaign Act, codified as KRS Chapter 121A, which provides public financing of up to $1.2 million per slate of candidates for Governor and Lieutenant Governor to those who agree to abide by a spending limit of $1.8 million per election, as increased or decreased by the consumer price index. Originally, as a further inducement to participate in the program, those slates agreeing to limit their spending could have accepted a contribution of $500 per person, PAC, political party, or contributing organization, while nonparticipating slates were limited to individual contributions of $100. Following a court case which ruled that the separate limits were unconstitutional, in 1996, the contribution limits were raised to $1,000 and apply equally to participating and non-participating slates. Participating slates could be released from the spending limit if a nonparticipating slate should raise or spend more than $1.8 million. Since participation in the program must be voluntary, to avoid violating the First Amendment right of free speech, it is possible that a slate that chooses not to limit its campaign spending could spend more than $1.8 million, thereby releasing participating slates from the spending limit and again making them eligible for additional matching public funds above the $1.2 million for which they could be eligible.

Several court cases have arisen regarding the implementation of the law. In 1998, the United States Court of Appeals for the Sixth Circuit case largely upheld the provisions of the public financing law, except for a provision that barred candidates from using their own money in the last 28 days of the campaign. A Kentucky Supreme Court case arising from enforcement actions under the law held that a grand jury may return an indictment for a criminal violation of the campaign finance laws, even absent a preliminary finding of probable cause by the Kentucky Registry of Election Finance. Additionally, a circuit court case held that certain provisions of the campaign finance laws in effect in 1995 were unconstitutional. The opinion stated that the definitions of "contribution" and "independent expenditure" were unconstitutional, as they did not permit political activities which are protected under the First Amendment to the U.S. Constitution. These definitions were amended by the General Assembly in 1996. However, a third definition contained in KRS 121.015(10), "knowingly", was declared to be unconstitutional, and this provision has not been amended. This opinion has been appealed by the OAG to the Kentucky Court of Appeals (July, 1999).

Discussion

There has been much recent discussion of whether the public financing system was effective in gubernatorial campaigns, and whether the system should be changed. Additionally, there has been discussion of broadening the public financing system to include other elections. In 1991, prior to the institution of the public financing system, the total election expenditures for all candidates for the governor's and lieutenant governor's races in the primary and general elections were around $24.3 million. Following the enactment of the public financing system in 1992, the total election expenditures were $10.3 million (in 1995).

Since the objectives of the public financing program were to reduce the amounts of money spent in races for Governor and Lieutenant Governor, as well as to prevent corruption, proponents of public financing state that this means that the public financing system has been successful in reining in campaign spending. Other proponents of public financing have stated that the state needs to go to a complete system of public financing for all campaigns. Opponents of the public financing system state that the system is unfairly coercive, that it violates the contributors' and the candidates' right to free speech, and that the spending limits are too low, especially to mount an effective campaign against an incumbent. Opponents state that disclosure of contributions is key, and would fulfill the purpose of public knowledge about campaign finance, without hampering the ability of candidates to get their particular message across through campaign expenditures.

The General Assembly might direct a review of whether the public financing system is effective, of the overall scope of the program, of the level of participation in the program, the public funding appropriation, or the spending limit itself, to determine whether the desired results have been achieved. Additionally, the issue of the Registry's authority to pursue campaign finance violations and the statutory definition of "knowingly" may need to be addressed by the General Assembly.

ELECTION RECOUNTS AND CONTESTS

Prepared by Laura H. Hendrix

Issue

Should the General Assembly clarify the statutory procedures for conducting election recounts and contests?

Background

Kentucky's election recount and contest laws have remained largely unchanged for more than fifty years. They were written at a time when most counties still conducted elections with paper ballots and others were beginning to use the mechanical lever-type voting machine approved for use in 1941. Today, electronic voting machines are widely used, and generally produce error-free vote tabulations. However, the existing recount and contest laws primarily address the use of paper ballots, not voting machines. Further, as election recounts and contests have been conducted over the years, various other inconsistencies, ambiguities, and gaps in the recount and contest laws have made it plain that legislative action providing candidates, the public, and the courts with more specific procedural instructions may be necessary.

The 1978 General Assembly directed that the LRC study the election recount and contest laws to identify problem areas and to develop clear and consistent procedures for conducting election recounts and contests. LRC Research Report No. 158, published in 1979, noted specific policy alternatives the General Assembly should consider in determining what type of recount and contest system should be implemented for Kentucky. The report also identified twenty-six substantive problem areas in the current recount and contest statutes. Except for three problem areas relating to recounts or contests of city elections, no legislative action has been taken to address the other study recommendations.

Perhaps the most notable recent example of the inadequacies of the election recount and contest laws occurred when an election recount was requested after the 1994 general election for U. S. Representative in the Third Congressional District. While the appropriate house of Congress has the ultimate constitutional authority to determine the validity of a congressional election, the U. S. Supreme Court has ruled that states may conduct recounts of congressional elections. The recount of the 1994 election was requested because it was felt that a power outage at some voting locations may have affected the ballot reading and vote tabulating functions of the electronic voting machines being used. However, unlike recounts of state and local elections, a recount of a congressional election is not specifically authorized in Kentucky statutes. Despite the statutes' silence as to whether a congressional recount may be conducted, the circuit court overseeing the recount permitted the recount action to proceed, on the basis of a candidate's right to request a recanvass of election returns and a state's powers to prescribe the time, place, and manner of electing its congressional representatives and to ensure the integrity of an election. That initial jurisdictional hurdle and other significant gaps and inconsistencies concerning policy and procedure in the laws presented the court and the parties with an unusually difficult challenge in applying statutes written for a different time in a manner consistent with modern election practices.

During the 1996-97 interim, the Task Force on Elections and Constitutional Amendments heard testimony regarding the need for updating the election recount and contest laws from the State Board of Elections, the Kentucky County Clerks' Association, and the Jefferson County Clerk's Office. All parties urged the adoption of the 1979 study recommendations and made several policy recommendations concerning the conduct of recounts and contests. The Task Force directed staff to prepare a bill draft to clarify the election recount and contest statutes for consideration during the 1998 Regular Session. However, no changes to the recount and contest laws were enacted in the 1998 session. During the 1998-99 interim, the Task Force looked again at some possible changes to these laws.

Discussion

Achieving greater consistency and clarity in the election recount and contest statutes would require policies concerning the purposes, beneficiaries, forum, function, scope, and costs of a recount or contest. In general, the purposes of a recount are to check for errors in vote counting and tabulation, to correct clerical and arithmetic errors in returns and tabulations, and to correct mistakes resulting from errors in vote counters' judgments in interpreting marks on paper ballots. On the other hand, the general purpose of a contest is to ascertain whether incidents of vote fraud, corrupt practices, or other election improprieties affected individual votes cast and, hence, the legitimate outcome of the election.

The State Board of Elections and others presenting testimony to the Task Force on Elections and Constitutional Amendments in 1997 noted that what is called a "recanvass" in Kentucky is considered a recount in other states. A recanvass is a government-paid re-check of the voting machine and paper ballot totals, vote tabulations, and returns, and is conducted at a candidate's request. The State Board recommended that Kentucky's current recanvass process become the recount process, conducted administratively by the state or county boards of elections, and the current contest process, initiated by filing suit in circuit court, would then be reserved for allegations of voting irregularities and improprieties concerning specific votes cast. During the 1998-99 interim, initial proposals for additional changes to the recount and contest laws were discussed, including a proposal to automatically trigger a recount if the margin of votes between candidates were within a certain percentage or number of votes. Another proposal would provide that a recanvass be an administrative procedure by the local election boards, that the recanvass be conducted according to the administrative regulations established by the State Board of Elections, and that the statutes allow local election boards to recanvass on their own initiative if there were obvious discrepancies. Additional policy decisions would remain, however, to determine whether any eligibility requirements for requesting a recount or contest are desirable, whether and under what conditions costs should be assessed to the government or the parties to the recount or contest, what specific grounds for a contest may be alleged and adjudicated, and whether different procedural standards should apply for recounts or contests of elections on public questions than for candidates. Also, the policy decision to give the State Board of Elections the discretion to determine the process for recanvasses by administrative regulation may be a question that the General Assembly may wish to examine.

Once necessary policy decisions regarding recounts and contests are made, issues regarding the election recount and contest statutes identified in Research Report No. 158, which are summarized below, may be addressed to provide clarity and consistency:

- Scope of a county board of elections' authority;
- Rechecking of voting machines and returns from them in elections on public questions;
- Recounts and contests of local option elections;
- Costs of a recanvass in primary or general elections as borne by the county;
- Special characteristics of the voting machine, as opposed to paper ball ots;
- Recount of election results in congressional races, presidential elections and selection of presidential electors;
- Proper standing and grounds upon which to initiate a recount or cont est and appeal;
- Inconsistent time limits for filing actions and retaining data, and inconsistent requirements for bonds or advance security;
- Payment of the costs of a recount or contest and under what conditions reimbursement of costs may be ordered; and
- Judicial discretion in rejecting ballots found to be procured by fraud, duress, bribery, intimidation, or for valuable consideration.

TRANSPORTATION

HUMAN SERVICE TRANSPORTATION DELIVERY SYSTEMS

Prepared by Kathy A. Kackley

Issue

Should the General Assembly modify the broker system under the Transportation Cabinet's human service transportation delivery system?

Background

The 1998 General Assembly enacted House Bill 468 to coordinate transportation services provided by the Cabinet for Health Services, Cabinet for Families and Children, Workforce Development Cabinet, and the Transportation Cabinet. House Bill 468 was the result of an Empower Kentucky initiative and combined programs from four cabinets for Medicaid non-emergency medical transportation, as well as transportation assistance to needy families, vocational rehabilitation, and the Department for the Blind under the auspices of the Transportation Cabinet.

The legislature created the new system to reduce the costs of providing transportation services, reduce problems with fraud and abuse, and increase services statewide. House Bill 468 created 16 human service transportation regions. The regions were established on the basis of geography, population, program recipients, and existing public transit ridership.

The Transportation Cabinet contracts with a single broker in each region. The broker is responsible for coordinating and providing all Medicaid transportation, as well as transportation assistance to needy families, vocational rehabilitation, and the Department for the Blind. Each broker in turn enters into a contractual agreement to subcontractors to carry out the region's transportation needs.

The state pays each broker a monthly capitated rate that varies by region. The broker must pay subcontractors and administrative costs out of the monthly capitated rate. The rate is a set dollar amount per month per eligible program recipient in the region. There are both profit and non-profit brokers, and brokers may also be providers.

Discussion

Since the new human service transportation delivery system began operating in May of 1998, the program has experienced numerous complaints against the broker system. Complaints are focused in the following areas:

- Failure by a broker or subcontractor to pick up a program recipient in a timely fashion, making the person miss medical appointments or job interviews.

- Failure by a broker or subcontractor to keep an appointment for a scheduled pick-up.

- Concerns that the capitated rate is too low for brokers to provide adequate transportation services.

- Concerns that brokers who are also providers are in direct and unfair competition with their subcontractors, resulting in brokers keeping the most profitable trips for themselves.

- Concerns that citizens who need transportation services but are not recipients of an entitlement program are being excluded from participating in this transportation system.

- Concerns that subcontractors cannot continue in business with the reduced rates they are paid by a broker under the new system. The problem is compounded because Medicaid and welfare recipients who want to have their transportation paid for must go through their region's broker. Many subcontractors that do not want to agree to their broker's payment schedule could lose a substantial base of their business.

Due to the many concerns and constituent complaints about the human service transportation delivery system, the Transportation Cabinet's administrative regulation (603 KAR 7:080 & E) implementing the system was found to be deficient by the Administrative Regulations Review Subcommittee at its May 11, 1999 meeting. The emergency regulation expired December 18, 1998.

The Cabinet for Health Services and Department for Medicaid Services companion administrative regulation (907 KAR 3:065) governing waiver services and payments for non-emergency medical transportation was found deficient in early 1999 by the Interim Joint Committee on Health and Welfare.

Under KRS Chapter 13A, unless the provisions of these two administrative regulations are enacted in the form of a bill, neither the Transportation Cabinet nor the Cabinet for Health Services can implement similar provisions in new regulations.

The human service transportation delivery system is a $50 million program. The 2000 General Assembly may need to develop legislation to address the deficient administrative regulations, the broker system and other problem areas identified since House Bill 468 was enacted.

COLLECTION OF SOCIAL SECURITY NUMBERS FOR DRIVER'S LICENSE

Prepared by Kathy A. Kackley

Issue

Should the General Assembly eliminate the practice of including Social Security numbers on the application for a Kentucky driver's license?

Background

Prior to 1994, Kentucky used a person's social security number as his or her driver's license number. Because the driver's license has become the primary source of identification, displaying the social security number there has placed drivers at risk of financial fraud.

The 1994 General Assembly enacted Senate Bill 171 to prohibit the use of a social security number on the plastic laminate driver's licenses issued in Kentucky; however, the Transportation Cabinet was given until January 1, 1996, to develop and implement an alternative numbering system. The Cabinet was also permitted to continue to collect the social security number on the application for a driver's license for law enforcement and taxation purposes.

Under the Federal Privacy Act of 1974, any federal, state, or local government agency that requests a person's social security number must inform the individual of the following:

(1) Whether disclosure of your social security number is required or optional;
(2) What statute or other authority they have for asking for the number;
(3) How the social security number will be used if you give it to them; and
(4) The consequences of failure to provide a social security number.

The 1997 Federal Driver's Privacy Protection Act prohibits personal information about motor vehicle operators or owners, including social security numbers, from being sold or otherwise distributed by states.

Discussion

Neither the 1974 Federal Privacy Act nor the 1997 Federal Driver's Privacy Protection Act prohibit states from collecting social security numbers; they merely limit access to a person's number. However, many individuals protest Kentucky's requirement to give a social security number before a driver's license will be issued (KRS 186.412). Reasons cited include religious beliefs and personal privacy and security issues.

The current federal law making it difficult to restrict collection of social security numbers is the Illegal Immigration Reform Act of 1996. Section 656 of the Act requires all states to either display the social security number on driver's licenses or embed the number on the licenses, or they may be used for any form of identification for a federal agency. States may be exempt from including the social security number on the license only if they require every applicant for a driver's license or identification card to submit their social security number.

Under the Illegal Immigration Reform Act, "federal agency" includes all federal executive agencies, the United States Military, any federal legislative agency, and any federal judicial agency. As long as the Illegal Immigration Reform Act stands, if Kentucky were to eliminate collecting social security numbers, a Kentucky driver's license could not be used as identification to secure a passport, apply for food stamps, Medicaid, or Medicare, or apply for veteran's benefits (to name a few examples).

A coalition of congressmen introduced House Resolution 2337 on June 24, 1999, which proposes to repeal Section 656 and the social security number requirement. House Resolution 2337 is currently being reviewed by the House Subcommittee on Government Management, Information, and Technology (a Subcommittee of the House Committee on Government Reform).

HANDICAPPED PARKING PLACARDS

Prepared by John Snyder

Issue

Should the General Assembly remove the fee imposed for permanent handicapped parking placards?

Background

Kentucky allows persons with disabilities to receive a handicapped parking placard that can be moved from car to car transporting the individual. The placards are printed at the Transportation Cabinet's expense and distributed to each county clerk, who is required to keep a copy of each application filed and a record of every placard issued. The clerk collects a fee of $8 for each placard, which is valid for six years. Persons who do not have a license plate for a person with disabilities may receive a second parking placard for a fee of $4. The fee for a replacement placard is $2.

In 1998, county clerks statewide issued 39,282 6-year permanent placards and 5,115 additional 6-year placards, resulting in total statewide clerk receipts of $334,716. In 1997, a renewal year, county clerks statewide issued 69,207 6-year permanent placards and 6,433 additional 6-year placards, resulting in total statewide clerk receipts of $579,388.

Kentucky also allows for a temporary disabled parking placard, which costs $2, is good for six months, and may be renewed for an additional six months for another $2 fee.

Discussion

Recent court decisions in several states have held that charging a fee for permanent handicapped placards is a violation of the Americans with Disabilities Act (ADA). Particularly relevant is Thorpe v. Ohio (C-1-96-764), a class action suit filed on behalf of all disabled persons in Ohio. The decision in Thorpe held that a $5 state fee imposed by Ohio for their permanent handicapped parking placards violated ADA prohibitions against public entities imposing a surcharge on a disabled person to cover the cost of ADA related measures found in 28 CFR 35.130(f). The ruling in Thorpe declared the $5 fee illegal, enjoined Ohio from charging the fee to future applicants, and required Ohio to reimburse the plaintiffs for past payments of illegal surcharges since January, 1992.

Attorneys for the Plaintiffs in the Thorpe case estimate that the state may owe some $3 million to over 300,000 Ohio citizens. Similar interpretations of the ADA have been handed down by federal district courts in California, Missouri, and North Dakota.

A Kentucky case, Lawrence v. Logsdon, et al, was brought in the U.S. District Court in the Western District of Kentucky against the Commissioner of Vehicle Regulation and all county clerks in Kentucky. The judge in the case granted the defendants' motion for summary judgment by declaring that the ADA violates the Tax Injunction Act, which prohibits federal district courts from interfering in the tax collection of a state. In the Thorpe case, and a similar case in Missouri, both courts heard similar arguments from the defendants and both courts held that a fee charged for handicapped parking placards was not a tax, and therefore not protected by the Tax Injunction Act.

All the cases mentioned above dealt only with permanent handicapped parking placards. Charging a fee for temporary placards has not been challenged.

The Interim Joint Committee on Transportation's Subcommittee on Highways and Traffic Safety held hearings on this issue. The subcommittee also discussed abuses of the present system, and ways to counteract them. A bill has been prefiled for introduction in the 2000 session of the General Assembly regarding this issue. BR 383 would eliminate all fees for permanent handicapped parking placards, require that the name of the person for whom the placard is issued be printed on the placard, and require that a vehicle using a placard must be transporting the person to whom it was issued.

FINES FOR OVERWEIGHT TRUCKS

Prepared by John Snyder

Issue

Should the General Assembly reinstate a maximum fine for overweight trucks?

Background

The 1998 General Assembly enacted House Bill 495, a measure which was designed to permit counties to allow trucks to run overweight on county roads if the truck owners bond with the county to defray the cost of damage done to the county roads by the overweight trucks.

House Bill 495 applies mainly to county roads. However, the last section of the bill amended KRS 189.990, which is a penalty section regarding state traffic regulations. In this section, the maximum fine of $500 for an overweight violation was eliminated. Overweight fines now are assessed on a graduated rate which ranges from 2 cents per pound of excess load, if the excess load is 2,000 pounds or less, to 9 cents per pound if the excess load exceeds 5,000 pounds.

Since House Bill 495 has become effective, fines for overweight trucks have increased dramatically, with several fines in the range of $3,000 to $4,000 reported to the Interim Joint Committee on Transportation.

Discussion

The Interim Joint Committee on Transportation heard testimony at its meetings in September and October of 1998 relating to the hardship caused statewide by the deletion of the maximum penalty. The members of the Committee were in agreement that deletion of the maximum penalty was an oversight. The Committee voted to send a letter to all District Judges and County Attorneys in the state expressing this sentiment.

Two bills have already been prefiled for the 2000 Regular Session of the General Assembly which attempt to remedy this situation. BR 88 would eliminate all cents per pound language in KRS 189.990, set the fine for overweight violation at $60 to $500, and set up a procedure by which people who were fined over $500 for an overweight violation while House Bill 495 was in effect would receive a refund of the fine paid in excess of $500.

BR 253 would eliminate the bonding provisions in House Bill 495 and reinstate the $500 maximum fine for overweight trucks.