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Robert Sherman
Director

MEMORANDUM

TO: **Members of the General Assembly**

FROM: **Bobby Sherman**

SUBJECT: **Supplement to Issues Confronting the 2002 General Assembly**

DATE: **November 30, 2001**

Attached is a supplement to the publication, *Issues Confronting the 2002 General Assembly*, that presents a few additional issues and updates some issues presented earlier. The staff writer of a particular entry may be contacted for further information on the subject of that entry. I hope you find this material helpful.

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SOLID WASTE

Prepared by H.G. Marks

Question

What issues relating to solid waste management may be considered during the 2001 Regular Session

Background

Solid waste disposal, litter, recycling, and related environmental issues continue to be of concern, and surveys indicate that the public supports efforts to address the problem.

Kentucky Revised Statutes Chapter 109 (first enacted in 1978) provides counties with broad authority to assess taxes to fund solid waste collection. These statutes also provide authority to counties to create solid waste management districts with governmental powers to compel participation in a collection system, collect fees, borrow money and issue bonds, and to purchase property and real estate.

During the next decade several nation-wide developments and federal statutes placed increasing pressure on the solid waste (and hazardous waste) programs of Kentucky. The General Assembly created the Waste Management Task Force in 1988, and in 1990 it addressed several solid waste-related issues: recycling, collection of garbage pick-up fees, and issues related to garbage disposal and the disposal of tires, batteries, and hazardous waste. Senate Concurrent Resolution 97 of the 1990 session of the General Assembly created the Local Government Solid Waste Management Task Force. A resulting report identified the "top five" major waste management problems in Kentucky as declining capacity of landfills, increased waste generation, lack of incentives to reduce waste/recycle, environmental and esthetic impacts, and illegal waste disposal.

In response to the above problems, an extraordinary session of the General Assembly was called in 1991. In that session, Senate Bill 2 made amendments to Kentucky Revised Statutes Chapter 224 which revised requirements for local solid waste management plans (and annual reports), and provided for "universal access" to solid waste collection in every county, a plan for cleanup of illegal dumps, incentives for recycling, a state-wide waste stream reduction goal of 25% (which was not met), and funding to assist in the development of solid waste plans and with loans for equipment purchase.

Although all counties now have universal access to some form of collection, only twenty-six counties require by ordinance, or some other device, universal participation in door-to-door collection. In these counties, according to annual county solid waste reports to the Natural Resources and Environmental Protection Cabinet, the participation rate averages 83%, but the range is between 35% and

100%. State-wide, only about 73% of all households now participate in household solid waste collection.

Thus, solid waste disposal, litter, recycling, and related environmental issues continue to be of concern. Recently, surveys conducted by the University of Kentucky and the Office of the Governor have found that 98% to 99% of Kentucky citizens think litter is an important problem and that preserving the environment is important. A related survey, conducted by the University of Kentucky Survey Research Center, found that more than two-thirds of the 841 respondents were in favor of an environmental impact fee on small beverage containers and would be willing to have that fee passed on to them as consumers if the money from the fee would be used to reduce litter and clean up illegal dumps.

Discussion

Several bills relating to solid waste and litter cleanup have been introduced in recent sessions of the General Assembly, but none have been enacted. In the absence of legislation in 2001, the Governor, by executive order, created the Kentucky Certified Clean Counties Program.

Legislation was enacted in 1998 creating a task force to study container deposits as a way to reduce litter and fund litter control and education programs. House Bill 1 of the 2000 session of the General Assembly would have provided for a container deposit/recycling system and mandatory door-to-door collection. House Bill 1 was not enacted, nor was proposed legislation providing for a constitutional amendment enabling the issue to be submitted to the citizens in a referendum.

During the 2001 Regular Session of the General Assembly the Governor and the Secretary of the Natural Resources and Environmental Protection Cabinet introduced legislation providing for a comprehensive approach to cleaning up Kentucky. Several related bills were introduced in both the House and Senate. None of the four major bills relating to litter control and solid waste was enacted. Shortly after the 2001 session the Governor created a Kentucky Certified Clean Counties program by executive order which provides incentives to counties to establish curbside collection service and clean up open dumps. Executive orders establishing new programs require ratification by subsequent sessions of the General Assembly.

Local government officials oppose mandates and want more involvement in solid waste legislation.

In testimony given on October 10, 2001, before the Interim Joint Committee on Agriculture and Natural Resources, local government officials expressed concern that there be no mandates and that no additional burdens be placed on local government without funding. These officials also asked that in the future there be wider participation in the development of solid waste and litter legislation than previously.

In response to all of the above it is therefore likely that the General Assembly will be called upon to consider once again the following components of solid waste management and related legislative issues:

Issues before the 2002 General Assembly may include door-to-door waste collection, illegal dump elimination, recycling and waste reduction, and litter abatement.

Door-to-door (curbside) collection service issues

- Should curbside collection be required for all residents in every county?
- How can the percentage of participation in both general collection and curbside collection be increased?
- Is any additional grant of authority required to enable counties to enforce participation?
- How should counties be assisted with the additional costs of managing curbside pickup?
- Should there be a statutory definition of rate of participation?
- How can the waste stream be reduced to accommodate a resulting increase in landfill use?

Illegal dump elimination

- Should there be a more systematic way to define and identify illegal dumps?
- Should there be some amnesty program for illegal dumps (i.e., on private property)?
- Should additional revenue sources be sought for the costs of state-wide dump cleanup?

Recycling and waste reduction

- Should state-wide/local goals for waste reduction and recycling be legislated?
- Should funding sources be developed for improvement of recycling infrastructures?
- How should counties be assisted with cooperative marketing programs and strategies?
- What is the relationship between compulsory curbside collection and curbside recycling?
- Should a registration/reporting system be required for statistical reporting purposes?
- Regarding commercial/industrial impacts on litter and solid waste management, should requirements be developed to identify material recovery activities and packaging alternatives to reduce waste?

Litter abatement

- Should statutes be amended to require increased "criminal" litter law penalties and enforcement?
- Is additional statutory authority and funding needed to place anti-litter curriculums and programs in schools?
- Is legislation needed to promote private resources and voluntary litter control programs?
- Are additional sources (and amounts) of funding required for litter control?
- Is legislation needed to provide other incentives for litter cleanup and control?

Education and public information programs may be required.

The above issues and related programs may all have corresponding requirements for public information and educational efforts to secure consensus and changes in attitudes toward waste control, recycling, and litter.

Finally, all of the above components and issues require corresponding resources and funding. The state currently faces a budget shortfall, and the fiscal constraints on program funding currently in effect will present themselves to the 2002 Session.

BIODIESEL

Prepared by D.Todd Littlefield

Question

Should the General Assembly pass legislation to encourage the development of biodiesel as an alternative fuel for trucks and cars?

Background

The following is an updated version of the issue paper found on page 57 of 'Issues Confronting the 2002 General Assembly'(Informational Bulletin #205). Background information for this issue can be found in that bulletin.

Discussion

Economic impact of encouraging biodiesel manufacture and use in Kentucky.

Supporters of biodiesel use suggest that it can help reduce dependency on foreign oil while simultaneously giving a boost to farmers who raise oilseed crops such as soybeans, hemp, and rapeseed. In a recent study, the U.S. Department of Agriculture and the Economic Research Service estimated that an annual demand for 100 million gallons of biodiesel would increase soybean oil prices by fourteen percent. An increase in soybean oil use of 200 million gallons per year would boost total crop cash receipts by $5.2 billion over ten years, resulting in an average net farm income increase of $300 million per year. The price for a bushel of soybeans would rise by an average of seventeen cents annually during the ten-year period. Others note that rising demand for soybeans and the probable increase in price caused by such a rise would negatively impact existing large purchasers of soybeans and soy products.

By some estimates, the addition of each percent of biodiesel to petroleum diesel would add between a penny and a penny and a half to the price of a gallon. Concern has been voiced that Kentucky could price itself out of the market for diesel for over-the-road truckers. Biodiesel supporters contend that current diesel prices in Kentucky have been low enough that an increase precipitated by biodiesel blending of as much as five percent would still leave diesel prices competitive with surrounding states.

Trucker and diesel manufacturing groups are now seeking to push back the EPA deadline for elimination of sulfur from petro diesel to 2009 rather than 2006. If they are successful, some momentum for

biodiesel may be lost. These groups would prefer a national standard for motor fuel to avoid the problems of "boutique" fuels, already seen in reformulated gasoline: insufficient manufacturing, storage, and transportation capacity to deal with a wide variety of blends required by different localities.

Biodiesel use to attain EPACT compliance

In 1998, B20 was approved by Congress as a compliance strategy for fulfilling the requirements of the Energy Policy Act of 1992 (EPACT). EPACT fleets (states and other owners of large vehicle fleets) are required to purchase alternative fuel vehicles. Fleet operators can meet their alternative fuel vehicle purchase requirements by buying 450 gallons of biodiesel and burning it in new or existing diesel vehicles in at least a B20 blend. This has been found to be among the lowest-cost alternative fuel options for EPACT compliance.

Legislative proposals to encourage biodiesel manufacture and use in other states

Several states have considered and some have enacted legislation to promote biodiesel use. Kansas has implemented a program in which state vehicles and equipment which burn diesel will use a blend of two percent biodiesel (B2). In Kentucky, state diesel vehicles are not fueled from state-owned fuel facilities, but through a contract in which small refueling tankers fill at commercial locations and transport the fuel to where the equipment is working. For that reason, the option of requiring state-owned diesel vehicles to burn a biodiesel blend may present logistical difficulties.

A bill before the Minnesota legislature last session would require all diesel sold within the state to contain at least two percent biodiesel for a number of years, followed by an increase to five percent. Although the statewide biodiesel effort in Minnesota did not pass, the legislature there did pass a bill that requires the evaluation of developing energy sources from resources derived from agricultural production, including biodiesel. A less-stringent approach might require retail vendors to make a biodiesel blend available for sale.

Biodiesel bills, or alternative fuel bills that could have a positive impact on biodiesel, passed in Washington, Hawaii, Nevada, Arizona, Montana, South Dakota, North Dakota, Iowa, Missouri, Arkansas, Indiana and Georgia. It should be noted that any fuel which displaces petroleum demand could impact the petroleum industry. Some parties have also suggested that any legislation contain a "relief valve" that would trigger if the price for biodiesel should spike. This would prevent a dramatic increase in diesel prices caused solely by an unforeseen shortage in biodiesel availability.

Other states are providing tax incentives for those manufacturing and using biodiesel within the state. A bill passed in Montana establishes a revolving loan fund for alternative energy systems, which includes biodiesel use. Several states have passed various biodiesel tax exemptions, including Hawaii, where legislation establishes the tax rate for biodiesel at half the rate for diesel. As with any tax exemption, the reduction in revenue would have to be made up from other revenue sources. Successful bills in Missouri and Iowa established a biodiesel revolving fund, which pays the cost of biodiesel fuel used by state agencies through a self-sustaining fund generated by the sale of banked EPACT credits.

CONTROLLING UNWANTED TELEPHONE SOLICITATIONS

Prepared by Tanya Monsanto

Question

Should the General Assembly strengthen laws relating to telephone solicitations?

Background

A series of federal and state actions have attempted to regulate telemarketing practices to provide a balance between personal privacy and the right of businesses to market by telephone. In 1991, Congress passed the Telephone Consumers Protection Act (TCPA) to reduce the number of unwanted telemarketing and prerecorded calls. It also required the Federal Communications Commission (FCC) to establish rules to accommodate households that do not wish to receive calls. In response, the FCC required the industry to maintain their own"do not call" lists for ten years and reinforced the right of states to create their own state "do not call" lists.

In general, a "do not call" list contains the names of persons who indicate their preference not to receive telephone solicitation calls. They can be compiled by an industry, a state, or a private organization such as the Direct Marketing Association.

In 1994, Kentucky passed a telephone solicitation act that defined the term telephone solicitation, required that verbal contracts obtained during a telephone solicitation be reduced to writing, and imposed registration and bonding requirements on telemarketers. Legislation passed in 1998 created a code of conduct for telemarketers and established a state "No Telephone Solicitations Calls" list. The list is maintained in the Office of the Attorney General (OAG). Any Kentuckian can contact the OAG and register to be on the list.

There are 22 exemptions from the requirement to honor the Kentucky do not call list.

According to the OAG, the Kentucky "do not call" list does not prevent Kentuckians from receiving unwanted telephone solicitations. This is because there are twenty-two exemptions to the definition of telephone solicitation that effectively keep those entities that likely make telephone solicitation calls from having to comply with the state "do not call" list. In fact, the OAG notes that the only businesses required to register with the OAG and comply with the no telephone solicitations calls list are those selling vacation time shares.

Discussion

A variety of bills attempting to amend the telephone solicitation statutes were introduced in the 2001 General Assembly. But broad consideration of the telemarketing act was shifted to the narrower provisions of the state's "No Telephone Solicitation Calls" list. Two bills, one in the House and one in the Senate, sought to strengthen the "No telephone Solicitation Calls" list.

SB 192 would have created a "zero call list" for persons 65 years or older.

Senate Bill 192 would have created a separate list to regulate calls to people who are most adversely affected by telemarketing abuses. As originally conceived, Senate Bill 192 created a "Zero Call" list that would permit persons 65 years or older to register with the Attorney General to prohibit all telemarketers except those with express permission from calling.

HB 54 would have removed a number of exemptions from the Kentucky "No Telephone Solicitations Calls List."

House Bill 54 would have deleted exemptions to the current definition of telephone solicitation and subjected a greater number of entities to the state's established "do not call" list.

Critics are concerned about the financial burden of bonding and registration and purchase of the do not call list that may be placed on smaller merchants. They are also concerned about how to define telephone solicitation and enforce violations.

Critics of amending the Kentucky "No Telephone Solicitations Calls" list contend that a broad definition of telephone solicitation absent many of the exemptions will subject smaller, local merchants to a variety of costly requirements under the telephone solicitation act. These requirements include registering with the Office of the Attorney General, posting a $50,000 bond, and purchase of a quarterly subscription to the "do not call" list at a cost of $400.00 annually.

Another major question raised by critics is "What is a telephone solicitation?" By deleting the industry exemptions from the definition of telephone solicitation, a number of different transactions that are not perceived as telephone solicitations may be construed as such under the law. As examples, critics claim that telephone solicitations could be calls from the pharmacist or physician, calls from a university about future attendance or calls from a favorite clothing shop about an upcoming sale.

Proponents claim that the current "No Telephone Solicitations Calls List" doesn't work and more entities must be subjected to the current telemarketing law. They claim enforcement will work if more entitites are subjected to the law.

Proponent argue that a strong, functioning "No Telephone Solicitation Calls" list is necessary to reduce the number of unwanted telephone calls. Without the list, it is incumbent on consumers to state their preference to each and every person making a telephone solicitation. Consumers argue that the intent of a "do not call" list is to prevent telemarketers from calling beforehand. By removing the

exemptions to the "No Telephone Solicitations Calls" list, more entities will be subject to the requirement to honor the list.

Proponents of amending the "No Telephone Solicitation Calls" list also express concern over extending the requirement to honor the list to small, local merchants. However, they argue that small business exemptions can be included in any "do not call" legislation. They contend the focus of the legislation can be crafted to target large, out-of-state corporations that make telemarketing a mainstay of their business marketing practice.

Both critics and proponents of strengthening telephone solicitation laws express concern about enforcement. Critics claim that the OAG cannot enforce current violations of the telephone solicitations statutes particularly if the violation doesn't involve fraud. Proponents argue that the OAG could enforce lesser violations of the telemarketing law if more entities were subjected to the current law.

ALLOCATION OF NITROGEN OXIDE CREDITS AMONG ELECTRIC POWER GENERATORS

Prepared by Tanya Monsanto

Question

Should the General Assembly take action to re-apportion the current allocation of nitrogen-oxide (NOx) credits between existing electric generating units and new electric generating units?

Background

The 1990 amendments to the Clean Air Act (CAA) authorized the United States Environmental Protection Agency (EPA) to control emissions of ozone and its precursors. Ozone precursors—nitrogen oxide (NOx), volatile organic compounds (VOCs) and oxygen (O2)—are chemical compounds that contribute to the formation of ground level ozone or smog.

A state implementation plan (SIP) consists of EPA approved administrative regulations, emissions inventories, NOx allowance allocations, and administrative procedures aimed at reducing certain air pollutants such as NOx.

On October 27 1998, EPA published a final rule requiring states to reduce their NOx emissions to significantly lower levels during the ozone season—May 1 to September 30. EPA determined that NOx emissions from sources in certain upwind states contribute to poor air quality in downwind Northeastern states. EPA's final action requires nineteen states including Kentucky and the District of Columbia—Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia—to adopt or revise a state implementation plan (SIP) to reduce nitrous-oxide (NOx) emissions. Enforcement of the lower emission level begins May 31, 2004.

One NOx allowance credit gives the holder permission to emit one ton of NOx.

Kentucky's NOx-SIP principally affects electric utilities and non-utility electric generators. To a lesser extent, it affects large industrial boilers and cement kilns.

In August 2001, Kentucky's Division of Air Quality (DAQ) promulgated administrative regulations to revise the state's SIP to reduce NOx emissions. Once implemented, these administrative regulations will create a NOx allowance banking and trading program that is similar to an existing banking and trading program for sulfur-dioxide (SO_2), a precurser to acid rain. The NOx banking and trading program will go into effect in 2004. Participants in the program will be able to buy, sell, or bank emissions allowance credits for future use. DAQ anticipates that all nineteen states affected by the final rule will participate in the regional NOx market.

Here is how the program works.

Large stationary sources that emit NOx—electric generating units (EGUs), large industrial boilers, turbines, cement kilns, and co-generation units—must hold enough allowance credits to equal their NOx emissions. Kentucky's DAQ allocates allowance credits to large stationary sources in proportion to what their emissions would be after applying a reasonable NOx reduction target. Total emissions from Kentucky's stationary sources during the ozone season must not exceed the total statewide, EPA-imposed NOx budget of approximately 65,000 tons/yr.

Kentucky's statewide NOx budget for the 2004-2007 control period is approximately 65,000 tons/yr.

The existing electric generators affected by the regulations are spending nearly one billion dollars over the next four years to add new equipment to selected generators to reduce their NOx emissions. This equipment will ensure that the amount of NOx emitted by existing electric generators, as a group, is far below the number of credits issued to them. However, if a generator wants to emit more NOx than it holds credits, the generator must purchase credits from another credit holder. If a source cannot purchase the credits, then it must cut back its emissions by limiting its hours of operation. The November 2 edition of Airtrends stated that the asking price for one allowance credit during the third week of October was $3,800/ton.

The asking price for one NOx allowance during the third week of October was $3,800/ton.

Electric power generators (EGUs) are the largest group of entities affected by the NOx-SIP. In 2000, electric generators contributed over half of the NOx emissions in Kentucky, and they will need to reduce NOx emissions by over 66,000 tons by 2004. For this reason, DAQ has apportioned fifty-six percent of the statewide NOx budget or approximately 36,500 credits to electric generating units (EGUs).

Apportioning the Credits: Existing and New EGUs

One of the current issues concerns the subdivision of the EGU allocation between existing and new electric generating units. For the first three years of the NOx bank and trade program, ninety-five percent of the EGU allowance credits will go to existing EGUs. Five percent of the EGU allowance credits will go to new generating sources. For the first allocation period (2004-2007), new generating sources are defined as EGUs which commence operation after May 1, 2001 and before May 1, 2006. During the second three years of the NOx bank and trade program, ninety-eight percent of the credits will be apportioned to existing sources with the remaining two percent allocated to new sources. DAQ will reallocate NOx allowances every three years. With each new allocation period,

Electric generating units (EGUs) will receive 36,500 allowance credits with 95% reserved for existing EGUs and 5% set aside for new EGUs.

many of the new EGUs will be redesignated as existing EGUs. The redesignated EGUs will then receive a proportional allocation from the existing source pool.

Discussion

Most of the new generating sources are merchant power plants. Merchant power plants are different than utilities. Merchants sell all their power on the competitive wholesale market. Utilities, on the other hand, build generation to serve Kentucky customers at rates set by utility regulators. The distinction between merchants and utility power generators is central to the debate over the allocation of credits to EGUs.

On June 19, 2001, the Governor imposed a six-month moratorium on new applications to construct electric generating units. The Governor ordered the DAQ to study the cumulative effects of permitting new generating units on Kentucky's air quality. Of particular concern was how new generating units would affect Kentucky's ability to comply with the NOx-SIP.

Those that support the 95-5 allocation claim that it benefits Kentucky retail customers by keeping retail electricity rates low.

Utilities make three principal arguments in favor of the current 95-5 allocation. First, they argue that utilities need most of the NOx credits to keep electricity rates to Kentucky customers low. With a ton of NOx trading for $3,800 dollars, utilities say they will incur a sizable expense for complying with the emissions restrictions if they are forced to purchase credits. Because utilities are entitled to recovery of their prudently incurred expenses, the purchase of allocation credits would be passed directly onto retail electric customers of the utility.

Supporters claim the 95-5 allocation mirrors the actual distribution of burden for reducing NOx emissions. Existing utilities will make a one billion dollar investment in NOx equipment.

Second, utilities say that the current allocation mirrors the distribution of burden between utilities and merchants to implement EPA's NOx regulations. Utilities will be making investments in excess of one billion dollars to reduce NOx emissions from utility boilers. These investments will facilitate emissions reductions that exceed the limitations imposed by EPA and create a surplus of emissions credits in the NOx market. According to the utilities, their investments in NOx reduction technologies makes it possible for new generating plants to locate in Kentucky.

Proponents also cite that the 95-5 allocation reflects EPA's model rule, which may assist in timely EPA approval.

Finally, utilities say that the current allocation mirrors EPA's model rule creating a banking and trading system. According to EPA, states can design their own allocation scheme or they can adopt the program established in the model rule. Utilities state that by

adopting the model rule, the state is ensured that Kentucky's SIP will be approved within the time frames imposed by EPA.

*Opponents of the 95-5 allocation scheme contend that utilities will be able to use the allocation to withhold credits and force new power suppliers out of the regional market making power relatively more expensive for wholesale power purch*asers.

A number of arguments are leveled against the current 95-5 allocation. Merchant power producers assert that utilities will bank their credits, inhibiting the development of a robust NOx market in the region. They claim that by banking the credits, utilities will be able to prevent new power suppliers from entering the wholesale power market in the region, thus ensuring that there are few power suppliers in competition with utilities in Kentucky. Merchant power producers contend that weak competition among wholesale power producers means that wholesale electricity prices will be higher than they would be if there is strong competition. Because utilities purchase some of their power from the wholesale market, higher wholesale prices mean higher retail prices for Kentucky consumers.

Those opposing the 95-5 allocation scheme also claim that it creates a barrier to entry for new industry resulting in the loss of job opportunities, tax revenues , and improved infrastructure associated with the development of a power supplier.

Merchant power producers also contend that the five percent allocation for new sources is too small. Merchants argue that they already have lower emissions limits than existing utilities under EPA's guidelines and that the small allocation will ensure that most of the plants under consideration will not get built. In short, they claim the disproportionately small allocation to new sources creates a barrier to entry for new generators. They further state this barrier will mean fewer competitive power suppliers in Kentucky, with a corresponding loss of economic opportunities such as tax revenues and jobs from the foregone economic investment by new power plants.

Opponents state that the 95-5 allocation favors older, relatively dirtier generating technologies over cleaner, state of the art generating technologies. They also maintain that under the EPA rule states that provide for different allocations schemes will not jeopardize SIP approval.

Merchant power producers argue that the current allocation penalizes cleaner generating technologies and subsidizes older, less efficient generating technologies. Merchant plants are being permitted at lower emissions rates and utilize newer, cleaner generating technologies. Many of the coal-fired generation units using clean coal technologies are being proposed by merchant power suppliers. Particularly the larger coal-fired plants (500 megawatts or larger) will need more emissions credits than are available in the new source EGU pool if all of the proposed merchant plants are built.

Finally, supporters of new power plants indicate that not all states have used the allocation scheme proposed in the model rule. New Jersey has allocated ten percent to new EGUs with an additional five percent set aside as a clean energy reserve. New York has set aside five percent for new EGUs with an additional three percent as a clean energy reserve. Rhode Island has allocated thirty-three percent to new EGUs which must be shared with clean energy producers. They

state that Kentucky may propose a different allocation scheme without jeopardizing the SIP approval process.

BIOTERRORISM

Prepared by Robert Jenkins

Question

Should the General Assembly enact additional strategies to increase the level of preparedness for acts of bioterrorism?

Background

The General Assembly began considering bioterrorism as an issue as early as 1999.

The issue of bioterrorism has taken on a new focus since September 11. However, in 1999, the Health and Welfare Committee received testimony on the level of the state's preparedness to recognize and respond to a biological or chemical event that threatened the public health. A physician from the University of Louisville reported that the Centers for Disease Control and Prevention (CDC) had developed a strategic plan for bioterrorism preparedness and response. The plan had five basic points: 1) the states should expand preparedness and prevention research with technical assistance provided by the CDC and federal government, ultimately to allow local and state health departments to perform self-assessments and increase their capabilities to respond in the event of an emergency; 2) the states were encouraged to conduct simulated exposures to measure their detection and surveillance capabilities, facilitated through partnerships with hospital emergency rooms response teams and front line clinicians who would be expected to recognize illnesses after exposure and outbreak of disease; 3) the states should increase their abilities to diagnose and characterize biological and chemical agents; 4) the states should form or otherwise support investigative teams to determine whether exposure has occurred and should make certain that treatments are available to large segments of the population, utilizing pharmaceutical stockpiles that have been created to supply the needs of mass exposures; and 5) the states should participate in a nationwide communications and training network to alert individuals to the extent of exposure, confirm the reality of exposure, and coordinate responses.

Several strategies for responding to a bioterrorist event have been discussed.

According to bioterrorism preparedness experts from the University of Louisville, the primary considerations for bioterrorist events are whether there has been 1) covert exposure that has the potential for the largest number of casualties; and 2) overt exposure that would use an explosive device to disseminate viral particles over large areas. Important to determining the source of the problem and protecting citizens are 1) microbiology recognition; 2) expansion of

tools to make rapid diagnosis microbiologically; 3) building a communications network; and 4) creation of model curricula for physicians, health care providers, residents in training, and medical students to be able to recognize diseases that could be caused by bioterrorists events and exposures and be able to report them reliably.

Some people believe that existing diagnostic laboratories are not equipped to respond in a crisis situation.

The commissioner of public health felt that most clinical diagnostic laboratories are not prepared nationally or statewide to deal with and respond to a bioterrorist event. Many laboratories do not have the expertise, skills, or capability to adequately and reliably detect diseases if a bioterrorist event should occur. One problem is the lack of qualified microbiology technologists to perform everyday testing in laboratories. There is additional concern over the availability and funding of rapid diagnostic tests.

In 1999, Kentucky submitted a Bioterrorism Grant to the CDC for preparedness, surveillance and epidemiology, increased laboratory capacity for biologic agents, and establishment of a health alert network. The goal was to take the state's intranet, or Kentucky Information Highway, and expand the on-ramps to fifty-three local health departments. Kentucky requested $750,000 for three years, but the only areas funded were the preparedness, surveillance, and epidemiology areas.

Kentucky has received funding from the Centers for Disease Control and Prevention to improve its preparedness for bioterrorism threats.

Kentucky is in its third year of CDC funding in a surveillance and detection program and has recently been awarded funds to focus on diagnosis, laboratory capacity, and response. Mock exercises have been coordinated with emergency management, public health, the medical community, and law enforcement. The development of the Health Alert Network, the purchase of sophisticated laboratory equipment, the improvement of existing detection systems, and the completion of a statewide needs assessment have contributed to the state’s overall strengthening of its ability to protect its citizens.

Kentucky is preparing a multidisciplinary response for bioterrorism preparedness.

The state adjutant general leads the Kentucky Homeland Security Program, which has been created to respond to any homeland security issues, including the threat of bioterrorism. This multidisciplinary team meets on a regular basis to share information and maintain communication between local, state, and federal agencies.

The Division of Emergency Management will prepare information related to specific threats of bioterrorism, and anthrax-specific information is available on its web site. The Kentucky Community Crisis Response Board was created in 1996 by the General Assembly to assure coordination and delivery of crisis intervention and disaster

mental health services in the event of any natural or human-made disaster or under national security conditions. This board is comprised of a statewide network of trained professional volunteer responders and can deploy rapid response teams to crisis sites.

Discussion

Legislative proposals relating to terrorism were considered by the 2001 General Assembly. Since the September 11 attacks, model state legislation has been proposed, and other states are considering action. House Bill 199, considered but not passed during the 2001 General Assembly, would have placed statewide responsibility for a bioterrorism strategy under the Division of Emergency Management and would have required the division to complete a statewide assessment of risks and preparedness to respond to acts of terrorism involving chemical or biological agents. A statewide preparedness strategy would have been designed for specific acts of terrorism, in coordination between the division and the Department for Public Health.

A *Model State Emergency Health Powers Act* has been disseminated among state government officials as a result of the recent anthrax concerns. Prepared by the Center for Law and the Public Health at Johns Hopkins and Georgetown Universities with a grant from the CDC, this Act would require state legislative action before implementation. The Model is detailed including a variety of strategies, such as mandatory medical examinations, disclosure of otherwise confidential patient information, and immunity of the state and also private entities from any liability as a result of enforcement of the Act. While the Act might facilitate a faster response to a crisis situation, there are people who question the degree of constitutional infringement and authoritative governmental response that would be sanctioned.

The Model State Emergency Health Powers Act may provide uniform standards for the states' response to bioterrorism.

Other states have taken action to improve readiness for a bioterrorism incident. Some are considering legislation that would establish policies for the quarantine of people, buildings, and sections of a city. Nevada has made it a felony to possess, stockpile, or threaten to use anthrax or other biological agents. New Mexico is working with hospitals to test a syndrome surveillance system in which doctors could document patient admissions with touch-screen computers. Diagnosis, demographic data, and other relevant information would be available in less than sixty seconds. The data will be transmitted immediately to a state central database to inform doctors whether the patient is an isolated case or part of a widespread pattern of illness.

The states have initiated several strategies to respond to bioterrorist attacks.

Proponents of these actions argue that earlier diagnosis and treatment would result. Opponents argue that the invasive nature of some of the actions infringes upon the civil liberties that are important to a free society. Others might argue that existing crimes (i.e., murder, assault) and penalties sufficiently allow for prosecution of any terrorist act.

Standby Fees for Fire Suppression Systems

Prepared by Joseph Pinczewski-Lee

Question

Should the General Assembly regulate or eliminate the ability of water districts and municipal utilities to charge "Standby Fees" for fire suppression systems?

Background

Standby fees are charged by utilities and water districts for the provision of a charged and pressurized water line dedicated to the fire suppression system.

A number of municipal utilities and water districts charge a monthly "standby fee" for both residential and commercial customers who have an operational fire suppression system (fire sprinkler system) installed. A standby fee is a fee agencies bill customers for the provision of a water line filled with pressurized water dedicated to the fire suppression system. Utilities do not base the standby fee on water used. These fees vary from provider to provider. According to testimony received by the Interim Joint Committee on Local Government, fees can be as low as twenty dollars per month to several hundred dollars per month, depending on the provider and user involved. Testimony indicates standby fees have caused some fire suppression systems to be deactivated and discouraged the use of residential fire suppression systems. Some utilities have been using standby fees for at least six years. It is unknown exactly how many utilities charge standby fees, however the Public Service Commission is currently compiling that information.

Discussion

Utilities argue that standby fees are offset by lower insurance premiums and expanded development opportunities.

Water utilities argue that standby fees are necessary to cover the costs of providing infrastructure for fire suppression systems. They also suggest that savings in insurance premiums may offset the cost of stand-by fees. Utilities also cite that the availability of fire suppression systems permit planning and zoning to allow the building of structures that may not be otherwise allowed.

Fire departments and private contractors contend that standby fees are unnecessary and counter-productive to public safety. These groups believe that the infrastructure to support fire suppression systems is not expensive and is paid for by-and-large by the owner of the property that has installed a fire suppression system. They further argue that the use of standby fees discourages the use of fire suppression systems and that this runs counter to current public policy that encourages the use of fire suppression systems.

Cities argue that elimination or reduction of standby fees could encourage the use of fire suppression systems by residential users and enhance home fire safety.

According to testimony before the Interim Joint Committee on Local Government, elimination or limitation of stand-by fees could decrease the cost of operation of fire suppression systems. Opponents of standing fees state that the lesser cost might encourage the use of fire suppression systems by residential users, enhance home fire safety, ease the financial burden on businesses and governments that are required by the Kentucky Building Code to install fire suppression systems, and increase fire fighter safety.

COURT SECURITY

Prepared by Mark E. Mitchell

Question

Should the General Assembly increase or redirect funding to increase the compensation provided to sheriffs' offices for the provision of court security?

Background

The sheriff receives two revenue streams for providing courtroom security. One is a lump-sum payment from court costs and the other is an $8 hourly wage paid by the Finance Cabinet.

The sheriff's office provides the bulk of courtroom security in Kentucky. For this service the office receives two sources of payment. One is an hourly wage of $8 paid from the Finance and Administration Cabinet for each hour spent and reported in the provision of court security as provided in KRS 64.092. The other is a lump sum payment paid out of the court costs for each criminal court case in the Circuit and District Courts under the provisions of KRS 23A.205, and 24A.175.

The market rate for security personnel exceeds, in many cases, the hourly rate provided by the Finance Cabinet.

In order to collect the hourly wage from the Finance and Administration Cabinet, the sheriff keeps a register of hours the staff spends providing court security. At the end of the month the sheriff sends the register to the Chief Circuit Judge or the Chief District Judge for approval. Then it is forwarded to the Finance and Administration Cabinet, which issues a check for each sheriff. The sheriff then places this money into a fee account from which the sheriff pays the deputies. The market seems to put pressure on sheriffs to pay more than $8 per hour. Testimony from the sheriffs to the Interim Joint Committee on Local Government indicated that the sheriffs can pay out more than they receive from the state to provide the statutorily mandated court security.One sheriff indicated that he pays his deputies at a rate of $11.50 per hour, $3.50 more than his office receives.

The sheriff receives a payment from each criminal court case for providing court security.

The second source of revenue paid to the sheriff is the lump-sum payment from the money received from the court costs in KRS 23A.205 and KRS 24A.175. This is paid directly to the sheriff monthly when court costs are actually recovered. It should be noted that not all court costs are recovered. It is not a per-hour payment as is the $8 an hour payment.

Discussion

In 2000, the General Assembly raised the lump-sum payment to the sheriffs out of the court costs from $5 to $12—an increase of $7. This was done via Senate Bill 326, which amended KRS 23A.205 and 24A.175. In the same session, the budget bill transferred that extra $7 to the Finance and Administration Cabinet, overriding the provisions of SB 326. The $7 that has been transferred away from the

The 2000 budget bill transferred $7 from an increase in court cost payments to sheriffs to the finance cabinet so that it may keep up with rising court security costs.

sheriffs' accounts is being placed in Finance and Administration's general fund. The budget specified that Finance and Administration use the money "for the purpose of compensating sheriffs on a statewide basis for attending court and providing security services in compliance with KRS 64.092." This permits the usage of the money paid from the court cost revenue stream under KRS 23A.205 and KRS 24A.175 to satisfy the hourly rate obligations under KRS 64.092. The Executive Branch indicates that this is necessary because many more hours are being billed to the Finance Cabinet for the provision of court security than ever before. The sheriffs contend that the judges of the courts set the level of security and this can contribute to the increased amount of billable hours. There is some indication that the definition of court security may have variable interpretations including equipment costs, such as metal detectors, as well as personnel.

Court security needs are increasingly placing additional burdens on both the Finance Cabinet and sheriffs departments.

Under current practice, the sheriffs report only the gross figure of billable hours. As court security needs increase, the sheriffs may need to hire additional personnel. Many other costs then become associated with these additional personnel that are not usually covered by the $8 hourly fee such as training, worker benefits, and equipment. The county and the sheriff's office are responsible for these costs.

The provisions of the budge bill will expire at the end of the biennium allowing SB 326 to prevail.

When the budget bill expires at the end of the current biennium, if the transfer language is not incorporated into the new budget, the provisions of SB 326 will prevail and the two revenue streams will again become independent producing a net increase in funds available to the sheriffs for the provision of court security, if the Finance Cabinet maintains the ability to pay the billable hours charged by the sheriffs. The Finance and Administration Cabinet may argue that the revenue needs to continue to be transferred to pay for the additional billable hours of court security that it is responsible for, especially in light of the budget shortfall.

The funding streams could be increased if funds exist.

If the General Assembly decides that the sheriffs need more money for providing court security, one or both of the funding streams could be increased. The $8 hourly wage could be increased, or more money from court costs could be channeled to the sheriffs. The latter could be accomplished simply by not repeating language in the budget bill in the next budget, by increasing the court costs, by modifying the statutes amended by 2000 SB 326 to increase the aggregate court cost, or by redistributing the component payments that make up the aggregate court cost.