Issues Confronting the 2005 Kentucky General Assembly:

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Foreword

The Kentucky General Assembly meets on an annual basis. During even-numbered years, the annual session lasts for 60 legislative days. This "long session" is constitutionally designed as the principal opportunity for the legislature to develop and enact statutory programs of benefit to the citizens of Kentucky. The passage of a constitutional amendment in 2000 mandates that the General Assembly also meet in a 30-day session in odd-numbered years. The "short session" was generally intended to allow the General Assembly to deliberate the important issues facing Kentuckians on a more timely basis, and it was specifically intended to offer the General Assembly the opportunity to refine issues addressed during the previous long session.

This publication is a summary of issues that may face the 2005 General Assembly in the upcoming short legislative session. It is formatted as an update of the more extensive publication that was produced by LRC staff for the 2004 Regular Session. Production of the detailed issues publication for even-year sessions, followed by an update for odd-year sessions was chosen as a reflection of the primarily intended functions of both the long and short legislative sessions of the General Assembly. It should be noted that this publication also contains summaries of any new issues that have emerged since adjournment of the last legislature.

Those who follow the activities of the General Assembly recognize that important issues must often be considered by successive sessions of the legislature before resolution is achieved. Therefore, an indicated lack of enactment of legislation pertaining to a particular issue in 2004 does not alone diminish the relevance of the issue for the upcoming 2005 General Assembly.

The listing of issues in this publication is not exhaustive. Issue summaries and updates are presented objectively and concisely and are grouped according to the various interim joint committee jurisdictions of the Legislative Research Commission. No particular meaning is placed upon the order in which they are presented. LRC staff members who prepared articles were selected on the basis of their knowledge of the subject matter.

Robert Sherman
Director

Frankfort, Kentucky
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Contents

Agriculture and Natural Resources

Should the General Assembly extend to horse farmers the tax exemptions, credits, and deductions currently available to livestock and crop farmers?

Background

Kentucky currently imposes sales and use tax on many of the raw materials used in horse farming operations; for example, all feeds and feed additives, chemicals used to control pests and diseases, on-farm breeding and production facilities, fencing, equipment, and machinery. However, Kentucky does not impose sales and use tax on comparable materials for other livestock such as lambs, buffalo, cattle, or poultry.

The state imposes a sales tax on fees for breeding a stallion to a mare within the state, but does not tax the sale of semen from a bull. It also taxes the sale of horses used for racing or show, though a bull shown at a local or state fair is not taxed when sold.

Update

House Bill 404, enacted and signed into law by the governor, amended KRS 100.111 relating to zoning in order to include various horse-related activities within the definition of "agricultural use." Several bills seeking to exempt equine industries and horse-farm-related purchases from sales and use taxation were introduced but not enacted.

House Concurrent Resolution 220 from the 2004 General Assembly authorized the creation of a Task Force on Horse Farming to study various components of the horse farming industry. This task force was created as a subcommittee of the Interim Joint Committee for Agriculture and Natural Resources. It met three times during the summer and fall of 2004 and received testimony relating to taxation and tax incentives in Kentucky and in states that have tax laws and incentives in place in order to compete directly with Kentucky's horse industry. Taxation (especially sales and use taxes), tax credits, and incentives as they relate to the horse industry continue to be an issue of concern that may be addressed legislatively in 2005.

Should the General Assembly amend existing law to delete language that requires Phase I tobacco settlement funds to supplement the Phase II growers program under certain circumstances?

Background

The newly enacted federal tobacco quota buyout may affect an existing state program that funds agricultural diversification projects with money derived from an earlier tobacco settlement program.

In October 2004, Congress passed the American Jobs Creation Act of 2004, which incorporates tobacco quota buyout provisions. The provisions authorize payments to tobacco quota owners and tobacco growers of approximately $9.6 billion over a 10-year period. Tobacco product manufacturers and importers will fund the buyout through government-imposed assessments on the tobacco companies (Tiller). The buyout may affect two older tobacco payment programs that tobacco companies also finance: the Master Settlement Agreement (Phase I), which sends funds directly to the state; and the National Tobacco Grower Settlement Trust (Phase II), a program that compensates quota owners and growers directly for losses anticipated as a result of the Master Settlement Agreement.

How the state uses Phase I funds is codified, in part, in KRS 248.701 to 248.727 that also contains language relating to Phase II. Under Phase II, tobacco companies agree to pay tobacco-producing states over a 12-year period.

Discussion

KRS 248.705 requires that Phase I funds supplement the Phase II program if Phase II funding drops below $114 million during any year of the 12-year period. However, the requirement is triggered only after accumulated shortfalls exceed $20 million. Phase I funding currently totals about $54 million and is used for agricultural diversification projects at state and county levels.

A requirement in the buyout legislation to assess tobacco companies will affect Phase II payments because of offset provisions in the original grower agreement. The offset provisions stipulate that Phase II payments will be reduced dollar-for-dollar in proportion to governmental obligations or assessments imposed on companies that benefit tobacco growers

(National Tobacco). Phase II disbursements to quota holders and growers may be reduced to zero, and Phase I funds may be used to supplement the shortfall.

If the Phase I statutory obligation to supplement Phase II payments is triggered, then Kentucky quota owners and growers will be directly compensated by both the buyout and by Phase II. No funds will be left in Phase I for agriculture diversification projects for either the state or the counties. The potential loss of Phase I dollars affects the agriculture component of Phase I funds only and does not impact state education and health agencies receiving tobacco settlement funds.

Because of the stipulation in KRS 248.705, the General Assembly may want to amend existing statutory language in a way that would remove the possibility of using Phase I agriculture-related funds to supplement the Phase II program.

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Appropriations and Revenue

Should the General Assembly repeal the remaining tax on intangible property?

Background

The discussion about whether the tax on intangible property should be repealed began in earnest in 1997, after the Kentucky Supreme Court issued its opinion in *St. Ledger v. Commonwealth of Kentucky, 942 S.W.2d 893 (1997).* In *St. Ledger*, the court held that the Kentucky statutes that imposed a higher tax rate on out-of-state bank deposits than in-state bank deposits, and taxed the stock of out-of-state corporations while exempting the stock of in-state corporations violated the Commerce Clause of the United States Constitution. According to the Revenue Cabinet, this court decision resulted in a loss of approximately $35 million in General Fund revenues, which constituted approximately 68 percent of the total intangibles tax revenue at that time.

The ratification of Constitutional Amendment 2 by Kentucky voters in 1998 amended the Constitution to allow the General Assembly to "provide by law an exemption for all or any portion of the property tax for any class of personal property." The amendment makes it constitutionally possible for the General Assembly to exempt intangible personal property through legislative enactment.

Update

The Governor included the repeal of the remaining intangible property tax as part of a tax modernization package, considered by the General Assembly during the 2004 Regular Session. It was estimated by the Revenue Cabinet that the repeal of the remaining intangibles taxes would result in a loss of General Fund revenues of $35.3 million in fiscal year 2006. Although considered by both the House and the Senate, this proposal failed to pass.

Should the General Assembly change the way limited liability companies are taxed?

Background

All 50 states and the District of Columbia allow the formation of limited liability companies (LLCs) as a method of doing business. Kentucky's Limited Liability Company Act was enacted in 1994 (KRS Chapter 275).

Although there are many reasons a business entity might organize as an LLC other than achieving tax advantages, many organizations elect to organize as or convert to an LLC specifically for the tax advantages. The combination of the flexibility of the LLC as an operating entity and the differences among the taxing structures of the various states have created an environment in which corporate taxpayers can, in many cases, structure operations in a manner that avoids or substantially reduces total state taxes paid.

In a report prepared for the legislatively created Subcommittee on Tax Policy Issues in 2002, Dr. William Fox, Professor of Economics and Director of the Center for Business and Economic Research at the University of Tennessee, noted the primary issues regarding the taxation of LLCs in Kentucky:

- LLCs are not required to pay corporate license taxes.
- The income of multi-state LLCs is apportioned using a single-factor sales formula (following the tax treatment of partnerships), rather than the three-factor formula used by corporations.[1] The single-factor formula allows Kentucky manufacturing firms to form an LLC in Kentucky with all activities in Kentucky except for a nexus-creating activity such as a sales office with property or payroll that it locates in a state that does not have a single-factor sales formula. The location of sales for tax purposes in the other state will significantly reduce the Kentucky tax liability without increasing the tax liability in the other state.
- Profits earned by LLCs may be passed to the members and taxed at that level rather than at the

[1] Corporations are required to apportion income between Kentucky and other states where they also are subject to tax based on a formula including payroll, property, and sales, with the sales factor given double weight.

LLC level, which means that the state may not receive tax revenues from out-of-state members receiving distributions from the LLC.

Fox recommended that Kentucky tax LLCs like corporations by requiring them to pay the corporate license tax and by requiring LLCs to apportion multi-state income in the same manner as other corporations. Fox also noted that Kentucky should consider imposing a withholding tax on all LCC income passed on to nonresident members to ensure the collection of tax due in Kentucky as a result of the activities of the LLC in the state.

Update

The Governor included several proposed changes to the way LLCs are taxed as part of a tax modernization proposal considered by the 2004 General Assembly. The proposal would have imposed a tax on all limited liability entities at the corporate level, with a flow-through credit for taxes paid at the entity level for individual members and partners to prevent double taxation. Because LLCs were defined as corporations under the proposal, they would also be required to use the three-factor apportionment formula, to pay the alternative minimum calculation amount or alternative minimum tax where applicable, and to file mandatory consolidated returns for all Kentucky-affiliated corporations. These changes, if enacted, would have resulted in a taxing structure for LLCs that differs substantially from the current tax structure for LLCs in Kentucky and would have made Kentucky unique in it's approach for taxing LLCs among states that also have an individual income tax.

Should the General Assembly modify Kentucky's individual income tax structure to adjust for lower incomes?

Background

Kentucky first enacted an individual income tax in 1936, with a graduated tax rate ranging from 2 percent on income less than $3,000 to 5 percent on income more than $5,000. In 1952, an additional top rate of 6 percent was applied to income more than $8,000. The tax rate has remained unchanged since.

To reduce taxes on lower-income individuals, Kentucky law contains several provisions to remove a portion of income from taxation. Some of these provisions are available to all taxpayers, such as the personal credit and standard deduction, while others are targeted to specific groups, such as the low-income and child care credits, and the pension income exclusion.

The personal credit is $20. It is allowed for each taxpayer and dependent claimed on a return. An additional $20 credit is allowed if the taxpayer is a member of the Kentucky National Guard; an additional $40 is allowed if the taxpayer is older than age 65 or blind. The standard deduction was set at $1,700 in tax year 2000 and is adjusted each year based on the consumer price index. In 2004, it is $1,870. It may be taken by any taxpayer in lieu of itemized deductions.

The low-income credit is available for taxpayers with an adjusted gross income of less than $25,000. The credit is expressed as a percentage of the tax liability. The lower the income, the greater the percentage of credit. The child care credit is available to all taxpayers who qualify under federal law and is equal to 20 percent of the federal credit for child care expenses.

Update

The tax modernization proposal considered by the General Assembly during the 2004 legislative session included an increase in the brackets for the Low Income Credit (LIC). The income level below which no income tax would have been owed would have increased from $5,000 to $12,000. Several other changes to the LIC were discussed during testimony on the proposal, including changing the brackets to exclude taxpayers whose income was at or below the federal poverty threshold.

Should the General Assembly modify Kentucky's cigarette excise tax?

Background

Kentucky first enacted a cigarette excise tax in 1936; and the rate has not been increased since then. Kentucky's excise tax rate is 3 cents per package of 20 cigarettes.

In 2004, the Virginia legislature approved a cigarette tax increase to 30 cents per pack, which will be fully phased in by July of 2005. Prior to this increase, Virginia had been the lowest taxing state at a rate of 2.5 cents per pack. With the recent increase of cigarette tax in Virginia, every state bordering Kentucky has increased its cigarette tax within the past five years. Kentucky's cigarette tax is now the lowest in the nation.

Discussion

Some individuals and advocacy groups claim Kentucky's cigarette tax should be raised. The most prevalent reasons given are listed below.

- Health care costs borne by the state have increased significantly, with smoking a contributing factor. Increased cigarette taxes would result in smokers paying for part of their increased health care costs.

- Underage smoking is said to be a significant problem in Kentucky. An increase in the tax would increase the price of cigarettes, making smoking more expensive and less accessible to children.

Others claim that the cigarette tax should not be raised. Significant reasons given are listed below.

- Tax increases in general are bad.

- Kentucky has kept the cigarette tax low in order to support farmers and the agricultural community. A tax increase would do harm to this part of Kentucky's economy.

- Some of Kentucky's biggest corporate citizens are tobacco companies. Maintaining a low cigarette tax makes Kentucky more attractive to future growth.

- Kentucky's low cigarette tax has produced a significant source of income for small businesses that sell cigarettes to out-of-state buyers. Some border-area retailers report very large volumes of cigarette sales. Others sell cigarettes on the Internet and by mail order, with the sales subject to

Kentucky's income tax and in many cases Kentucky's sales tax.

Should the General Assembly change the way the telecommunications industry is taxed?

Background

Kentucky's current taxation of the telecommunications industry, including cable, was developed when the providers of these services were considered regulated monopolies and all forms of communication were delivered over hardwired lines. A regulated rate-setting mechanism permitted all customers to be served at reasonable rates and granted the companies a guaranteed rate of return on their investment. Local governments granted the companies a franchise and taxed them on this basis.

New technology brought about rapid changes in the communications industry including deregulation. In 1996, the Federal Communications Commission deregulated the rate-setting mechanism and removed barriers to competition. Companies began to diversify and offer new services. The same phone services provided by regulated wire line phone companies are now also available from cable providers, wireless phone providers and through the Internet. Direct broadcast satellite (DBS) companies compete heavily with cable companies. Many of these services are bundled and offered for one price.

Discussion

With the advent of diversification and deregulation, many different types of entities provide similar telecommunications services. These services are often taxed based on the provider rather than the service provided, resulting in direct competitors being taxed differently for providing substantially similar services. Each provider believes that any tax it pays that its competition doesn't pay is unfair. The following are examples of the different ways the communications industry is taxed.

- Telephone and cable companies are classified as public service companies and are assessed under KRS 136.120 using the "unit value" method for property tax purposes, which is designed to value

and tax not only the hard assets, but also the value of the company as a going concern. DBS is not taxed under this statute. This difference in taxation is currently in litigation. The Franklin Circuit Court held in *Insight Kentucky Partners II, L. P. v. Revenue Cabinet*, Civil Action No. 01-CI-01528, that applying the unit value assessment method to cable companies and not to DBS companies violated the uniformity requirement of Section 171 of the Kentucky Constitution. The decision has been appealed.

- Sales tax is applied to telephone service but not to cable or DBS service.
- Most cable companies pay a local franchise fee. DBS is not subject to the fees.
- A majority of the school districts levy a Utility Gross Receipts License tax on telephone and cable service but are prohibited at the federal level from levying the tax on DBS.

Telecommunication tax reform has been a topic of discussion for the last several years. Two studies have been legislatively authorized and completed. The Task Force on Utility Tax Policy completed its work in 1999 and the Subcommittee on Tax Policy Issues in 2002. Legislation was introduced in the 2000, 2002, and 2004 sessions but no legislation has passed due to the complexity of the issues and the myriad of problems associated with ensuring that the local taxing jurisdictions do not suffer any significant revenue losses.

A statewide communications tax was part of the proposed tax modernization package. A proposed single excise tax on all communications services including cable and DBS at the end-user level would have replaced the 6 percent sales tax on telephone service, and local franchise fees on telephone and cable companies. Telephone and cable companies would have been removed from the public service company property tax assessment method and taxed as any other company. The Utility Gross Receipts License Tax (school tax) imposed by school districts was not included in the package. However, with the passage of House Bill 163 in 2004 (effective July 1,

2005), the Revenue Cabinet will be responsible for collecting the school tax from the telephone and cable companies and distributing the tax back to the appropriate school districts.

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Banking and Insurance

Should the General Assembly enact a statute to more strictly regulate automobile and homeowners insurance rates and underwriting guidelines?

Background

The increased regulation of automobile and homeowner insurance rates is an important legislative consideration, as is the fairness of underwriting guidelines that use credit and claims histories of applicants and customers. Likewise, Congress and state regulators are grappling with the issue of whether insurance regulation should be left solely to the states, and how much regulation is good for consumers.

Update

During the 2004 Regular Session, two bills were introduced that would have restricted use of credit histories in the underwriting of insurance, and a resolution was introduced to require a study of automobile insurance rates. The proposals were not enacted. The use of credit histories in underwriting homeowners and automobile insurance remains an issue in state legislatures across the country. The Federal Trade Commission is required by H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, to complete a study by the end of 2005 on the use of credit information by financial services companies, including insurance companies.

Should the General Assembly enact a statute to require medical malpractice insurers to file their rates with the Office of Insurance?

Background

Unlike most states, Kentucky statutes do not mandate that medical malpractice insurance rates be filed with the Office of Insurance. Kentucky statutes leave it to the discretion of the Insurance Executive Director to determine whether medical malpractice insurers must file their rates. In January 2003, after discussion about the cost and availability of medical malpractice insurance, the executive director issued an order requiring the filing of medical malpractice insurance rates. The question facing the General Assembly is whether Kentucky should remain a no-file state with discretion in the executive director to require filings or

join the majority of other states and require by statute that medical malpractice insurance rates be filed with the Office of Insurance.

Update

The 2004 Kentucky General Assembly considered House Bill 450 that would have required medical malpractice insurance rates to be filed with the Office of Insurance. That bill passed the House but not the Senate. This issue may again confront the General Assembly when it convenes for its 2005 Regular Session.

Should the General Assembly require stricter regulatory oversight of group self-insured workers' compensation funds by the Office of Insurance?

Background

AIK Comp, a group self-insured workers' compensation fund sponsored by Associated Industries of Kentucky, entered into financial rehabilitation on August 5, 2004, with a deficit of more than $58 million. Prior to that, on August 3, 2004, the Governor moved oversight of group self-insured workers compensation funds from the Office of Workers Claims to the Office of Insurance. In November 2004, the Office of Insurance announced a plan to assess members to eliminate the company's financial deficit. The median assessment is $4,233. The Office of Insurance has claimed AIK Comp's problems appear to be poor financial management and a lack of adequate regulatory oversight (Office of Insurance).

Discussion

The General Assembly will need to amend current statutes if it approves the Governor's transfer of oversight of group self-insured workers' compensation funds to the Office of Insurance. Once the cause of AIK Comp's financial deficit is identified, the General Assembly may wish to review the adequacy of regulatory oversight required by statute. The benefits of stricter regulatory oversight must be weighed against the effects of higher administrative costs on financially sound group self-insurers operating in the state. The General Assembly may wish to consider whether changes in the law will encourage or discourage competition in the workers' compensation market in Kentucky.

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Economic Development and Tourism

Should the General Assembly consider changes to the Enterprise Zone program?

Background

In 1982, the General Assembly passed legislation creating the Enterprise Zone program. Paralleling efforts in other states, the intent of the program was to improve the economic well-being of residents in designated areas that were characterized by high unemployment and deteriorating residential and commercial property. To do so, the program offered businesses certain sales and corporate income tax credits and, for zone residents, sales tax exemptions for the purchase of building materials used to upgrade residential property within zones. In Kentucky, the original legislation specified that each zone would have a life span of 20 years. Enterprise zones in Louisville and Hickman expired in 2003. In 2004, zones in Ashland and Covington will expire. The remaining 6 zones are set to expire by 2007. With the expiration of the initial zones, there has been continued debate over the effectiveness of the program in achieving its stated goals.

Update

During the 2003 interim, several legislative committees received testimony about the costs and benefits of the Enterprise Zone program. Critics argue that it is difficult to measure benefits to the state, that the program has not been effective in meeting its goals, and that the tax revenue foregone by the program is too costly to allow the program to be continued. Critics also argue that because the number of qualified zones is limited to 10, the program is special and local legislation that is unconstitutional. Proponents of the program argue that without the incentives offered, eligible businesses would be unable to sustain the numbers of persons hired and they would be less likely to expand within zones. They also point out that the program is the only one widely available to businesses in urban areas. The 2004 General Assembly considered legislation that would have suspended the program's 20-year sunset provision. Another bill was

considered that would have allowed all local governments to apply for zone designation and would have adopted many of the recommendations in a study done by the Program Review and Investigations Committee of the enterprise zone program.

Although neither of the bills passed, because the program is popular in existing zones, the issue is likely to remain active.

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Education

Should the General Assembly address the rising cost of public postsecondary education for Kentucky students?

Background

Increasing the college-going rate of Kentuckians, a key goal for the state, is strongly related to college access and affordability, which are directly correlated to funding. While undergraduate enrollments at public postsecondary institutions increased by 27.1 percent from fall 1998 to fall 2003, the enrollment increase from fall 2003 to fall 2004 is estimated to be less than 1 percent (Council on Postsecondary Education, “Kentucky”).

Direct state funding for postsecondary education has declined in recent years, placing upward pressure on tuition. At the same time, according to *Measuring Up 2004: The National Report Card on Higher Education,* "although financial aid has increased, it has not kept pace with the cost of attendance (National Center, “Measuring” 8)."

While postsecondary education remains an excellent investment for individuals and the state, the cost of college remains difficult for many families to afford. In 2004, the annual net college cost at a public four-year college in Kentucky represented 33 percent of the average family income for the lowest 40 percent of households in the state (National Center, “Kentucky” 9). *Measuring Up 2004* identifies Kentucky as one of the "vast majority of states [that] have failed to keep college affordable for most families (National Center, “Measuring” 8)."

Update

The Governor’s fiscal year 2005 spending plan provides operating budget estimates for postsecondary institutions of $985.9 million (Legislative Research Commission, Postsecondary). The LRC Budget Review staff estimated that this amount represents 3.3 percent less than the initial General Fund appropriation for FY 2002 (Legislative Research Commission, “History”).

One result has been that the cost of attending Kentucky's public colleges and universities continues to increase. From FY 2002 to FY 2005, the increases in annual undergraduate tuition and fees at Kentucky's public postsecondary institutions have ranged from 27 percent to 56 percent, representing increases of between $758 and $1,596 (Council on Postsecondary Education, "Kentucky"; and "2004-05 Actual").

Should the General Assembly make changes to the Kentucky Educational Excellence Scholarship program?

Background

The Kentucky Educational Excellence Scholarship (KEES) program provides grants to high school graduates based on their grades and ACT scores to help pay for college in Kentucky. The program is funded by proceeds from the Kentucky Lottery. In fiscal year 2004, the average KEES award was $1,197, while total awards were approximately $72 million (McCormick).

Recent analysis by the Interim Joint Committee on Education of the KEES program suggested that it has succeeded to some extent in achieving its goals: to provide incentives for high school students to work harder; to encourage more students to enroll in college; and to keep the best students in Kentucky for postsecondary education (Legislative Research Commission, "A Study").

Yet, according to the study, while the merit-based KEES program provides resources to students at all income levels, Kentucky's two primary need-based grant aid programs, also funded through the lottery, do not receive sufficient funds to provide support to all income-eligible students. In academic year 2002-03, an estimated 31,000 likely potential students who were eligible for need-based grant aid did not attend college.

According to the study, in 2003, the Kentucky Student Financial Aid Forecasting Workgroup projected that lottery revenues will not keep pace with demand for the KEES program over the coming years, projecting a $3.3 million shortfall for FY 2006.

Update

The Kentucky Student Financial Aid Forecasting Workgroup revised its revenue and expense estimates in July 2004 and no longer expects a shortfall for the KEES program for FY 2006, projecting instead a $11 million positive ending balance. The Governor's Office for Policy and Management warned, however, that these carry forward funds are expected to be exhausted by the end of the 2006-08 biennium. Thus, over the longer term, concerns remain regarding whether lottery sales, prone to complex market pressures, will remain sufficient to cover the entire cost of the KEES program as currently structured.

Should the General Assembly address the drop in student achievement levels of middle and high school students in reading and mathematics?

Background

While Kentucky students have been making some progress on national and state assessments, overall recent assessment data indicates that Kentucky students lose relative position with students nationally in mathematics and reading after exiting the primary grades. According to results on the 2004 Comprehensive Test of Basic Skills (CTBS), a nationally norm-referenced test, Kentucky students' national percentile rank decreased at the higher grade levels, as indicated in Table 1.

Table 1
2004 National Percentile Rankings of Kentucky Students on the Comprehensive Test of Basic Skills in Selected Grade Levels

Grade Level	Percentile in Mathematics	Percentile in Reading
3	66	63
6	55	56
9	52	55

Source: Kentucky Department of Education, CTBS/5

The results from the Commonwealth Accountability Testing System (CATS) from the 2002-2004 Accountability Cycle provide similar evidence. Although each grade level has made progress, and the number of novices in reading and mathematics has decreased over the past six years, there is still a larger percentage of novices at the middle and high school levels in mathematics than at the elementary level.

Based on the 2002-2004 CATS results, the percentage of novices in mathematics for elementary students in 2004 was 22.84 percent; the percentage of novices in mathematics for middle schools was 25.73; and for high school, the percentage was 31.56 (Kentucky Department of Education, briefing packet).

Discussion

Reading and mathematics proficiencies are recognized as important gateway skills to student achievement in other academic content areas. There are some limited provisions in Kentucky statutes that focus attention on professional development and research-based practices to address the content needs of teachers in reading at the early grades and mathematics at the middle school level. The question is whether additional legislative action is needed.

In 2004, bills were considered by the General Assembly to address both reading and mathematics. One bill proposed, Senate Bill 100/GA, the Read to Achieve Act, would have amended the Early Reading Incentive Grant program to be an ongoing program, rather than a competitive grant program, to target assessment, diagnostic and intervention services in school districts for early elementary students throughout the state. Another bill, House Bill 193/GA, the Gateway Skills Act, would have amended the Early Reading Incentive Grant program to extend the provisions to serve middle and high school students in reading. It also proposed a series of requirements to develop a statewide plan for improving mathematics instruction, the preparation of teachers of mathematics, and services to students.

The Commissioner of Education testified before the 2004 Interim Joint Committee on Education that intervention strategies relating to early reading were having positive results and posited that it was time to consider strategies to address the mathematics performance of middle school and high school students (Wilhoit).

The Governor, in a recently released proposal, emphasized the importance of refocusing high school curriculum and essential skill development so that

remediation of students at the postsecondary education level is decreased and retention of college students is increased (Fletcher).

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Elections, Constitutional Amendments, and Intergovernmental Affairs

Should the General Assembly consider legislation to implement the federal Help America Vote Act?

Background

The Help America Vote Act (HAVA) enacted by Congress in 2002 creates new federal election law requirements that the states must implement. One new federal requirement is provisional voting. Provisional voting is where a voter who is not on a registration list or whose eligibility is challenged by a poll worker may vote a special ballot, which is then set aside pending resolution of whether the person is actually registered to vote. Requirements for 2004 include voter identification and information requirements. New voting system standards and disabled-accessible machines are required to be in place by 2006.

Update

Kentucky has complied with all HAVA requirements having a January 1, 2004, deadline. Administrative regulations regarding provisional voting were promulgated by the State Board of Elections (31 KAR 6:020) to define terms, establish applicability, and to state procedures and circumstances for casting a provisional ballot. The board also created voter information posters for precincts and added new language to mail-in voter registration forms.

Kentucky received federal monies in the amount of $32,899,292 on June 17, 2004, for implementation of the 2006 requirements (Johnson).

The General Assembly may want to consider legislation that establishes standards for voting machines and that creates definitions of a vote, for each type of voting machine.

Should the General Assembly propose amendments to the Constitution to permit the legislature to limit punitive and noneconomic damages, to provide for mandatory alternate dispute resolution, and to provide a uniform statute of limitations for medical negligence claims?

Background

Medical malpractice premiums have increased in Kentucky and around the country over the past several years. In an attempt to address these escalating costs many states have enacted medical malpractice reforms. Nineteen states have limited noneconomic awards and 20 states have limited or prohibited punitive awards (The Council of State Governments).

Since the 1970s, the General Assembly has also attempted reforms through the passage of legislation, but all of the reforms have been found by the courts to violate the Kentucky Constitution (*McGuffey* and *O'Bryan*).

Sections 14, 54, and 241 of the Kentucky Constitution establish an individual's right to seek recovery for an injury or wrongful death. Though the prohibition on limiting awards applies to any wrongful death or personal injury actions, debate on this issue has been centered on medical malpractice awards and their impact on the cost of medical liability insurance and the possible effect on medical costs associated with the practice of defensive medicine.

Discussion

During the 2004 Regular Session, Senate Bill 1 proposed amendments to the Constitution to permit the General Assembly to limit noneconomic and punitive damages, to provide for a statute of limitations on medical liability actions, and to require alternative dispute resolution in cases involving health care providers. Though SB 1 was not adopted, this issue will likely be considered again by the General Assembly.

Proponents of amending the Constitution state that a limit on the amount awarded for noneconomic losses would decrease the rate of premiums by curtailing excessive awards and lessen the perceived need for the defensive practice of medicine. Opponents submit that variables other than awards affect professional medical liability premiums and that reform measures such as caps may undercompensate injured persons (United States. General Accounting Office).

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Energy

Should the General Assembly establish incentives for electric utility adoption of Clean Coal Technologies?

Background

Advanced technologies for coal-fueled electricity generation are achieving environmental protection performance far in excess of conventional coal fired technologies. According to the United States Department of Energy, some of these Clean Coal Technologies (CCTs), most notably Integrated Gasification Combined Cycle, approach the environmental performance of natural gas fueled generation technologies. CCTs vary in terms of commercial readiness. Under current utility regulation, utilities have been hesitant to construct CCTs because of uncertainty about recovery of typically greater costs of construction and of unforeseen operating costs. Utilities and coal interests state that CCTs are crucial for continued provision of the nation's lowest-cost electricity.

Discussion

The General Assembly is likely to receive requests to ensure utility recovery of construction and operating costs related to CCTs through new or amended rate-making regulation. Because recovery of the costs may result in increases in electricity rates, there will be contending interests concerning environmental protection, Kentucky coal production, and electricity rates.

Should the General Assembly create incentives for the use of biofuels?

Background

Biofuels, energy sources from renewable organic feedstocks, hold some promise for farmers. The biofuels that have received the most attention in Kentucky have been ethanol, derived principally from corn and used as a gasoline additive; and biodiesel, derived principally from soybeans and used as a diesel fuel additive. Advocates of the use of biofuels cite reduction in pollution-causing emissions, reduction in dependence on foreign oil, and the benefit to farmers from increased demand and prices on grains.

Biodiesel's superior lubricity is touted by proponents who wish to use it to replace sulfur in federally mandated low-sulfur diesel. A bill passed by the 2003 General Assembly required oil refiners to report to the Interim Joint Committee on Agriculture and Natural Resources on progress toward meeting the 2006 low-sulfur deadline and whether biodiesel was being included in the formulation of fuel to meet the new sulfur standard.

Discussion

Bills promoting biofuels through tax credits or through mandated usage have been proposed at the federal level and in many states, including Kentucky. Minnesota now requires all diesel sold within the state to contain a small percentage of biodiesel. Recently passed federal legislation grants a small tax credit to encourage the use of biodiesel. Alternative fuel bills have passed in at least 13 states. In past sessions, opponents of mandatory inclusion of biofuel have raised concerns about the voiding of warranties on heavy equipment and the increased cost of fuel blended with biofuel. Truck stop owners raised concerns that trucks might not refuel in Kentucky if diesel fuel costs were to rise by several pennies per gallon.

Health and Welfare

Should the General Assembly mandate the reporting and analysis of medical errors?

Background

The Institute of Medicine, established by the National Academy of Sciences, has reported that as many as 98,000 individuals die each year in hospitals as a result of preventable medical errors. This is more than the number of individuals that die from motor vehicle accidents (43,458), breast cancer (42,297), or AIDS (16,516). These medical errors account for an estimated $17 billion to $29 billion of health care costs annually (Kohn). Seventeen states mandate the reporting of adverse medical events that occur in hospitals and five have voluntary reporting of these events.

Update

The 2004 General Assembly considered legislation that would have required a newly created Academy for Health Care Improvement and Cost Reduction to study adverse medical events and medical errors reported by hospitals. A cooperative venture with the University of Louisville and the University of Kentucky, the academy's mission would have been to redesign the health care delivery system using information technology to facilitate safe and effective patient care. Other bills related to this issue would have restricted use of utilization review quality assurance information in civil proceedings. It was suggested that this could have promoted more open discussion and review of medical errors and the development of corrective measures.

Although these particular pieces of legislation were not adopted, the related issues will likely be discussed again in the context of the overall consideration of health care and medical malpractice.

Should the General Assembly require school districts to offer healthier foods and snacks as a method of addressing the obesity epidemic?

Background

Obesity is an epidemic in Kentucky, particularly among the young, and is associated with higher rates of diabetes, elevated blood pressure, elevated cholesterol, asthma, cardiovascular disease, liver damage, sleep apnea, and arthritis. Studies have shown that school nutrition programs may help students learn the detrimental effects of poor diets and may assist in the fight against the epidemic. At least 15 states statutorily limit or prohibit the sale of foods with minimal nutritional value in schools, and many other states have considered similar legislation. Other states mandate increased physical education. Some school districts use the receipts from vending machine sales to fund school-related programs. Several expressed concern that vending machine restrictions could eliminate a source of revenue with no positive effect on students' eating habits if they simply bring the banned foods from home.

Update

The 2004 General Assembly considered legislation that would have limited, and in some instances prohibited, the sale of certain high-sugar and high-fat foods and beverages in schools. More physical education would have been encouraged, and training of school food-service workers would have been increased. Other proposed legislation would have promoted an examination of the obesity issue in the context of the Healthy Kentuckians 2010 initiative. These and other legislative proposals for addressing childhood obesity are likely to receive continued discussion in 2005.

Should the General Assembly mandate staffing standards for long-term care facilities that exceed the standards established by federal law?

Background

Federal law establishes a set of minimum standards for the number of nurses on duty in all long-term care facilities, and Kentucky has adopted these standards. Other states have expanded their standards to include staffing requirements for nonlicensed direct-care staff who play a significant role with bathing, dressing, and feeding facility residents; and to increase the minimum numbers of required nurses beyond the federal standard.

Update
The 2004 General Assembly considered legislation to mandate increased staffing standards and to direct that government reimbursement systems, such as Medicaid, require long-term care facilities to apply increased funding toward increasing the number of direct-care staff.

The General Assembly passed legislation that established an additional long-term care facility provider tax of 4 percent that, when matched with federal funds, will result in enhanced Medicaid payments to participating facilities. There was no requirement that a long-term care facility dedicate a portion of these payments toward staffing.

Should the General Assembly mandate dental examinations for all children entering school?

Background
Almost 40 percent of preschool children in Kentucky have never been to a dentist, and 47 percent of children 2 to 4 years of age exhibit dental caries (Hardison). This is a common chronic bacterial disease that can lead to tooth loss; and long-term consequences can include negative effects on speech, nutrition, and self-image. Some states have mandated dental examinations for children entering school.

Update
The 2004 General Assembly did not consider legislation on this issue, although legislation was passed authorizing charitable dental clinics.

Should the General Assembly limit the provider tax liability of nonprofit and charitable nursing facilities?

Background
The original health care provider tax, enacted in 1993, assessed a tax on most health care services for the purpose of generating additional amounts to apply toward increased matching funds from the federal government to support the Medicaid program. While most of these taxes have been repealed, a 2 percent provider tax for nursing services has remained.

In 2004, the General Assembly assessed an additional 4 percent provider tax on certain gross receipts of nursing facilities and a 5.5 percent tax on certain

gross revenues received by intermediate care facilities for the mentally retarded and developmentally disabled. The purpose of the additional taxes was to increase reimbursement to those facilities and to obtain additional funds for the Medicaid program. The state estimated that approximately $201 million in additional funds (inclusive of the federal match) would be made available for Medicaid each year.

Discussion

Subsequent to implementation of the taxes mandated in 2004, questions have arisen from non-Medicaid-participating facilities about the fairness of their having to pay taxes that will fund Medicaid services. Nonprofit and charitable facilities that have little or no revenue argue that the tax increase is particularly burdensome for them. Also, statutory language may be unclear as to whether the tax excludes acute care-based facilities. Staff of the Cabinet for Health and Family Services have indicated they may request legislative changes.

Should the General Assembly increase funding for child care subsidies?

Background

Child care subsidy costs have risen substantially over the last 5 years. In 2003, about 58,000 children each month were served at an average monthly cost of more than $12 million. In an effort to contain costs, the state program ceased taking new applications, lowered the amount of income a family could receive and still be eligible, and increased the co-payments for families in May 2003 (Cheek). As a result of these actions, at least 5,500 children were placed on a waiting list for assistance and about 5,000 children were no longer eligible for assistance (Woodworth).

Discussion

The General Assembly is likely to receive requests for additional funds to restore child care subsidies to original levels. It is argued that this would help eligible low-wage earners maintain employment.

Should the General Assembly enhance state and local capability to respond to reports of elder abuse and neglect?

Background

Thousands of elder Kentuckians are victims of abuse, neglect, and exploitation each year; yet administrative and criminal investigations are hampered by insufficient staff, lack of training on applicable protective services and criminal statutes, and lack of coordination among interested state and local authorities.

Discussion

State and local law enforcement and administrative officials have been meeting to identify problems in systems for reporting elder abuse, investigations, and delivery of protective services. Suggestions have included additional training for law enforcement and prosecutorial workers; refinements to the penal code; and requirements for increased follow up and referrals in response to reports of elder abuse, neglect, and exploitation.

Should the General Assembly extend ARNP prescriptive authority to include controlled substances?

Background

The 2004 General Assembly directed the Legislative Research Commission to study issues relating to expanding the prescriptive authority for advanced registered nurse practitioners (ARNPs) to include controlled substances. The study is to review evidence from other states regarding their experiences after expanding prescriptive authority. Some argue that expansion will lower health care costs and expand access to needed prescriptions, particularly for low-income and rural patients. Others believe that expansion could lead to an increase in access to scheduled narcotics for inappropriate use.

Discussion

Legislation in prior sessions has sought to expand prescriptive authority for ARNPs to include controlled substances. The issue will likely be considered again in light of the results of the mandated study. It is expected that discussion will include what limitations are placed on ARNPS in prescribing controlled substances in other states and the educational mandates imposed by other states.

Should the General Assembly establish a drug reimportation program?

Background

The Congressional Budget Office reported that prescription drug costs have increased by as much as 18 percent annually since the early 1990s, at a time when many health insurance companies are limiting coverage for drugs and increasing copayment and coinsurance requirements. Americans ages 65 and older pay an average of nearly $1,500 annually for prescription medications. This is an increase from $559 in 1992 (Families USA). Drugs help many citizens, particularly the elderly, to enjoy a longer and higher-quality life, yet Medicare will not offer any coverage for drugs until at least 2006. Some people have begun purchasing prescription medications from Canada, where the same drugs can be less expensive. Many states are considering programs that would actively import or reimport prescription drugs from Canada to help their citizens obtain lower-cost medications.

Discussion

The safety of reimporting drugs from another country has been debated, and certain pharmaceutical companies have threatened to withdraw distribution of their drugs to Canada or to individual Canadian pharmacies if drugs continue to be exported. Congress authorized reimportation in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, yet it gave the secretary of the Department of Health and Human Services the authority to veto the initiative. States are required to request federal approval of drug reimportation, although states that have been denied that approval have reported plans to proceed. Published reports in Kentucky have suggested that Medicaid and other programs, such as state employee/teacher health insurance and the AIDS Drug Assistance Program, might lower their costs with a reimportation program.

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Judiciary

Should the General Assembly require that Transportation Cabinet vehicle enforcement officers enforce only commercial motor vehicle laws?

Background

KRS 281.765 commands all peace officers of the Commonwealth, including special officers employed by the Transportation Cabinet, to enforce its commercial motor carrier laws and all other laws relating to motor vehicles. In 2000, legislation was introduced that would transfer vehicle enforcement back to the State Police and require basic training for Motor Vehicle Enforcement officers.

Update

In 2003, the Governor issued an executive order transferring Motor Vehicle Enforcement to the proposed new Justice Cabinet. House Bill 161, a reorganization bill that would have made the transfer permanent, was considered by the legislature, but did not pass. In 2004, the Governor issued Executive Order 2004-730 transferring enforcement to the Justice Cabinet and providing for a Special Operations division. It is likely that this matter will be revisited in a bill during the 2005 Regular Session.

Should the General Assembly raise the current jurisdictional limits for small claims court?

Background

The maximum amount allowed for a claim or counter-claim in the small claims division of the District Court has remained capped at the level set in 1988: $1,500. If the $1,500 limit had been adjusted for inflation since that year, it would now be almost $2,300.

Update

The Interim Joint Committee on Judiciary heard testimony on the advisability of increasing the jurisdictional limit of small claims court prior to the 2004 session. While no legislation was filed on this topic in 2004 session, legislation was filed in the 2003, 2002, 2000, and 1998 regular sessions. Additionally, some of the prior bills proposed increasing the number of small claims court cases a person may file in a

single calendar year, and have proposed increasing the jurisdictional limit of the District Court itself.

Should the General Assembly require the entry of mutual protective orders in domestic violence cases?

Background

Domestic violence is a growing problem in Kentucky, as evidenced by an increase in statewide domestic violence statistics. According to the Kentucky Domestic Violence Association, the 17 spouse abuse centers in Kentucky received 41,600 domestic violence-related calls during fiscal year 2002. This is nearly a 50 percent increase from fiscal year 2000, when the centers received 28,200 domestic violence-related calls. Also, the number of domestic violence filings in family and district courts increased from 26,809 in fiscal year 1996 to 29,536 in fiscal year 2002.

A victim of domestic violence may petition a court for a protective order that prohibits the restrained party from any contact or communication with the petitioner. Generally, a protective order restricts only the behavior of the restrained party, but KRS 403.735 states that a court may issue mutual protective orders only if the restrained party files a separate petition. In recent years, proposals have been made that would require the entry of mutual protective orders in domestic violence cases. Because the order would apply to both the petitioner and the restrained party, both parties would be prohibited from any contact. This would permit the court to punish either or both parties for violation of the protective order.

Proponents of mutual protective orders argue that the current system often allows the petitioners to use the protective order to harass the restrained party, without fear of recrimination. Also, proponents view mutual protective orders as a method to deter victims from going back to abusers. Opponents of mutual protective orders argue that they have the potential for abuse by allowing the restrained party to claim the contact was voluntary, thereby escaping punishment, and resulting in the arrest of the victim for violating the order.

Opponents also fear that mutual protective orders could have a chilling effect by discouraging victims

from seeking help. Finally, opponents are concerned that Kentucky will lose federal funding if it has mutual protective orders in place. Compromise proposals have been offered that would allow a court to issue a mutually binding protective order if the court finds it is in the interest of justice.

Update

Although the 2004 General Assembly did not consider legislation on this issue, legislation to eliminate the restriction against mutual protective orders was filed in the 2002, 2001, and 2000 regular sessions.

Should the General Assembly reduce the number of chemicals or amount of equipment necessary to constitute criminal ability to manufacture methamphetamine?

Background

Methamphetamine is the most commonly manufactured synthetic drug in the United States. Because the chemicals and equipment used in manufacturing methamphetamines are easily acquired and commonly used in many homes, determining when possession of these items should be illegal is difficult. Currently, in order to be prosecuted successfully for manufacturing methamphetamine, a person must possess either all of the chemicals or all of the equipment necessary to manufacture methamphetamine. Various proposals for amending the current statute raise the issues of arbitrary and discriminatory enforcement and double jeopardy. Many of these proposals also address conduct that is already covered by other statutes. An alternative proposal would be to amend the statute to include a list of chemicals that are unlawful to possess with intent to manufacture methamphetamine.

Update

The General Assembly studied multiple bills addressing this topic in 2004, a difficult task given the wide number of statutory prohibitions and penalties that relate to methamphetamine and substances used in its manufacture. Additional difficulty was encountered given the changing recipes and methods used to manufacture methamphetamine. Ultimately, various proposals were consolidated into House Bill 25, which would have restructured the elements and penalties of many of the offenses relating to methamphetamine production and distribution. This

bill passed the House, but did not pass the Senate before final adjournment.

Licensing and Occupations

Should the General Assembly appropriate resources to treat compulsive gambling?

Background

In 2003, the Legislative Research Commission published a study of compulsive gambling in Kentucky. A statewide survey conducted as part of the study yielded an estimate that 1.68 million Kentuckians had wagered money in the past year. Of those, 12.3 percent may have had some problem with their gambling. State and national associations of Gamblers Anonymous and other support groups, citing examples of personal and public negative consequences associated with problem gambling, such as divorce, bankruptcy, and crime, contend that states should fund awareness and treatment programs for those affected (Commonwealth of Kentucky).

Currently, 30 states provide some sort of direct state funding to treat problem gambling (National Council). Kentucky does not; however, state agencies that oversee gaming venues such as the Lottery, and racing and charitable gaming operations, fund programs to create awareness and promote responsible play (State of Kentucky). Opponents of additional state funding contend that problem gamblers are irresponsible or weak-willed and note that many insurance companies refuse to reimburse providers of gambling-related counseling (National Council). Proponents of additional funding argue that the benefits of providing services for problem gamblers outweigh the costs of the services. Proponents cite costs associated with negative impacts of gambling to support their opinions (National Council).

Update

Legislation for the 2005 Kentucky General Assembly to fund awareness and treatment programs for problem gamblers has been prefiled. Similar legislation has been proposed every legislative session since 1998, but funding discussions have been impacted by biennial budget constraints.

Should the General Assembly require criminal background checks for mental health professionals?

Background

Criminal background checks are becoming more frequent in all areas of employment. In Kentucky, they are often performed by the Kentucky State Police and the Federal Bureau of Investigation. These checks are already required in the Commonwealth for private investigators, foster care providers, physicians, registered nurses, holders of a commercial driver's license, charitable gaming licensees, emergency medical services personnel, and certified hires in public and participating private schools. Proposed legislation would require that several mental health professionals undergo criminal background checks as well. These would include alcohol and drug counselors, art therapists, psychologists, social workers, marriage and family therapists, fee-based pastoral counselors, and professional counselors (Webb).

Most states bordering Kentucky only require that mental health professionals be of "good moral character" or a similar requirement, and leave it to the applicant to answer honestly or sign an affidavit. However, general releases included in some applications in those states arguably give the relevant professional board the authority to conduct a criminal check if desired. Ohio is the exception in that it directly allows, but does not require, the boards with jurisdiction over all mental health professionals, except psychologists, to request a criminal background check at the board's discretion (Ohio). Several states allow more latitude during an ongoing investigation based on a complaint against an existing licensee. Virginia's Department of Health Professions may conduct a criminal background search as a part of its investigation of a licensee's violation (Virginia). Other health care workers, especially in nursing homes and adult-care facilities, are already subject to this check in many states. Other issues related to background checks involve new fees and administrative regulations.

Discussion

Authorizing or mandating criminal background checks for mental health professionals has several advantages over the current system. It would create more

consistency in policy, standards, and methodology regarding licensed professionals, and it would provide a better determination of risk (and thus protection) to the public. Proponents assert that this requirement would strike a proper balance between privacy and public safety, especially if a connection can be shown between the past conviction and the licensed profession, such as sexual offenses by a social worker applicant.

Disadvantages to the use of criminal background checks include the need to establish standards for determining which crimes constitute automatic rejection and which require investigation before possible approval. Opponents say that the increased use of these checks nationwide may result in a backlog and delay the credentialing process.

Legal action may result if licensure is denied due to a mistake. Even FBI checks use local data, which are often manual and paper-based and are not 100 percent reliable. Further, Kentucky would need to address reciprocity for candidates from foreign countries where laws are different concerning what may be revealed. Finally, reliance on criminal background checks risks marginalizing those who have already paid their debt to society, particularly if the crime is many years old and unrelated to mental health practice.

Should the General Assembly authorize changes to occupational boards or to the powers and privileges of their licensees?

Background

There are frequent changes in the number and jurisdictions of occupational boards in Kentucky. Boards such as those with jurisdiction over massage therapy, private investigators, and electricians have been formed in the past few years. Some boards seek to enhance their focus from certification to actual licensure. Some boards are struggling financially. The result is an inherent tension between forces of expansion and contraction of the number of boards and their scope of authority. Expansion occurs in both the creation of new boards and in the enhancement of board powers or licensee privileges and responsibilities. Licensure means a consistent income stream and oversight, including standards of practice

and member discipline. Contraction of boards could take place either through sunset or merger of smaller or failing boards.

The Division of Occupations and Professions has identified issues relevant to the establishment of professional boards. To create a new board, the division estimated a total start-up cost of $47,450, which could be absorbed by any three separate boards sharing resources (Webb). Other start-up activities include board appointments, creation of restricted fund accounts, identification of target groups of licensees, review of membership applications, and authorized creation of administrative regulations. The division has also named possible remedies for boards in financial difficulty, including (1) enacting laws that would boost the board's membership but contain a sunset provision requiring reenactment by the General Assembly, (2) amending existing occupations and professions laws to grant more discretion to the division regarding board funding, and (3) merging boards with similar or related professions and subject matter. The merger option could be used in conjunction with either of the other two.

Discussion

Whether the change involves the expansion or the contraction of boards or licensee privileges, the two core issues are the same: (a) will this change create a cost savings for the Commonwealth or perhaps even a self-sustaining board; and (b) will the change either benefit the licensees in their practice or protect the public from harm?

A new board might protect the public from harm by helping to restrict the activities of unqualified licensees. Expanded board or licensee powers could allow more flexibility for boards to safely accomplish public goals. The negatives of new board creation and expansion include fee increases (or new fees altogether) and a greater burden to professionals in terms of licensing, continuing education, or other new or increased responsibilities.

Proponents of merging or eliminating boards say that such action promotes efficiency by streamlining

administration; sharing physical facilities, equipment, and support staff; allowing centralized storage for records; and reducing general overhead. These actions might lead to reduced fees and create uniformity, license portability, and less duplication of efforts. Furthermore, proponents assert that merger could yield similar licensing requirements, less confusion for the public, greater staff specialization in relevant issues, centralized and simultaneous testing, and a greater chance of board self-sufficiency.

Opponents assert that merging or sunsetting boards diminishes access for licensees and requires wholesale changes of statutes and administrative regulations. Another difficulty cited is determining the board's governing bodies and ensuring that the constituents of the former boards are represented in a merged board. Finally, a merger or sunset could lessen the amount of credible information for licensees and the public through reduced information sources and decreased representation.

Should the General Assembly provide the Office of Alcoholic Beverage Control greater oversight of licensed wineries?

Background

Kentucky has 36 small or farm wineries. The executive director of the Office of Alcoholic Beverage Control has proposed that the office's oversight of small and farm winery licensees be expanded (Clay). The executive director noted that small and farm winery licenses are hybrids of several alcoholic beverage licenses and consequentially have broader authority than is afforded to other licensees.

Unlike other alcoholic beverage licensees, a single license authorizes the small or farm winery licensee to act as a manufacturer and, if located in wet territory, a retail seller and shipper of its own wines and the wines of other wineries. Included in this authority is the option to serve complimentary samples of its and other wineries' wines. Authority particular to the small and farm wineries permits the licensees to

- bypass the three-tier alcoholic beverage distribution system that prescribes that manufacturers sell only to wholesalers and wholesalers sell only to retailers;
- sell at off-premise sites, fairs, festivals, and other similar events; and

- sell malt beverages and wine if done so in connection with a restaurant, bed and breakfast, conference center, or similar establishment (KRS 243.155 and 243.156).

Discussion

Under the broad authority granted, wineries may sell their wares at a special limited charitable fundraising event. The Office of the Alcoholic Beverage Control has received some complaints that unauthorized activities, such as sampling, are occurring at these events. Proponents of more oversight of the operations of small and farm wineries assert that enforcement is hampered when the licensees are at fairs, festivals, and similar establishments, unbeknownst to the office.

Opponents of expanding the authority assert that greater checks should not be imposed on the industry. Pointing to the language of the authorizing statutes, they say that small and farm wineries are given greater authority in order to promote the growth of grapes for wine making, the science of wine and wine making, and tourism, to provide an alternative for farmers dependent on the tobacco crop. The opponents say that if wineries are to serve as tourist attractions and provide jobs in rural communities, the wineries must be able to promote their products and develop an array of facilities, such as restaurants and hotels. Moreover, they assert that because it takes a number of years to develop one's wines, new wineries must sell other wineries' products to remain profitable until wines are produced.

In deciding whether to enact greater oversight of small and farm wineries, the General Assembly will need to balance the needs for improved enforcement against the impact additional recordkeeping and paperwork requirements will have on wineries' ability to generate state taxes and tourism dollars and create rural jobs.

Should the General Assembly revise existing horse racing medication policies?

Background

Kentucky is reputed to have one of the least restrictive drug medication policies for horse racing in the country (Street). While most states prohibit the distribution of medication within 24 hours prior to a

race, Kentucky permits horses to be medicated as little as 4 hours prior to a race (Gallagher). Under existing state regulations, horses may be treated with no more than two nonsteroidal anti-inflammatory agents, no more than one steroidal anti-inflammatory agent, furosemide, and aminocaproic acid (Goode).

In 2002, the Kentucky Racing Commission revised the state's horse racing medication policies, reducing the number of permissible race-day medications from 16 to 5. On a national level, much discussion is taking place about the adoption of a national standard that would impose uniform rules in the 32 states offering horse-racing venues. The National Thoroughbred Racing Association's drug-testing task force supports states' adopting national reforms and contends that the improper use of therapeutic medications and the administration of illegal drugs in thoroughbred race horses is the most serious and direct threat to the integrity of the sport (Rees). Many of the states offering horse racing have adopted the national guidelines of the Racing and Medication and Testing Consortium, the recognized authority for a national policy. The policy permits the use of Salix on race days and use of one of three nonsteroidal anti-inflammatory drugs, no later than 24 hours before a race.

Discussion

The General Assembly may 1) adopt a national medication policy, 2) make its current medication policy stricter, or 3) leave the state's existing medication policy as it is.

Supporters of either adopting a uniform medication policy or adopting a stricter medication policy contend that such change will make the playing field more level for bettors and owners who ship horses between states. Supporters further contend that the existing system has certain long-term effects. Some of the drugs that are now authorized are said to mask illegal medications. Additionally, breeders are affected because breeding decisions are made on the basis of a horse's performance. The prowess of a high-performing horse may be attributed to drugs rather than superior bloodlines.

Opponents, often trainers and veterinarians, believe that a uniform or more liberal policy is unnecessary and believe that existing regulations are needed to provide horses better and more humane medical treatment. They assert that current regulations and ensuing sanctions are sufficient to deter medication abuse.

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Local Government

Should the General Assembly consider restructuring the existing funding and operations responsibilities for county jails?

Background

County government has the primary responsibility for the local incarceration of all prisoners entering the state's judicial system. This responsibility was established by a constitutional amendment in 1975. The incarcerated prisoners remain the responsibility of county government until they are sentenced by the courts or released. Subsequent statutes and administrative regulations have established the framework by which local jails are operated and funded from state revenues. Funding beyond the state appropriations is often necessary and then must be supplemented by local funds. For example, according to the Campbell County county administrator, the average cost to house a prisoner is $34.69 per day. Of this amount, the state pays $26.81, which is a reduction from the 2002 level of $28.06. The county must make up the difference for each prisoner.

This responsibility for the local incarceration of all prisoners is the county's regardless of whether the accused is arrested for violating a federal, state, or local law or ordinance. The current system does not permit counties to receive any funding from the state for incarceration costs until the accused is convicted and sentenced. To further compound the state payment issue, if a judge credits the prisoner with time already served, then the county receives no state reimbursement despite the amount of time that the prisoner may have been held in a county jail. Representatives of the County Judge's Executive Association have said that the funding of jails is possibly the greatest financial challenge facing counties since the creation of county government.

The state's financial condition, other funding commitments, and higher alternate priorities have often been cited as reasons the state has not increased its financial share of jail costs.

Discussion

County officials say that the current system has left county governments with the responsibility of funding facilities and inmate costs but with little flexibility in the administering the jails or jail-related matters. They maintain that with the full implementation of the Judicial Article and subsequent state funding actions, counties have seen funding from cities eliminated and the state's proportional share of actual incurred costs continually decrease. County officials have said it is not uncommon for one-third to one-half of a county's general fund revenues to be dedicated to bridging the gap between state jail funds and those that must be provided by the county to meet the operational and funding requirements of the local jail system. According to testimony given by officials of the Kentucky County Judge/Executive Association, counties receive approximately 10 percent less today for jail per diems than they did in 1982, while the costs relating to the operation and maintenance of jail facilities and prisoner care have steadily risen. Health care costs for prisoners was cited as a primary factor. County representatives have said that prisoner populations tend to be among the unhealthiest due to the lifestyles of many of the prisoners prior to incarceration. Counties can be faced with payment for expensive surgical and other medical procedures for which the county receives no insurance or state reimbursements.

Some county officials say their ultimate goal would be for the state to operate and fully fund jail facilities. But county officials have stated that they realize that the current budget climate could prevent the state from assuming more financial responsibility for jails at this time. In the absence of a state takeover or increased state funding, they have said they would like more of a dialogue between state and local governments on this issue.

State executives have acknowledged the need to provide more assistance to counties in this area, but budget constraints may be a major impediment to significant increases in state funding. Other options have been suggested as possible means for assistance to county governments in this area such as a state-

level, multi-jurisdictional task force on jails, experimentation with alternative health care delivery systems for inmates, and the possibility of alternative revenue sources for counties as a result of tax modernization.

Seniors, Veterans, Military Affairs, and Public Protection

Should the General Assembly enact legislation to generate dedicated revenue for the Department of Veterans' Affairs as a first step toward making the department independent of the Commonwealth's General Fund?

Background

Beginning with the 2002 Regular Session of the Kentucky General Assembly, the Kentucky Department of Veterans' Affairs (KDVA) has attempted to become somewhat independent of General Fund revenue by proposing legislation that would (1) create a new lottery scratch-off game to fund Kentucky veterans' programs; (2) require that the KDVA receive a portion of veterans' organizations charitable gaming gross receipts; and (3) create a veterans' personal loan program and utilize a portion of the profits for department operations. This legislation has been unsuccessful.

Update

The KDVA indicates that it will not propose legislation similar to that discussed above for the 2005 General Assembly. However, the KDVA will propose legislation to impose a $5 fee for renewal of a military-related license plate. Renewals are currently free, although KRS 186.041 allows a $5 voluntary donation to the veterans' program trust fund. Similar bills—Senate Bill 117, House Bill 172, and HB 696—were unsuccessful in 2004. The department estimates that a $5 renewal fee would annually generate about $193,000.

Should the General Assembly limit public disclosure of sensitive homeland security information?

Background

Following the September 11, 2001, terrorist attacks, a majority of the states, but not Kentucky, amended their Open Records Laws to stop disclosure of public agency homeland security records in order to prevent further attacks or limit their destructiveness. All of Kentucky's border states have enacted such legislation (Reporters Committee. *Homefront Confidential* 78-91).

Update

During the 2004 Regular Session, House and Senate bills were introduced to amend both the Open Records and Open Meetings Laws to stop disclosure of sensitive homeland security records. While ideas contained in the legislation received substantial discussion, the legislation was not enacted. For the 2005 General Assembly, the Kentucky Office of Homeland Security has established as a top legislative priority the passage of legislation similar to the House bill (Schrader).

Should the General Assembly enhance the security of vital records?

Background

Vital records consist of birth, death, marriage, and divorce certificates. Debate continues over who should have access to them. On one hand, freedom of information is a pillar of a democratic society. On the other, closing vital records hinders criminals, including terrorists, in their efforts to perpetrate identity theft, fraud, and other crimes. State laws reflect the debate. Some states, Kentucky among them, permit anyone to have access to any vital record, including obtaining a certified copy. Other states permit little access. A majority of the states fall somewhere in between, permitting moderate access (Reporters Committee. *Tapping Officials' Secrets).*

Update

The 2004 General Assembly considered legislation that would have allowed moderate access to vital records. The legislation provided for the release of all information contained in a vital record to a person requesting it. At the same time, with several exceptions, vital records themselves would not be reviewable by the public, and certified copies of vital records would not be made for public distribution. The legislation was not enacted.

Should the General Assembly enhance benefits for members of the Kentucky National Guard and Reserves and their families?

Background

According to the Department of Military Affairs, the number of Kentucky National Guard and Reserve members deployed since the fall of 2001 in support of the war on terrorism is more than the total number of such Kentucky service members deployed in the

previous 39 years, and that number is expected to increase. The average length of service has been 11 months (LeMay). Active duty places hardship on service members and loved ones left behind. In response to these challenges, the Kentucky General Assembly has enacted into law several pieces of legislation since 2001. In 2002, the General Assembly passed legislation for military members that granted an extension for filing income taxes; extended provisions of the Federal Soldiers' and Sailors' Civil Relief Act of 1940 to members of the Kentucky National Guard; dealt with eligibility for scholarships; and specified absentee voting for military voters. In 2003, an adopted resolution addressed restoring academic standing for students returning from military service. In 2004, the General Assembly enacted other legislation: giving free birth certificates to those being deployed; permitting school boards to pay for health insurance and retirement during employee active duty; and waiving tuition for veterans' dependents.

Discussion

During the last four sessions, additional legislation was introduced but did not pass. This legislation included measures on taxes, insurance, retirement, leave time, motor vehicles, and tuition assistance. According to the National Conference of State Legislatures, Kentucky's surrounding states are addressing issues facing service members such as allowing parents to make up missed child visitation, reemployment rights upon return, and unemployment compensation for military spouses (NCSL, Legislation Regarding Activation). Florida has been a leader in introducing legislation that creates an employment assistance program for families; creates a trust fund where matching grants are awarded to private sector employers who provide wages to employees in the military; and assists children of military members by improving the transfer of school records (NCSL, "2003-2004 Legislation Regarding Educational Assistance"; and NCSL, Legislation Regarding Activation). Other states are addressing numerous issues not discussed above (National Governors Association).

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State Government

Should the General Assembly enact antispam legislation to protect Kentucky e-mail users?

Background

Many Kentuckians are frustrated by the increasing quantity of spam, or unsolicited bulk e-mail, in their computer in-boxes. For businesses and individuals alike, spam has become more than an annoyance. Often the vehicle for spreading viruses, engaging in fraudulent practices, and stealing identities, spam has become an expensive problem. A 2004 productivity study by Nucleus Research concluded that the average cost of spam to business per employee is $1,934 annually, nearly double the previous year's cost of $874 per employee.

Update

To date, it appears that neither software, filters, nor legislation has had much deterring effect. According to the National Conference of State Legislatures (NCSL), 36 states had enacted antispam legislation before Congress enacted the CAN-SPAM Act. NCSL reported that effective January 1, 2004, CAN-SPAM preempts any state law that "expressly regulates the use of electronic mail to send commercial messages except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto." The law does not preempt "(A) State laws that are not specific to electronic mail, including state trespass, contract, or tort law; or (B) Other state laws to the extent that those laws relate to acts of fraud or computer crime." Other provisions of this legislation include requirements for senders to provide an honest subject line, a physical business address, a notice that the e-mail is an advertisement, and an opt-out provision (allows a recipient to opt-out of receiving further messages). Harvesting of e-mail addresses is prohibited. The legislation does not allow a private right of action, but it does permit Internet service providers and state attorneys general to sue violators in United States district court.

Whether the CAN-SPAM Act will be effective is yet to be seen. Approximately a year after its effective date, the quantity of spam continues to increase rapidly. Despite the prohibition, harvesting of e-mail addresses continues to progress. Attempting to unsubscribe, known as "opting out," actually results in more spam. Some of the Internet service providers have filed legal actions under the act, but it will take years for these cases to go through the courts. Meanwhile, the states await the development of more effective technological tools than are currently available.

Should the General Assembly enact legislation to require local governments to pay more to cover the actual cost of health insurance for their retirees when their active employees are not included in the state group as well?

Background

Local government retirees have been included in the state group since 1982. Local governments have only been able to join the state group for their active employees since 1996. Having retirees of employers in the group without the younger active employees of that employer causes the average cost of claims to rise because older individuals tend to have higher medical costs. Studies by the Kentucky Education Association, the Legislative Research Commission, and the Kentucky Group Health Insurance Board have all concluded that these retirees, called "unescorted," raise the cost of the state group health insurance program by millions of dollars. The 2004 Annual Report of the Kentucky Group Health Insurance Board estimated the added cost of unescorted retirees at just over 3 percent of the premium or roughly $21 million for 2003. Eliminating the subsidy would help hold down future insurance premium increases but would increase local government costs.

Local government representatives have testified that they are willing to pay their “fair share” of the cost of their retirees so long as the state recognizes the amount that classified school employees increase their pension costs. Classified school employees can work as little as four hours a day for 180 days and receive pension benefits as well as post-retirement health insurance benefits. While classified school employees make up more than half of the County Employees Retirement System liabilities, school districts contribute less than half of the total contributions. The

analysis by the retirement system's actuary indicated that inclusion of classified school employees increases local government pension contributions by more than $13 million based on the 2001 actuarial valuation of the system. Because the Department of Education includes the retirement contributions in its budget recommendation, separating classified employee pension liabilities from local government liabilities would increase the state's costs but would lower local government costs.

Update

The issue has been further compounded as a result of the action by the General Assembly during the 2004 Special Session on public employee health insurance. The General Assembly increased the proposed 2005 coverage for the state group, thus, increasing premiums for the group. However, the higher premiums impacted local government entities that do participate in the state group. The General Assembly appropriated funds to help with the increased costs, but did not fully cover the increase. Many local government entities in the state group have contracts requiring them to remain in the group and now face dramatically higher premiums for their employees. The General Assembly placed a moratorium on local governments joining the state group.

Should the General Assembly make benefit changes or establish a self-insured plan to control costs in the state insurance group?

Background

Self-insuring the state health insurance group is frequently mentioned as a possible cost-control measure. It is also discussed in terms of providing continuity of care, which could give the state more opportunities to create long-term wellness and disease management programs.

Update

The Personnel Cabinet arranged a self-insurance pilot project for 2005 by accepting a self-insured bid for the western part of the state. Cabinet officials further testified, both during the interim and the special session on health insurance, that it was the cabinet's intent to self-insure the entire state group in 2006.

The health insurance bill enacted during the 2004 Special Session on health insurance included creation of a blue ribbon panel to study the state group plan. That panel may look at self-insurance.

Current law permits, but does not require, the Personnel Cabinet to self-insure. Legislation requiring the state to self-insure in 2006 has already been pre-filed for the 2005 General Assembly.

Should the General Assembly enact legislation to address the increasing cost of providing pension benefits to public employees?

Background

The Kentucky Long-Term Policy Research Center estimates that pension costs could grow 98 to 152 percent over the next 10 years, while the state's General Fund is estimated to grow 27 to 46 percent. Thus, the cost of maintaining retirement benefits could reduce the share of revenues available for other uses, including salaries or other programs (Commonwealth of Kentucky).

Update

Concern over future pension funding drove the 2004 General Assembly to enact legislation that limits health insurance benefits for newly hired employees. This change is expected to produce moderate reductions in the employer contribution rates over the next 20 years.

Nevertheless, actuarially determined employer contribution rates will still rise significantly in future years as the Baby Boom generation begins to retire. The situation is exacerbated by the state's budgetary situation. The 5.89 percent contribution rate currently being paid by state agencies for nonhazardous employees is only 57 percent of the rate recommended by the retirement system's actuary, which was 10.29 percent. This amounts to about $77 million less than recommended by actuary.

Putting off payment of the actuarially required contributions in the current year shifts the cost to future years, when the state may, or may not, have more revenue.

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Transportation

Should the General Assembly restrict the use of cell phones by drivers?

Background

There are currently more than 170 million cell phone subscribers in the United States, according to the Cellular Telecommunications and Internet Association. To date, New York is still the only state that has banned all use of hand-held cell phones by anyone operating a motor vehicle. New York's law is limited, however, in that it still allows a user to pick up a phone to activate and dial it. Other states have limited bans and have placed some restrictions on hands-free listening devices (Sundeen).

Bans on using hand-held cell phones while driving have been introduced during the last five regular sessions of the Kentucky General Assembly. None of these bills has been voted out of committee. The bills introduced in Kentucky have made exceptions for emergency personnel and citizens reporting emergency situations.

Update

Since January 1, 2000, Kentucky has tracked the use of cell phones as a contributing factor in motor vehicle crashes. In 2003, cell phone use was cited as a specific contributing factor in 615 accidents and 2 fatal accidents, numbers that represent less than 1 percent of both total accidents and fatal accidents (Kentucky Transportation Center and Kentucky State Police 27).

Proponents of cell phone regulations cite the negative effect on driver attention. Academic studies of cell phone use on driver attention have confirmed this notion and have further cast doubt about the potential efficacy of hands-free-only laws such as the one passed in New York (Strayer).

Should the General Assembly change the enforcement of the mandatory seat belt law from a secondary offense to a primary offense?

Background

In 1994, Kentucky enacted the current mandatory seat belt law (KRS 189.125) that applies to all persons riding in a motor vehicle designed to carry 10 or fewer passengers. From an enforcement standpoint, Kentucky's seat belt law is a "secondary offense," meaning a police officer cannot stop a vehicle for the sole reason that the driver or other passengers in the vehicle are not wearing seat belts. "Primary enforcement" of the statute would give law enforcement the authority to stop a vehicle solely for a suspected violation of the seat belt requirement.

Of the 50 states and the District of Columbia, only New Hampshire does not have a mandatory seat belt law. Of the 50 jurisdictions that have mandatory seat belt laws, 22 of the laws have primary enforcement (Insurance Institute for Highway Safety). The closest Kentucky has come to passing a primary seat belt law was in 2002, when House Bill 68 passed the House of Representatives, but not the Senate. Similar legislation has been filed during subsequent sessions of the General Assembly.

Update

The National Highway Traffic Safety Administration considers seat belt use to be the single most effective way to prevent serious injuries and reduce fatalities in motor vehicle collisions (National 1).

The 2003 seat belt usage rate in Kentucky was 65.5 percent, an increase over the 62 percent rate reported in 2002 and the highest rate ever recorded in Kentucky (Agent and Green ii). However, Kentucky's usage rate lags considerably behind the 2003 national rate of 79 percent, which was the also highest rate ever recorded by the National Occupant Protection Use Survey (Glassbrenner 13-14). Researchers have found consistently higher usage rates in states with primary enforcement (Glassbrenner 19).

Concerns have been raised about the use of roadblocks to enforce seat belt laws. Some of these concerns were raised during discussion of HB 68 during the 2002 Regular Session, and as a result, a

provision prohibiting police roadblocks to check solely for seat belt violations was added to the bill.

Should the General Assembly adopt the provisions of the Federal Motor Carrier Safety Improvement Act?

Background

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) was adopted by Congress to remove unsafe commercial driver's license (CDL) holders from the nation's highways. The Act requires states to adopt laws and regulations that conform to the provisions of the Act by September 30, 2005, or face significant fines and lose the ability to issue CDLs.

Discussion

Officials with the Kentucky Transportation Cabinet appeared at the September 7, 2004, meeting of the Interim Joint Committee on Transportation to discuss this issue. At that meeting, they cited several instances where Kentucky statutes do not conform to the provisions of MCSIA:

- States may not mask, defer imposition of judgment, or allow diversion that would prevent a conviction in any type of vehicle from appearing on a CDL record. In Kentucky, this would include out-of-state speeding violations in a passenger car, purging a .02 Driving Under the Influence infraction from someone younger than 21, and masking violations covered by state traffic school attendance.
- A new school bus endorsement would be required.
- An imminent hazard clause must be adopted, requiring states to disqualify drivers if the Federal Motor Carrier Safety Administration determines the driver to be an imminent hazard.
- Three violations must be established as serious violations: driving a commercial motor vehicle (CMV) without a CDL, driving a CMV without a CDL in the driver's possession, and driving a CMV without the proper endorsement.
- Two major disqualifying offenses must be established: driving a CMV with a suspended or cancelled CDL, and causing a fatality through the negligent operation of a CMV.

If Kentucky does not comply with the provisions of MCSIA by the September 2005 deadline, it faces the following penalties:

1. Loss of 5 percent of Federal Aid Highway Funds for the first year ($25-$30 million), and a loss of 10 percent ($50-$60 million) in second and subsequent years.
2. Loss of Motor Carrier Safety Assistance Program funds ($2-$3 million annually).
3. Decertification of the CDL program, such as being prohibited from issuing, renewing, transferring, or upgrading CDLs.

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