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ISSUES CONFRONTING THE 1980 GENERAL ASSEMBLY

A Supplement

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LEGISLATIVE RESEARCH COMMISSION

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MEMORANDUM

TO: Members of the General Assembly

FROM: Vic Hellard, Jr. VH

RE: Supplement to Issues Confronting the 1980 General Assembly

DATE: November 9, 1979

This collection of briefs, prepared by members of the Legislative Research Commission staff, is a supplement to Issues Confronting the 1980 General Assembly, which you received in August. The analyses contained herein are the results of the efforts of staff assignees of the Interim Joint Committees on Agriculture and Natural Resources, Elections and Constitutional Amendments, and Highways and Traffic Safety.

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ACQUISITION OF FARMLAND BY ALIENS

Prepared by Brooks H. Talley

Issue

Should restrictions be placed on the acquisition of Kentucky farmland by alien corporations and nonresident alien individuals?

Background

There is some concern throughout the country about the apparently increasing rate at which alien corporations and nonresident alien individuals are acquiring American farmland. An alien corporation, generally, is a corporation created in a foreign country or one with a majority of its board of directors or executive officers being alien individuals. A nonresident alien person, generally, is one who does not live in the United States and who is neither a citizen nor a national of the United States. Acquisition of farmland by resident aliens is not involved, because numerous court decisions have held it unconstitutional to deprive resident aliens of their basic, fundamental rights.

The real magnitude or seriousness of the matter is difficult to determine because thorough and reliable information has not been available. It was not until passage of the Federal Agricultural Foreign Investment Disclosure Act of 1978 that adequate data was made readily accessible.

The first, preliminary reporting from the federal government, as a result of the new law, indicates that in the entire country foreign investors have an interest in about 4,000,000 acres of agricultural land, which includes timberland. This is the equivalent of less than one-half of one percent of all agricultural land in the country.

The USDA preliminary report, which is not entirely complete, shows that some states have much more agricultural land held by alien interests than other states. Tennessee has more agricultural land controlled by alien interests than any other state, about 285,773 acres; South Carolina is second with 219,948; and Georgia is third with 215,898. The holdings in these three states represent 27 percent of the total acreage held by alien interests. In Kentucky, alien interests control about 5,642 acres. These acreage statistics for each state will probably reflect increases when the preliminary report is complete.

The USDA will present a more complete report to the President and to Congress on November 2, 1979. But the preliminary report shows that the magnitude of the issue depends on the state involved. It also reveals that 72 percent of all foreign-held agricultural land is held by investors from four countries: the United Kingdom, Luxembourg, West Germany, and Canada.

Persons and organizations in favor of placing restrictions on the acquisition of Kentucky farmland by alien corporations and nonresident alien individuals make the following points:

1. There is only so much farmland and, once it is sold, the control over its use is lost forever to persons who are not citizens of this country.
2. Wealthy alien corporations drive up land prices, thereby prohibiting young farmers from acquiring needed farmland so that they may remain in agriculture.
3. Foreign investors will not manage the farmland in a manner which will result in the greatest long-term productivity of the land for farming purposes.
4. Alien corporations do not have as much civic concern as American corporations.

Persons and organizations opposed to the restriction of foreign investment in Kentucky farmland make the following points:

1. Since much of the farmland purchased by foreign investors goes for non-farming purposes, industrial development would not be as great

and the state's economy would be adversely affected.

2. Kentucky would be at an economic disadvantage in comparison with other states if restrictive legislation were enacted.
3. Foreign countries could retaliate and prohibit the importation of certain Kentucky products into their countries.
4. Restrictions on foreign investment in Kentucky farmland would be a denial of a basic property right of both the seller to sell to whomever he chose and at whatever price he could receive, and also of the buyer to purchase whatever land he desired as long as he was willing to pay the purchase price.

Possible Legislative Action

Several alternative courses of action are open to the 1980 General Assembly. Among the alternatives and their possible implications are the following:

1. The legislature could enact restrictive legislation. For example, it could prohibit foreign interests from acquiring farmland for any purpose, or restrict foreign interests to acquiring farmland only for non-farming purposes, such as for industrial or commercial uses. This alternative recognizes the issue as a definite problem requiring corrective action.
2. The legislature could enact legislation to require the registration and disclosure of foreign investment in farmland. The implication of this alternative is that the legislature recognizes that the matter deserves close attention to determine the extent and the seriousness of the matter.
3. The legislature could decide not to enact legislation but to rely on the reports from the USDA to supply information to keep current with the situation. This alternative avoids a duplicative effort to set up a similar system.

4. The legislature could enact tax legislation which would eliminate some of the capital gain tax advantages available to alien corporations and nonresident alien persons. This alternative implies that it is desirable to remove some of the incentive for aliens to invest in Kentucky farmland.

Fiscal Implications

The fiscal implications of the legislative alternative courses of action range from whatever adverse economic impact on the state's economy would result from an outright ban on all foreign acquisition of farmland regardless of the purpose of the acquisition, to an administrative cost to the state to require registration, to a fairly insignificant increase in state revenue by eliminating capital gain tax advantages. (The U. S. Treasury estimates that in 1979 it would receive only about $22,000,000 in additional revenue if the capital gain tax advantage were eliminated on the sale of all U. S. agricultural land by alien corporations and nonresident aliens.)

MORATORIUM ON ALTERATIONS OF
ELECTION PRECINCT BOUNDARIES

Prepared by Robert Sherman

Issue

Should the Kentucky General Assembly enact legislation temporarily freezing the boundaries of election precincts in order to facilitate analysis of census data utilized in Kentucky legislative reapportionment and congressional redistricting?

Background

During the year 1980, the United States Bureau of the Census will conduct the decennial census of the nation's population. By April 1, 1981, the Bureau must, by federal law, supply state legislatures with complete census data for use in legislative reapportionment and congressional redistricting. The Census Bureau, however, utilizes geographical census units not generally identical to Kentucky election precinct boundaries, the latter being the population unit used in our reapportionment process.

The above situation necessitates a rather complex and time-consuming procedure to be undertaken by the legislature and its staff in which data supplied through census reports must be "translated" into respective election precincts. Alterations of election precinct boundaries after the process has begun obviously further complicates matters, with the result that efforts to arrive at precinct population estimates prior to the legislative session at which reapportionment is considered and efforts to respond to legislative requests for district population data may be impeded.

Alternatives and Implications

Probably the most obvious method of alleviating problems associated with the compilation of reapportionment population data is a rather direct legislative approach. The Interim Joint Committee on Elections and Constitutional Amendments has endorsed such an approach by prefiling LRC 70. This bill, upon its effective date, would simply mandate the county boards of elections to maintain the current boundaries of election precincts. The state board of elections would have the authority to supervise enforcement of the legislation. Provisions of such a statute would automatically stand repealed upon the termination of the 1982 Regular Session or upon the termination of any Extraordinary Session of the General Assembly which enacts reapportionment and redistricting legislation, whichever occurs first.

According to KRS 117.055, the primary responsibility for the creation and alteration of election precinct boundaries is allocated to the various county boards of elections. It would be expected that any objections to a moratorium on precinct boundary alterations would originate with these bodies. Prior to the interim committee's approval of LRC 70, committee staff contacted the county clerks of the Commonwealth, being statutory members of the county boards of elections, in order to solicit possible objections to a temporary boundary freeze. As of this date, no objections have been received.

Fiscal Implications

Legislative action in regard to this issue would seem to have no fiscal implication for the Commonwealth.

HANDICAPPED PARKING PERMITS

Prepared by James Roberts

Issue

The issue of handicapped parking privileges to be resolved is whether to expand the scope of the parking permit project. Expansion of the program could be accomplished by extending the definition of handicapped or basing parking privileges on a basis other than motor vehicle registration.

Background

The parking privileges extended to handicapped individuals may not adequately serve the total handicapped population's needs. The parking privileges are currently provided by issuance of a handicapped registration plate. The handicapped individual must have a properly registered vehicle to obtain parking privileges.

This policy has thus limited parking privileges to handicapped persons with registered motor vehicles. Several municipalities have established the need for expanding the program. These cities issue handicapped parking decals to all handicapped individuals who request them.

The decal is issued to the individual and not the vehicle. This method means the handicapped individual has special parking privileges when being transported by another person. Thus he may not even own a vehicle, yet he may participate in the program.

As cities begin to establish this program, it is felt legislation may be needed to implement the program statewide. Should a program be established, the General Assembly is faced with determining a definition for handicapped and establishing a method for distribution of the decal.

Possible Legislative Action

Chapters 186 and 189 of the Kentucky Revised Statutes would probably be amended to establish handicapped parking by decal. The General Assembly would have to enact legislation to make any expansion in the current program.

Fiscal Impact

The fiscal impact would be determined on the basis of cost of the decal and its issuance, and the status of the vehicle registration plate. In several instances a cost savings to the state could be generated by repealing the license plate requirement.

An example would be the passage of a handicapped parking decal such as is required by ordinance in Jefferson County. The state currently pays more for production of the special license plates. The plates have to be provided to the clerk's office even though they may not be used. The implementation of the parking decal system would enable the state to stop production of the handicapped plate. The regular license plate could be used and the cost of the decal charged as a fee to the user.

The Bureau of Vehicle Regulation says the production cost of regular plates is $.24 per plate. Special license plates cost approximately $.42 per plate to produce. The cost savings generated by a shift to the handicapped decal and the repeal of the handicapped registration plate would be about $.18 per registration plate.

HIGHWAY REVENUE SHARING PROGRAMS

Prepared by James Roberts

Issue

The issue to be resolved is which governmental jurisdiction can provide the optimal level of service for maintenance of the highway system.

Background

The Legislative Research Commission requested the Interim Joint Committee on Highways and Traffic Safety to examine the road maintenance program in the Commonwealth. The committee, upon completion of its study, determined that ambiguity of government responsibility for road maintenance was a major issue.

The Kentucky road system is classified by two areas of responsibility: state and county. The statutes distinguish between state and county roads, but laws also mandate state aid for county roads.

The state aid to the counties ranges from supplying materials and labor to performance of work on the county roads. The extent of the work performed by the state depends upon the agreement between the Bureau of Highways and the fiscal court of the county.

Arguments against the state's assuming the responsibility would be the increased workload, insufficient personnel and lack of funds. Another objection to the state's assuming responsibility of county roads is that the public becomes confused as to actual maintenance responsibility. It becomes easier for both governmental jurisdictions to pass on responsibility when confronted with citizen complaints. Proponents for state control of all roads believe the state is better equipped; they point out that the state possesses a broader tax base and that its responsibilities are more apparent.

Possible Legislative Action

The General Assembly has two alternatives to consider in coping with responsibility for highway maintenance. If it is believed that the current system is not workable, the General Assembly could mandate that

(1) the state assume total responsibility for all roads; or

(2) the state distribute funds to the county and let the county administer its own road program.

Both of these changes would require changes to the Kentucky Revised Statutes. Legislation would have to be enacted to redistribute or repeal the revenue sharing programs. Guidelines for selection of maintenance projects would need to be changed. The state highway system might have to be changed extensively to accommodate desired policy changes.

Fiscal Impact

The fiscal impact on either of the alternatives mentioned would have to be measured on an individual basis. However, it should be noted that changes based on a reclassification of roads and redistribution of revenue should not affect total road fund revenues. For instance, if the state assumes total responsibility for the highway system, the local revenue sharing programs in KRS Chapter 177 could be repealed. This would bring approximately $70 million into the state road fund without mandatory requirements for expenditure.

In the case of the second alternative, the General Assembly would be asking the local government to provide a greater effort. The statutes could reflect such changes by amending the administrative and emergency clause out of the revenue sharing programs, or increasing the aid programs.

MANDATORY HELMET LAW FOR MOTORCYCLISTS

Prepared by James Monsour

Issue

Should Kentucky's mandatory helmet requirement for motorcyclists be repealed?

Background

The national Highway Safety Act of 1966 provided for the establishment of Federal Highway Safety Program Standards and required that all states adopt these standards as part of a national highway safety program. Penalties in these provisions included withholding federal highway funds from those states which did not require the wearing of protective headgear by motorcycle riders. Accordingly, Kentucky passed an act during the 1968 session which placed it in compliance.

In 1976, the U. S. Congress removed the provision that states enact safety standards as a condition for federal highway funding. Subsequently, many states repealed or amended their mandatory helmet laws. Currently, 25 states do not have a compulsory helmet law or have a modified law that requires helmets for motorcyclists under 18 years of age.

The argument for retaining the helmet law is based on the safety and protection of the rider, while those advocating repeal feel that such a law constitutes an encroachment of individual freedom.

Various motorcycle groups and the Kentucky Department of Transportation have appeared before the Highways and Traffic Safety Committee in 1968, 1977, and 1978. A bill to repeal the helmet law, HB 59, was introduced during the last regular session of the General Assembly but was not reported from a Senate Committee, after passing in the House. As a result, it is likely that the issue of a mandatory helmet law will again confront the General Assembly when the 1980 Regular Session convenes.

Possible Legislative Action

The Legislature may amend the current statute (KRS 189.285) relating to safety equipment for motorcyclists to: (1) delete the helmet requirement, or (2) limit the protective headgear requirement to persons under 18 years of age.

Fiscal Impact to State

No direct fiscal impact to the State would result from the repeal of the mandatory helmet law for motorcyclists.

ROAD FUND

Prepared by James Roberts

Issue

The road fund is used exclusively for construction and maintenance of highways. Revenues earmarked for this fund have not kept pace with inflation. The issue facing the 1980 General Assembly is to determine whether to increase the road fund to meet projected highway needs and, if so, to establish a method to increase the fund.

Background

The road fund derives its revenue from the motor fuels tax and the vehicle registration fee. These levies have remained constant over the past six years. During this time, the Bureau of Highways has faced increasing costs in supplies, labor and equipment. Revenues have not kept pace with this inflationary period.

The figures developed by the Department of Transportation show the need for an additional $300 million annually over the next ten years to complete necessary highway work. If these funds are not raised, it will become necessary to curtail state construction projects.

The problem most often cited is the fixed $.09 per gallon tax on motor fuels. This price has remained constant since 1972. Since that time, the cost of gasoline has increased from $.40 to $1.00 per gallon. Despite the retail increases, the motor fuels tax has remained at $.09 per gallon.

In addition to the fixed tax on motor fuels, energy demands are calling for conservation. Legislation is being enacted by Congress and state assemblies providing tax breaks for carpools, public transportation and gasohol users. The incentive for conservation may provide less revenue to the road fund, depleting the monies needed to meet highway demands.

Possible Legislative Action

The General Assembly is faced with several alternatives for increasing road fund revenues, should such be determined necessary. Three methods are:

(1) A percentage tax on motor fuels rather than an establishment of tax per gallon;

(2) Increasing the tax per gallon; and

(3) An appropriation from the general fund to the road fund for the purpose of payment of debt obligations, maintenance or construction.

All three of these actions would require legislation by the General Assembly. The statutes which would require changes in the first and second alternatives are contained within Kentucky Revised Statutes Chapter 138. The third alternative would require action taken on the budget bill, requiring a general fund appropriation to the Department of Transportation and possibly amending the statutes relating to the toll road lease agreement.

Fiscal Impact

Alternative one establishes a change of the gasoline tax on a percentage basis. An example would be a straight 10% tax on today's $1.00-per-gallon gasoline. Revenue generated by this method would increase with every rise in gasoline price. The establishment of the 10% sales tax would generate approximately $20,000 additional dollars for the road fund for every $.01 increase in the price of gasoline per gallon. These figures are based on current levels of gasoline consumption.

An increase of $.01 per gallon (from $.09 to $.10) in the motor fules tax would generate approximately $20 million, based on 1978 demands. The road fund revenue for 1979 is failing short of the 1978 period, so the 1978 figures may not be a completely correct basis for estimation.

Any appropriation from the general fund would have to be determined by the General Assembly. The fiscal impact is based solely on the program which receives the aid and the amount to be received.

SPECIAL LICENSE PLATES

Prepared by James Roberts

Issue

The issue is whether the General Assembly should authorize the use of special licenses for public service groups.

Background

The past sessions of the General Assembly have produced a variety of special registration plates for motor vehicles. Among groups currently receiving special tags are the members of the General Assembly, judges, amateur radio operators, handicapped persons and national guardsmen. During this session more requests for the special license plates will likely arise.

Legislation has already been prefiled amending the amateur radio registration statute and creating new special license plates for volunteer firemen and prisoners of war. Registration fees and expiration dates are different for each type of tag, which may provide a burden to the county clerk's office.

Opponents of special registration believe the practice damages the intent of registering the vehicle. In most cases, the special license plates are used to acknowledge the individual's interests and not for vehicle registration. Revenues could be affected, depending upon the language of the legislation. Additional funds could be generated if the legislation enacted is similar to that for personalized license plates, which require a $25 annual purchase fee.

However, a loss of revenue may occur if the legislation is comparable to that for the national guard special plate. The statutes in this instance establish a one-time fee of $25 for the license plates. There is no renewal fee for national guardsmen's plates. In this instance, road fund receipts would be reduced by the third year.

Proponents of special plates argue that the individuals receiving special registration deserve the recognition. Amateur radio operators, national guardsmen and public officials contribute to the community, and special registration provides a token acknowledgement of their service.

Legislative Action

The General Assembly will act upon each bill for special registration. The decision should be based on weighing the perceived contribution of each group desiring legislation against the burden placed on the registration system and the road fund receipts.

Fiscal Impact

Each special license plate request will have a fiscal impact. The extent of the impact will depend upon the size of the group and the fees charged. Sponsors of legislation for special registration plates will usually request a fiscal impact statement to accompany the legislation.

Examples of fiscal impacts would be as follows. In one instance, an annual fee of $25 is established. Ten individuals wish to acquire the special plate. The regular fee is $12.50, so additional road fund revenues would be generated. The following attempts to illustrate the annual fee.

(a) current fee

$ 12.50 - current fee
x 10 - persons applying
$125.00 - current revenue

(b) registration with $25 annual fee

$ 25.00 - special plate
x 10 - persons applying
$250.00 - total revenue

(c) $250.00 - special fee
-125.00 - current fee
$125.00 - new revenue generated

The second instance depicts a one-time fee of $25. The break even point would occur at the beginning of the second year of registration.

(d) $ 25.00 - one-time fee

x 10 - persons applying

$250.00 - total revenue

(e) $ 12.50 - annual fee

x 10 - persons applying

$125.00 - revenue per year

(f) $125.00 - revenue per year

x 2 - years

$250.00 - revenue for 2 years

Figures (b) and (c) illustrate the additional revenue generated by an annual $25 fee. Figures (e) and (f) show that revenues would begin to diminish after two years, if based on a one-time fee.