

Local Government Law News

Salmon P. Chase College of Law ♦ Governor's Office for Local Development ♦ Northern Kentucky University

Volume VII, Issue 2

Spring 2005

THE 2005 KENTUCKY GENERAL ASSEMBLY: A TOPICAL REVIEW OF SELECTED ACTS AFFECTING LOCAL GOVERNMENTS

A Note on Effective Dates

"[L]egislation (except for general appropriation measures and those containing emergency or delayed effective date provisions) passed during the 2005 Regular Session of the Kentucky General Assembly will be *effective on the first moment of Monday, June 20, 2005.*" Opinion of the Attorney General 05-004.

Administrative Procedures

AN ACT relating to death certificates. Amends KRS 213.076(3) to provide that, if a cause of death is unknown or pending investigation, the death certificate may so reflect and to provide for later amendment by filing a supplemental report after the necessary inquiry is complete. SB 18 (Acts ch. 131).

AN ACT relating to liens. Amends KRS 376.230 to extend from 30 days to 60 days the period in which to file a lien for labor, materials, or supplies. SB 100 (Acts ch. 104).

AN ACT relating to administrative regulations. Amends numerous provisions of KRS Chapter 13A to change the procedures governing the adoption of administrative regulations. SB 123 (Acts ch. 100).

AN ACT relating to guaranteed energy, water, or wastewater savings performance contracting. Amends KRS 45A.345, part of the Kentucky Model Procurement Code, to include water, sewer, and metering upgrades in the definition of items appropriate for guaranteed energy savings performance contracting. SB 133 (Acts ch. 163).

AN ACT relating to public agencies and declaring an emergency. Amends KRS 61.878 in the Open Records Act to allow an agency to protect from disclosure certain records pertaining to homeland security; amends KRS 61.810 and 61.815 in the Open Meetings Law to allow an exception for that portion of a meeting devoted to discussion of specific homeland security records; makes conforming amendments to KRS 313.130, 319.082, 327.070, and 342.347. HB 59 (Acts ch. 93), effective March 16, 2005.

AN ACT relating to the dissemination of public information. Creates a new section of KRS Chapter 15 to require the Attorney General to distribute to county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, school district attorneys, and presidents of public universities written information prepared by the Attorney General's office that explains the procedural and substantive provisions of the Open Meetings and Open Records Acts together with information prepared by the Department for Libraries and Archives concerning proper retention and management of public records; creates new sections in other chapters charging the recipients to distribute the information to elected and appointed members of legislative bodies, boards, commissions, authorities, and committees and document their receipt of that information; amends KRS 61.878 of the Open Records Act to create an exemption for archival records. HB 77 (Acts ch. 45).

AN ACT relating to personal identification cards. Amends KRS 186.412, relating to personal identification cards, to permit the issuance of a personal identification card to the holder of an instruction permit or an operator's license; amends KRS 186.531 to conform. HB 196 (Acts ch. 55).

Business Regulation

AN ACT relating to state regulation of individuals and entities and declaring an emergency. Amends several sections of KRS pertaining to the expiration dates of certain occupational licenses; amends KRS Chapter 273 to allow certain stock corporations to convert to nonprofit corporations; amends KRS Chapter 237 to prescribe the manner in which honorably retired peace officers may qualify to

Continued on page 3

articles in this issue

Director's Desk.....	page 2
Be It Ordained	page 9

DIRECTOR'S DESK

The 2005 session of the General Assembly saw the introduction of 225 Senate bills and 518 House bills. Of those bills more than 140 became law, and of those laws more than half affect local government.

The focal point of this year's session was undoubtedly the state budget. The General Assembly failed to enact a budget in the 2004 session, and the pressure to get a budget done increased when, in December, a court declared the governor's spending plan unlawful. The failure of the General Assembly to appropriate collected revenues for public use, declared the court, was in violation of the Kentucky Constitution. Further, the court said, the governor had no power to spend state funds without an appropriation from the legislative branch.

Much of the dispute over the budget last session involved linkage with the governor's tax modernization proposal. This year, however, a tax modernization measure succeeded. HB 272 became the most extensive revision of Kentucky's tax code in more than half a century. It expands the corporation income tax base to include all limited liability forms of doing business and makes other significant changes to the corporate tax structure. Further, the bill repeals most intangible property taxes. The bill also provides a number of incentives and tax credits to stimulate economic development. Individual taxpayers will see changes, too. For example, there is tax relief for low-income taxpayers, a rate reduction for middle-income taxpayers, and an education tuition tax credit. The cigarette tax goes up as well by 26 cents per pack. Of particular importance to local government, the bill imposes an excise tax on multi-channel video and audio programming services from which they will receive a guaranteed amount to replace lost franchise fees and unit valuation property taxes.

Outside the realm of taxation and finance, two of the more interesting bills this session involved the Open Meetings Act and the Open Records Act. One is HB 77. It requires the Attorney General to distribute to county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, school district attorneys, and presidents of public universities written information prepared by the Attorney General's office that explains the procedural and substantive provisions of the Open Meetings and Open Records Acts. They must then distribute the information to elected and appointed members of legislative bodies, boards, commissions, authorities, and committees and document the members' and officials' receipt of that information.

The other is HB 59. In passing the bill, Kentucky joined a large list of states that have amended their open government statutes in response to the threat of terrorism. As amended, the Open Records Act allows public agencies to withhold public records "the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act." A parallel provision in the Open Meetings Act allows a public agency to exclude the public from that portion of a meeting devoted to a discussion of such a record. Both provisions contain an exception allowing access for members of the General Assembly.

Invoking the new records exception will not be especially easy. The law specifically defines what it means by a terrorist act and limits the exemption to eight classes of documents. A terrorist act means a criminal act intended to intimidate or coerce a public agency or the civilian population, disrupt certain governmental and utility systems, or cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency. The categories of protected information include criticality lists, vulnerability assessments, antiterrorism protective measures, counterterrorism measures, security and response needs assessments, certain infrastructure records, a variety of maps, drawings, plans, and building specifications, and certain records concerning hazardous chemical, radiological, or biological materials.

While the aim of such exemptions is to thwart terrorism, they could, at the same time, hamper public watchdog efforts and obstruct public knowledge of safety issues that are unrelated to terrorism. An example is a recent dispute at the University of Texas. The university sued Attorney General Greg Abbott to prevent release of information about campus surveillance cameras in response to an open records request by The Daily Texan. Abbott ruled the information was public and had to be given to the newspaper. The university fought to keep the information secret but lost in court.

As this example shows, a law like this will require local governments to draw some very fine lines, particularly in the classes for infrastructure and for maps and drawings.

Continued on page 11

carry concealed weapons. SB 142 (Acts ch. 182), effective March 31, 2005.

AN ACT relating to members of the United States Armed Forces. Creates a new section of KRS Chapter 36 to require any licensing authority to extend any license, certificate, or permit held by a member of the United States Armed Forces deployed overseas until 90 days after the end of the deployment and to renew the license at no cost to the holder. HB 189 (Acts ch. 49).

Cities

AN ACT changing the classification of the City of Warsaw, in Gallatin County. Reclassifies the city of Warsaw from a city of the fifth class to a city of the fourth class. SB 32 (Acts ch. 8).

AN ACT relating to the reclassification of cities. Reclassifies the city of Union from a city of the fifth class to a city of the fourth class and reclassifies the city of Corbin from a city of the third class to a city of the fourth class. HB 67 (Acts ch. 42).

AN ACT changing the classification of the City of Prospect, in Jefferson County. Reclassifies the city of Prospect from a city of the fourth class to a city of the third class. HB 113 (Acts ch. 77).

AN ACT relating to local government. Amends KRS 91.750 to 91.762, relating to management districts, to include a consolidated local government within its purview, to delete language that would limit district assessments to five years, to permit board members to be removed by the executive authority in certain instances, and to delete requirement that the district be renewed every five years; amends KRS 100.117 to add provisions regarding certain independent planning units. HB 210 (Acts ch. 119).

AN ACT relating to city boundaries and declaring an emergency. Amends KRS 81A.440 to alter the procedure by which a city may reduce its borders when striking an uninhabited area. HB 233 (Acts ch. 78), effective March 16, 2005.

Commonwealth

AN ACT relating to state emblems. Creates a new section of KRS Chapter 2 to designate milk as the official drink of Kentucky. SB 93 (Acts ch. 36).

AN ACT relating to the official theatre pipe organ of Kentucky. Creates a new section of KRS Chapter 2 to des-

ignate the Kentucky Theatre's Mighty Wurlitzer Theatre Pipe Organ as the official theatre pipe organ of Kentucky. SB 148 (Acts ch. 63).

AN ACT relating to establishing Juneteenth National Freedom Day in Kentucky. Creates a new section of KRS Chapter 2 to establish June 19 as Juneteenth National Freedom Day. HB 42 (Acts ch. 28).

Counties

AN ACT relating to the electronic transfers of funds by counties. Amends KRS 68.275(3) to allow counties to pay recurring monthly payroll and utility expenses by means of electronic funds transfer and set out requirements for doing so. HB 256 (Acts ch. 72).

AN ACT relating to county government. Amends KRS 67.060(1) to require that, where a county opts to have commissioners, the division of a county into three districts be accomplished no later than the first Monday in January in the year of the regular election for county officers; amends KRS 383.110 by adding a new subdivision to allow for certification of photocopies of official records and the filing of certified photocopies in certain instances. HB 260 (Acts ch. 69).

AN ACT relating to county occupational license fees and declaring an emergency. Amends KRS 68.197 by adding a new subdivision to provide that in certain counties (Kenton and Campbell) there shall be no credit of a city license fee against a county license fee except by agreement between the county and the city as provided in the section. HB 400 (Acts ch. 79), effective March 16, 2005.

Crime and Criminal Justice

AN ACT relating to crimes and punishments. Amends KRS 508.025, relating to assault in the third degree, to include assaults against emergency medical services personnel, organized fire department members, and rescue squad personnel and names the Act the "Brenda D. Cowan Act." SB 91 (Acts ch. 128).

AN ACT relating to crimes and punishments. Creates a new section of KRS Chapter 510 to prohibit the use of an electronic communications system to procure a minor, or a peace officer posing as a minor, to commit certain specified sexual offenses; prohibits prosecution for the newly created offense and designated inchoate offenses where there was a single course of conduct directed toward a single victim. SB 106 (Acts ch. 160).

Districts, Authorities, and Special Purpose Governments

AN ACT relating to deeds and conveyances. Amends KRS 382.135 to exempt deeds conveying real property to airport boards from certain filing requirements. SB 111 (Acts ch. 171).

AN ACT relating to the letting of work by water districts. Amends KRS 74.260 to delete the prohibition that bids awarded on a lump-sum basis cannot exceed estimated costs except as specified. HB 264 (Acts ch. 108).

Economic Development

AN ACT relating to economic development for small business. Creates new sections of subchapter 12 of KRS Chapter 154 to allow the Kentucky Economic Development Finance Authority (KEDFA) to develop a small-business loan program and provide loans to small businesses engaged in manufacturing, agribusiness, or service and technology on terms and conditions less stringent than industry standards; amends KRS 154.12-216 and 154.12-223 to include among the duties of Division of the Small Business the facilitation of sales transactions between Kentucky businesses and the identification of government procurement opportunities. SB 156 (Acts ch. 158).

Education

See also Schools and School Districts.

AN ACT relating to reading, making an appropriation therefor, and declaring an emergency. Enacts the “Read to Achieve Act of 2005” by amending various provisions of KRS to establish a Reading Diagnostic and Intervention program to provide grants to help teachers improve the reading skills of students in primary schools and imposing upon the Kentucky Board of Education, the Kentucky Department of Education, the renamed and expanded Early Reading Incentive Grant Steering Committee, and the Collaborative Center for Literacy Development various responsibilities for the program. SB 19 (Acts ch. 157), effective March 19, 2005.

AN ACT relating to the Governor’s Scholars Program. Amends KRS 158.796 to reorganize the Governor’s Scholars Program; amends KRS 12.020 and 12.023 to conform. SB 132 (Acts ch. 38).

AN ACT relating education. Amends KRS 160.380 to permit a superintendent to require a national criminal history background check for a job applicant who has resided in Kentucky for 12 months or less; creates a new section of KRS Chapter 158 to require the board of each local public

school district and the governing body of each private and parochial school or school district to have on duty at least one school employee at each school qualified to administer certain medication in an emergency and addressing liabilities in such instances. HB 88 (Acts ch. 177).

AN ACT relating to improving student achievement, making an appropriation therefor, and declaring an emergency. Creates new sections of KRS Chapter 158 to describe roles of state entities in improving student achievement, to establish the Committee for Mathematics Achievement to develop a strategic plan to improve student achievement in mathematics at all levels of schooling, and to establish the mathematics achievement fund; amends KRS 156.553 to expand optional uses of the teachers’ professional growth fund related to reading and mathematics. HB 93 (Acts ch. 164), effective March 18, 2005.

AN ACT relating to the Education Professional Standards Board. Amends KRS 161.027 to clarify the requirements for certification as a principal or assistant principal; amends KRS 161.048, the alternative certification program for teachers, to provide that under Option 6 a candidate must successfully complete the assessments before participating in the internship and make certain other changes. HB 183 (Acts ch. 111).

AN ACT relating to instructional leadership. Amends KRS 156.101 to require that, effective July 1, 2006, each instructional leader shall complete a 21-hour training program annually rather than a 42-hour training program biennially, to require each local district superintendent to report any instructional leader who fails to complete the training, and to require the Department of Education to verify completion of the required training. HB 301 (Acts ch. 110).

AN ACT relating to the Kentucky Educational Excellence Scholarship program. Amends KRS 164.7874, 164.7877, 164.7879, 164.7881, 164.7883, and 164.7885 to move the administrative responsibility of the Kentucky Education Excellence Scholarship program from the Council on Post-secondary Education to the Kentucky Higher Education Assistance Authority and changes reporting requirements for grades of students. HB 460 (Acts ch. 117).

Elections

AN ACT relating to elections and declaring an emergency. Repeals the Public Financing Campaign Act, KRS Chapter 121A, and amends numerous other sections to remove references to and requirements for compliance with the Public Financing Campaign Act; creates a new section of KRS Chapter 121 to specify the manner in which to fill

vacancies in a slate of candidates in a primary election. SB 112 (Acts ch. 105), effective March 16, 2005.

AN ACT relating to the regulation of elections and declaring an emergency. Amends KRS 117.235 to reduce from 500 feet to 300 feet the area around a polling place within which electioneering is prohibited. HB 26 (Acts ch. 126), effective March 31, 2005.

AN ACT relating to elections. Amends KRS 23A.070 to number and name divisions and family court divisions in the Thirtieth Judicial Circuit for election and other purposes and allow judicial candidates to expend funds from certain previously created campaign accounts; amends KRS 118A.045 to conform. HB 121 (Acts ch. 124).

AN ACT relating to elections. Creates a new section of KRS Chapter 117 to prohibit any persons in a voting room to use any item or device other than the precinct signature roster to create a check-off list or otherwise record the identity of voters; amends KRS 117.035 to provide that a member of a county board of elections appointed by the State Board of Elections must resign upon becoming a candidate for public office; amends KRS 117.187 to require the county board of elections to provide disability awareness and provisional voting processes training to poll workers; amends KRS 117.265 to prescribe the deadline for the filing of a declaration of intent to be a write-in candidate; amends KRS 117.345 to allow the State Board of Elections to pay expenses for precincts with fewer than 350 registered voters; amends KRS 117.900 to broaden the scope of the election-related essay contest conducted by the Secretary of State; amends KRS 118.105 to clarify how to fill certain vacant candidacies; amends KRS 118.315 to exclude a candidate for president from its petition requirements; and amends KRS 118.367 to permit certain independent candidates to be exempt from the requirement to file a statement of candidacy form. HB 141 (Acts ch. 71).

AN ACT relating to gubernatorial power to reschedule elections during a state of emergency. Amend KRS 39A.100 to provide that in a state of emergency, the governor, upon the recommendation of the Secretary of State, may by executive order suspend or delay a state election up to 20 days and amends KRS 117.015 to direct the State Board of Elections to promulgate regulations establishing the procedures for election officials to follow in that event. HB 266 (Acts ch. 91).

Finance

AN ACT relating to financing public projects. Amends KRS 58.180(2), which currently provides that no bonds or other obligations shall be authorized for the construction of electric facilities, to create an exception for electric facili-

ties that are constructed or maintained to provide service solely to the customers of the municipal utility. SB 150 (Acts ch. 146).

AN ACT relating to medical assistance. Amends KRS 205.640 to change the manner of distribution of disproportionate share funds from the Medical Assistance revolving trust fund among public and private hospitals particularly as to indigent-care costs. SB 218 (Acts ch. 107).

AN ACT relating to appropriations and revenue measures providing financing for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state-supported activities. Enacts the Executive Branch budget. The governor exercised his partial veto power with respect to 13 items, which vetoes the General Assembly sustained. An analysis of the bill is at <http://www.lrc.state.ky.us/>. HB 267 (Acts ch. 173).

AN ACT relating to the Disaster Relief Funding Program and making an appropriation therefor. Creates a new section of KRS Chapter 29A to establish a Disaster Relief Funding Program, administered by the Division of Emergency Management, that will provide financial assistance where the governor declares an emergency but where federal authorities decline to issue a federal declaration of disaster and make available federal assistance. HB 367 (Acts ch. 56).

AN ACT relating to faith-based initiatives. Creates new sections of KRS Chapter 12 providing for the establishment of the Office for Faith-Based and Community Nonprofit Social Services within the Office of the Governor. HB 383 (Acts ch. 137).

AN ACT relating to governmental operations and declaring an emergency. An omnibus bill making amendments to the Executive Branch budget (HB 267 above) and amending various sections of KRS in Chapters 131, 139, and 148. HB 497 (Acts ch. 184), portions effective April 1, 2005.

Fire Service

AN ACT relating to crimes and punishments. Amends KRS 508.025, relating to assault in the third degree, to include assaults against emergency medical services personnel, organized fire department members, and rescue squad personnel and names the Act the "Brenda D. Cowan Act." SB 91 (Acts ch. 128).

AN ACT relating to the Kentucky Emergency Response Commission. Amends KRS 39E.030 to add the executive director of the Commission on Fire Protection Personnel

Standards and Education or the director's designee to the membership of the Kentucky Emergency Response Commission. SB 166 (Acts ch. 82).

AN ACT relating to the identification of certified volunteer firefighters. Creates a new section of KRS Chapter 95A to authorize the Commission on Fire Protection Personnel Standards and Education to implement a voluntary statewide certified volunteer firefighter identification program and specifies the manner for procuring an identification card and the uses to which it may be put. HB 48 (Acts ch. 151).

Land Use

AN ACT relating to uniform environmental covenants. Creates new subchapter 80 of KRS Chapter 224 relating to environmental covenants. HB 472 (Acts ch. 92).

AN ACT relating to nuisance abatement. Amends KRS 381.770 to include within the nuisances prohibited by that section the accumulation of junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials and junked, wrecked, or non-operative uninhabited mobile homes. HB 345 (Acts ch. 179).

Law Enforcement

See also Crimes and Criminal Justice.

AN ACT relating to crimes and punishments. Creates a new section of KRS Chapter 510 to make it unlawful for any person knowingly to use a communications system or any other electronic means to procure or promote the use of a minor, or a peace officer posing as a minor, for certain sexual activities and to punish a violation as a Class D felony. SB 106 (Acts ch. 160).

AN ACT relating to donations to sheriffs. Amends KRS 61.310 to allow sheriffs under prescribed conditions to accept donations of money and goods to further the public purposes of the office; creates a new section of KRS Chapter 521 to provide that the offering, asking for, or accepting donations does not alone constitute a bribe or unlawful compensation as prohibited by that chapter. SB 129 (Acts ch. 103).

AN ACT relating to state regulation of individuals and entities and declaring an emergency. Amends several sections of KRS pertaining to the expiration dates of certain occupational licenses; amends KRS Chapter 273 to allow certain stock corporations to convert to nonprofit corporations; amends KRS Chapter 237 to prescribe the manner in which honorably retired peace officers may qualify to carry concealed weapons. SB 142 (Acts ch. 182), effective March 31, 2005.

AN ACT creating the Interstate Compact for Juveniles. Repeals and reenacts KRS 615.010 to replace the existing Interstate Compact on Juveniles with the Interstate Compact for Juveniles. HB 46 (Acts ch. 118), effective when the 35th state ratifies the compact or upon July 1, 2006, whichever is later.

Motor Vehicles

AN ACT relating to motorcycle safety education and making an appropriation therefor. Creates new sections of KRS Chapter 15A to require the Justice Cabinet to create a motorcycle safety education program, prescribe program guidelines, establish a motorcycle safety education program fund, create the Motorcycle Safety Education Commission and prescribe its responsibilities, and establish reporting requirements; repeals KRS sections 186.870 to 186.895. SB 77 (Acts ch. 122).

AN ACT relating to mobile infrared electronic transmitters. Creates a new section of KRS 189.910 to 189.950 to prohibit the use of a mobile infrared electronic transmitter (MIRET) to change the lighting cycle of a traffic control signal unless the user is an occupant of an emergency vehicle that is responding to an emergency or a person engaged in the installation, maintenance, and testing of the traffic control signal and to prescribe penalties for unauthorized use. HB 17 (Acts ch. 28).

AN ACT relating to consumer protection. Amends KRS 186A.530, relating to branded titles for motor vehicles, to require that a vehicle that has been issued a previous title branded "junk," "unrebuildable," or other similar classification by another state, if rebuilt in Kentucky, carry a special brand on the title that warns that the vehicle may not be eligible to be titled for highway use in all states; amends 186A.990 to conform. HB 109 (Acts ch. 22).

AN ACT relating to motor vehicle registrations. Repeals existing sections of KRS Chapter 186 pertaining to special license plates and creates new sections of KRS Chapter 186 to replace them and in doing so authorizes certain special license plates, specifies the applicable fees and the allocation of those fees, and sets out the procedures for creating new series of special license plates and for making donations to particular organizations; makes conforming amendments to various sections of KRS. HB 134 (Acts ch. 133).

AN ACT relating to motor vehicle license plates. Amends KRS 186.240 to allow the Transportation Cabinet to issue new motor vehicle license plates at its discretion rather than at the five-year intervals currently required. HB 426 (Acts ch. 50).

Public Health and Safety

AN ACT relating to the protection of adults. Amends and creates various sections of KRS Chapter 209 to promote coordination and efficiency among agencies with a responsibility to respond to the abuse, neglect, or exploitation of adults by care givers, to charge the Cabinet for Families and Children with primary responsibility for services related to elder abuse, to encourage Commonwealth's attorneys and county attorneys to dedicate personnel to matters of elder abuse, and to direct various agencies to develop programs and materials addressing elder abuse; creates a new Chapter 209A to promote coordination and standardization of the reporting, investigating, and prosecuting cases of domestic violence, abuse, or neglect inflicted by a spouse. HB 298 (Acts ch. 132).

AN ACT relating to nuisance abatement. Amends KRS 381.770 to include within the nuisances prohibited by that section the accumulation of junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials and junked, wrecked, or non-operative uninhabited mobile homes. HB 345 (Acts ch. 179).

Roads and Highways

AN ACT relating to highway signs. Creates a new section of KRS Chapter 177 to require that the Transportation Cabinet, after consultation, permit any local government that so wishes to erect in the highway right-of-way motorcycle awareness signs that conform to the section and to the Manual on Uniform Traffic Control Devices. HB 39 (Acts ch. 113).

Schools and School Districts

See also Education.

AN ACT relating to the closure of schools for elections. Amends KRS 158.070 to include the day of primary elections as a day on which schools are closed. SB 7 (Acts ch. 178).

AN ACT relating to toll roads. Amends KRS 175.525(2) to make school district vehicles operating in an official capacity eligible for a nonpaying toll-road identification card. SB 115 (Acts ch. 130).

AN ACT relating to health and nutrition in schools. Creates four new sections of KRS Chapter 158 to require that (1) beginning with the 2006-7 school year each school district limit access to retail fast foods in the cafeteria to one day per week, (2) each school district appoint a qualified food service director to be responsible for the management and oversight of the food service programs in the district, (3) the Kentucky Board of Education promulgate regulations

specifying the minimum nutritional standards for all foods and beverages sold outside the National School Breakfast and National School Lunch programs, and (4) each school food service director annually assess school nutrition in the district and issue a report to parents, the school board, and the site-based decision making councils; amends KRS 156.160 to prescribe penalties for noncompliance; amends KRS 160.345 to require each school council to develop and implement a wellness policy that includes moderate to vigorous physical activity each day. SB 172 (Acts ch. 84).

AN ACT relating to the awarding of high school diplomas to veterans. Amends KRS 158.140(4) to require a local board of education to award an authentic high school diploma to an honorably discharged veteran who did not complete high school prior to induction into the United States Armed Forces during World War II or the Korean conflict. HB 60 (Acts ch. 63).

AN ACT relating to habitual truancy. Amends KRS 150.150 to redefine a truant as including any enrolled public school student up to the age of 21 who is absent or tardy without excuse for three days or more and to define as a habitual truant any student twice reported as a truant; amends KRS 159.990 to prescribe fines for truancy offenses; amends KRS 600.020 to conform. HB 72 (Acts ch. 172).

AN ACT relating to transportation. Creates a new section of KRS Chapter 281A to establish a new school bus endorsement for commercial driver's licenses and to set forth qualifications; amends KRS 186.018 to prevent the destruction of records of certain violations for driving under the influence; amends KRS 186.570 to allow suspensions or penalties for certain out-of-state speeding violations; amends KRS 186.574 to require that certain offenses appear on a person's driving history record after state traffic school; amends several sections of KRS 281A to expand the grounds that disqualify a person from holding a commercial driver's license; amends KRS 174.405 and 411.450 to update references to federal hazardous material transportation laws; creates a new section of KRS Chapter 277 to criminalize certain activities that interfere with or disrupt the operation of a railroad; amends KRS 277.350 to increase the penalty for trespass on railroad property. HB 133 (Acts ch. 165).

AN ACT relating to nonresident student contracts. Amends KRS 157.350 to allow two local school districts to enter into a nonresident student contract for more than one year and to delete reference to the best interest of the student in the determination of appeals related to SEEK funds. HB 197 (Acts ch. 52).

AN ACT relating to Vietnam veterans. Amends KRS 158.140 to require a local board of education to award a

high school diploma to an honorably discharged veteran who did not complete high school prior to induction into the United States Armed Forces during the Vietnam War. HB 230 (Acts ch. 54).

Taxes and Fees

AN ACT relating to levy and recall of taxes. Amends KRS 132.017, which applies to referenda on certain taxing ordinances, KRS 132.100, which applies to referenda on certain acts of the General Assembly, KRS 160.485, which applies to referenda on license fees, and KRS 160.597, which applies to certain school district taxes, to revise the relevant procedures and requirements including the form and content of the petitions, the duties of county clerks with respect to the petitions, the applicable time periods, and the conduct of the elections; provides that the act shall apply to orders, ordinances, resolutions, or motions passed after July 15, 2005. SB 13 (Acts ch. 121).

AN ACT relating to county law libraries. Amends KRS 453.060, relating to funding of county law libraries through attorneys' fees, to remove the requirement that a jury trial not be involved and to apply the fee statewide and not just in urban counties. SB 85 (Acts ch. 80).

AN ACT relating to fees. Amends KRS 64.090 to increase from \$10 to \$30 the fee received by a sheriff for serving process or arresting a person in misdemeanor cases. SB 105 (Acts ch. 43).

AN ACT relating to delinquent property taxes. Amends KRS 134.500, relating to delinquent property taxes, to include the filing of a cross claim as litigation by the taxpayer that will allow the addition of the 13% county attorney fee to the total due upon payment of a delinquent property tax claim. HB 4 (Acts ch. 51).

AN ACT relating to insurance premium surcharges. Amends KRS 91A.080 to permit the Department of Insurance to impose a penalty against an insurance company that willfully engages in a pattern of business that fails properly to collect and remit the fee or tax on insurance premiums imposed by a local government and to provide for refunds in the event of overpayment of the tax. HB 18 (Acts ch. 31).

AN ACT relating to occupational license fees and taxes. Amends KRS 68.180, 68.197, 91.200, 92.300, and 160.483 to provide that no local government shall regulate any aspect of the manner in which any minister of religion may perform his or her duties and activities as a minister of religion and to provide that ministers shall be subject to the same license fees imposed on other taxpayers. HB 28 (Acts ch. 167), effective July 1, 2005.

AN ACT relating to local taxation. Amends KRS 67.750, relating to local taxation, to conform its terms to the current language of the Internal Revenue Code; amends KRS 65.6851 to direct that persons assessed a job development fee receive credits against any applicable local occupational license fee or payroll tax imposed by the governing body that established the development area; and amends KRS 67.795 to defer from January 1, 2006 to July 15, 2008 the effective date of the local occupational license fee or tax on net profits. HB 116 (Acts ch. 153).

AN ACT relating to sales and use taxes. Amends KRS 139.495 to provide a partial sales tax refund on sales of donated goods by nonprofit, charitable institutions if the refund is used as reimbursement for constructing new retail facilities in this state and the institution is involved in job training and placement and other community services. HB 128 (Acts ch. 46), effective August 1, 2005.

AN ACT relating to revenue and taxation and making an appropriation therefor and declaring an emergency. The governor's tax reform package. HB 272 (Acts ch. 168), effective March 28, 2005.

AN ACT relating to local property tax exemptions. Amends KRS 132.200 to provide a definition of biotechnology products and to provide that, for assessment dates on or after January 1, 2002, biotechnology products as defined are subject to property taxation for state purposes only. HB 308 (Acts ch. 26).

AN ACT relating to the revenues and expenditures of the Commonwealth, making an appropriation therefor, and declaring an emergency. Amends KRS 136.180 to provide that the Revenue Cabinet shall centrally assess the property of common carrier water transportation companies and makes conforming amendments to other sections; amends KRS 136.184 to extend from 30 to 45 days the time within which to protest an assessment by the Revenue Cabinet; appropriates monies for debt service for bonds to be used for the Letcher County Central Vocational Center, the Russell County Learning Center, the Butler County Area Vocational Center, the Louisville Science Center, the E.P. Tom Sawyer Park, and the Louisville Zoo; provides that certain fund transfers not be made; creates a new section of KRS Chapter 424 to provide that, where public agencies must advertise or publish notices, newspapers charge the lowest rate generally charged for advertising. HB 350 (Acts ch. 106), effective March 18, 2005.

AN ACT relating to the provider tax. Amends KRS 142.301 to define or redefine various terms applicable to the Health Care Provider Tax, creates new sections of KRS 142.301 to 143.363 to impose a provider tax against regional

community mental health and mental retardation services, psychiatric residential treatment facility services, and Medicaid managed care organization services, and amends various sections to conform. HB 461 (Acts ch. 120).

AN ACT relating to sales and use tax. Creates a new section of and amends other sections of KRS Chapter 139 to conform to the Streamlined Sales and Use Tax Agreement and to exempt a seller who registers under the terms of

the agreement from assessment for uncollected or unpaid sales or use tax, penalty, and interest for sales made. HB 495 (Acts ch. 154).

AN ACT relating to the refund or recovery of taxes. Amends KRS 134.580 and 134.590 to clarify that for a refund request to be proper, a taxpayer must apply for a refund individually, not as a member of a class; amends KRS 160.637 to conform. HB 498 (Acts ch. 112).

BE IT ORDAINED . . .

LASER POINTERS AND CAMERA PHONES

In a story with a dateline of January 4, 2005, the Associated Press reported that, using the Patriot Act, federal authorities charged a New Jersey man with pointing a laser beam at an airplane overhead and temporarily blinding the pilot and co-pilot. Similar incidents reported in Colorado Springs, Colorado; Cleveland; Washington; Houston; and Medford, Oregon, raised fears the laser beams could temporarily blind cockpit crews and lead to accidents. A memo sent by the FBI and the Department of Homeland Security in December 2004 warned that terrorists have explored using lasers as weapons and may seek to down aircraft by shining powerful lasers into cockpits to blind pilots during landing approaches.

The dangers posed by lasers are not limited to those who fly. For example, police and drivers have reported that beams from laser pointing devices have caused traffic accidents and near misses. In addition, police are concerned that a laser pointer beam looks very much like the beam created by laser sights available for firearms. Having a laser beam pointed at him or her could lead a police officer to think that he or she is facing a potential threat to personal safety.

To address concerns such as these, many local governments are adopting ordinances making it illegal to use a laser to harass, annoy, or injure any person or animal. Below are two examples from Kentucky – one from Owensboro, the other from Louisville.

Using her city's ban on laser pointers as a rough model, a member of the Providence, Rhode Island, city council introduced an ordinance to address another challenge posed by a new technology – invasions of privacy by persons with camera phones or "video voyeurism." (For more about "video voyeurism," visit the Electronic Privacy Information Center, <http://www.epic.org/privacy/gender/>.) The problem received Congressional attention in the Video

Voyeurism Protection Act of 2004, which President Bush signed into law on December 23, 2004 (P.L. 108-495). New 18 U.S.C. § 1801 provides in part, "Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both." The prohibition is "inapplicable to lawful law enforcement, correctional, or intelligence activity."

The sponsors of the federal legislation intended it to serve as a model for the states. However, not all states or localities have laws regulating the use of miniature cameras in public areas. As *The New York Times* reported in "Hold It Right There, And Drop That Camera," some communities are adopting legislation on video voyeurism to regulate the use of imaging devices in places where a person has a reasonable expectation of privacy, such as health clubs and spas, sports facilities, restrooms, public showers, changing rooms, locker rooms, and tanning salons. As the story points out, an ordinance of this kind has to recognize that there is a broad but flexible standard for the reasonable expectation of privacy. Chicago and nearby Elmhurst, Illinois, provide the examples below, both of which predate the federal act.

Owensboro Code of Ordinances

Sec. 17-13. Harassment, etc. with laser device unlawful.

(1) *Definitions:* As used in this section, the following definition shall apply: *Laser device:* The term "laser device" shall mean any of several devices that convert incident electromagnetic radiation of mixed frequencies to one or more discrete frequencies of highly amplified and coherent visible radiation as well as any other such device operating on the principles of Light Amplification by Stimulated Emissions of Radiation.

(2) *Prohibited uses:* It shall be unlawful for any person to focus, point, or shine a laser device directly or indirectly into the eye(s) or onto the body of another person, animal, or toward any occupied motor vehicle, with the intent to harass, annoy, distract, intimidate, alarm, or injure such person, animal or occupant of a motor vehicle.

(3) *Possession and Other Uses Not Prohibited:* Nothing herein shall prohibit any person from owning, purchasing, possessing, or using any laser device for any lawful purpose.

(4) *Fines/Civil Penalties:* Any person found to be in violation of subsection (2) above shall be punished by a fine not to exceed one hundred dollars (\$100.00) for each offense. As an alternative to, or in conjunction with, the penalties set forth herein, any person found to be in violation of this section may also be assessed a civil penalty not to exceed one hundred dollars (\$100.00), payable to the City of Owensboro, Kentucky, within twenty (20) days of the issuance of the citation. Civil penalties not paid within the time prescribed herein may be recovered by the city in a civil action, in the same manner provided for the collection of a civil debt.

Louisville Code of Ordinances

§ 134.04 LASER DEVICES.

(A) As used in this section, the term “*LASER DEVICE*” shall mean any of several devices that convert incident electromagnetic radiation of mixed frequencies to one or more discrete frequencies of highly amplified and coherent visible radiation as well as any other such device operating on the principle of Light Amplification by Stimulated Emission of Radiation.

(B) It shall be unlawful for any person to point or otherwise direct the beam from a laser device into the eye(s) or onto the body of another person. It shall be unlawful for any person to point or otherwise direct the beam from a laser device into the eye(s) or onto the body of any animal. It shall be unlawful for any person to point or otherwise direct the beam from a laser device toward any occupied vehicle.

(C) Nothing herein shall prohibit the use of a laser device by any licensed and qualified physician, veterinarian, or medical technician for diagnostic or treatment purposes. Nothing herein shall prohibit the use of a laser device by any person for scientific, commercial, or industrial purposes provided the laser device is not directed into the eye(s) or onto the body of another person or toward any occupied vehicle. Nothing herein shall prohibit the use of a laser device by any student, regularly enrolled in any educational institution, provided such use is in a controlled laboratory or classroom setting, with the permission and under the direct supervision of a licensed teacher or instructor. Nothing herein shall prohibit the use of a laser device by any person possessing a valid Kentucky Hunting License provided the

laser device is used as an aiming device, properly mounted and affixed to a firearm and not directed into the eye(s) or onto the body of another person or toward any occupied vehicle. Nothing herein shall prohibit the use of a laser device by any person at a licensed target range provided the laser device is used as an aiming device, properly mounted and affixed to a firearm and not directed into the eye(s) or onto the body of another person or toward any occupied vehicle. Nothing herein shall prohibit the use of a laser device by any peace officer.

Municipal Code of Chicago, Illinois

8-4-125. Use of cell phones/cameras/camera phones in public privacy areas.

No person shall use a camera/cell phone or other device capable of preserving and/or transmitting an image in any public “privacy area.” For purposes of this section, “privacy area” shall be defined as rooms in structures, or other areas whether or not enclosed, designated for the administration of examinations, clinics, hospitals, and areas where a person should reasonably expect to have privacy, including but not limited to showers, locker rooms/changing rooms, bathrooms, lactation rooms, automatic teller machine areas, and cashier lines. Possession of said devices in these areas is lawful if the image-preserving and/or -transmitting portion of the device is not operational.

Videotaping, photographing, and filming by law enforcement officers pursuant to a lawful criminal investigation is exempt from this section.

Any person violating any provision of this section shall be fined not less than \$5.00 nor more than \$500.00 for each offense.

Municipal Code of Elmhurst, Illinois

51.09 Use of camera cell phones and similar devices—Restricted.

(a) Findings. The City Council finds:

(1) That there exist in the City various businesses, schools, government buildings, and institutions which contain areas in which the guests, patrons, employees, students, and invitees thereof, as well as the general public, have a reasonable expectation of a certain degree of privacy such as locker rooms, dressing rooms, bathrooms, lavatories, and shower facilities (hereinafter singularly referred to as a “protected area” and collectively referred to as “protected areas”);

(2) That the reasonable expectation of privacy of the aforesaid guests, patrons, invitees, employees, and the gen-

eral public, while present in any protected area, cannot exist if the use of any device capable of recording, producing, duplicating, reproducing, storing, copying, transmitting, or displaying any visual, video, photographic, electronic, or digital recorded image, picture, or representation is permitted to be used without restriction in any protected area;

(3) That included among such devices capable of producing visual images is a cellular telephone, and therefore persons may experience a heightened concern about the protection of his or her privacy interests if such cellular phones are permitted to be used in protected areas without restriction;

(4) That restricting the use of cellular telephones having the capacity to produce, record, or transmit visual images, and other devices having the same or a similar capacity, in protected areas by requiring that such devices could not be used without first obtaining the consent of the person whose image is produced, recorded, or transmitted, would not prove to be an undue burden on any individual, in light of the privacy interests to be protected by such a restriction; and

(5) That the City Council finds it to be necessary and desirable to safeguard, protect, and preserve the privacy interests of the employees, patrons, guests, invitees aforesaid, and the general public while present in any protected area, and that in order to do so the use of certain devices by any person while present in a protected area should be restricted.

(b) Definitions.

(1) “Protected area” and “protected areas” means and includes any locker room, dressing room, bathroom/restroom, lavatory, shower or bathing facilities located in any

business establishment, school, or college (whether public or private), government building and institutional facility and like areas where one has a reasonable expectation of personal privacy. An institutional facility shall include any hospital, clinic, nursing home, respite home, or like facility used by or available for use by guests, patrons, employees, students, or invitees, as well as the general public, as the case might be. No private residence shall be included within the definition set forth herein, except to the extent and during those times a private residence is utilized for or as part of any home occupation as such term is defined in the Elmhurst zoning ordinance.

(2) “Visual recording device” means any electronic, mechanical, manual, electric, digital, voltaic, or other device, instrument, or means capable of recording, producing, duplicating, reproducing, storing, copying, transmitting, or displaying any visual, video, photographic, electronic, digital, recorded, or other visual image, picture, or representation, including, but not limited to, any camera, camcorder or videotaping device; and that capability or feature of any cellular telephone that enables such cellular telephone to record, produce, duplicate, reproduce, store, copy, transmit, or display any video, photographic, electronic, digital, or other visual image, picture, or representation.

(c) Use of Visual Recording Devices Restricted in Protected Areas. No person shall use any visual recording device to produce, reproduce, record, duplicate, store, display, or transmit the visual image of another person without that person’s consent if such use of the visual recording device takes place in any protected area.

(d) Penalty. Any person who violates this section shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00) and the costs of prosecution.

Director’s Desk *continued from page 2*

The burden of proof remains on the agency to show that the exception applies. In addition, should an agency deny access out of concern for public safety, it must on the same day forward a copy of the written denial to the executive director of the Office for Security Coordination and to the Attorney General.

Kentucky’s amendment, like those of the other states, is not the product of experience but of speculation about what could go wrong. In an interview with Stateline.org, Charles Davis, executive director of the Freedom of Information Center at Missouri School of Journalism, said, “There’s an

assumption that secrecy guarantees security. That’s where I get off the bus. For people to know what government officials are doing and to act responsibly in the ballot box, we need full access to information.”

It is a hard open-government nut to crack. How does the government disclose to citizens that it has plans to protect them – including the costs of those plans – without releasing details that would expose vulnerabilities? The public has a right to know how government is investing tax dollars and to engage in legitimate policy debate, even when it relates to homeland security.

The Chase Local Government Law Center

Telephone: (859) 572-6313

Fax: (859) 572-6302

E-mail: clglc@nku.edu

Website: access.nku.edu/localgov/

Local Government Law News

A publication of the Chase
Local Government Law Center

Local Government Law News is published three times each year by the Chase Local Government Law Center, offices located in Room 406, Nunn Hall, Northern Kentucky University, Nunn Drive, Highland Heights, Kentucky 41099. *Local Government Law News* is printed by Northern Kentucky University with state funds (KRS 57.357) under a grant from the Governor's Office for Local Development and is distributed free of charge to local government officials, attorneys, managers, and others in Kentucky. Articles and manuscripts for publication in the newsletter are solicited and may be submitted to the Local Government Law Center for consideration. Articles contributed are printed as received from the contributors. Articles printed represent the views of the contributors and do not necessarily reflect the views of the Department for Local Government, Northern Kentucky University, or the Chase Local Government Law Center.

Phillip M. Sparkes
Director

Kathleen Gormley Hughes
Assistant Director

This publication was prepared by Northern Kentucky University and printed with state funds (KRS 57.375). Equal Education and Employment Opportunities M/F/D. 09597

Nonprofit Organization
U.S. Postage
PAID
Newport, KY
Permit No. 2

Northern Kentucky University
Chase Local Government Law Center
406 Nunn Hall
Nunn Drive
Highland Heights, Kentucky 41099