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FEDERAL ADVISORY IMPINGES OPEN RECORDS LAWS

Advocates of openness in government are expressing concern about a recent opinion by the U.S. Department of Education. The opinion gives schools greater control over the information necessary to determine whether they comply with state open records laws. Critics of the opinion worry that schools may use it to hide information that students and parents use to evaluate schools.

The opinion has its origins in an attempt by a local newspaper in Texas to use the Texas Public Information Act (PIA) to discover facts related to the arrest of a high school volleyball coach.¹ The incident involved accusations that the coach inappropriately touched a female student on a school bus ride home from a match. In response to the newspaper's request for a copy of the student's report of the incident, the school district provided a copy in redacted form. The newspaper then filed a complaint with the Texas attorney general asserting that the school redacted too much information. The attorney general's office asked the school to provide it with an unredacted copy of the report so that the office could make a determination about the district's compliance with the PIA. The school refused to do so. The Family Educational Rights and Privacy Act (FERPA, also known as the Buckley Amendment to the Privacy Act of 1974),² it said, did not authorize it to disclose the record to the attorney general.³

The school, however, did provide an unredacted copy of the incident report to the Family Policy Compliance Office in the U.S. Department of Education. The FPCO administers the Family Educational Rights and Privacy Act and the Protection of Pupil Rights Amendment and provides technical assistance to educational agencies and institutions regarding compliance.⁴ The Texas attorney general's office agreed to have FPCO make a determination about the school district's compliance with FERPA regarding redaction of the student report. Subsequently, the FPCO wrote letters to the school district⁵ and to the attorney general⁶ interpreting FERPA.

In its letter to the school district, FPCO explained that an educational agency subject to FERPA may not have a policy or practice of disclosing education records, or non-directory personally identifiable information from education records, without the prior written consent of the parent or eligible student except as provided by law. Education records are records, files, documents, and other materials that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution.⁷

While FERPA prevents the transfer of, release of, or access to personally identifiable information contained in education records, an educational agency or institution may release education records without meeting the written consent requirements if it removes all personally identifiable information from the records. Personally identifiable information includes information such as the student's name, the names of parents or other family members, the address of the student or the student's family, or a student's Social Security number or student number. Personally identifiable information also includes a list of personal characteristics or other information that would make the student's identity easily traceable.⁸

FPCO noted that occasionally a student's identity might be easily traceable even after redaction of identifying information from student-level records. It gave as an example a highly publicized disciplinary action or one that involved a well-known student. In such instances it might still be easy to identify a student even after the record has been scrubbed of

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DIRECTOR'S DESK

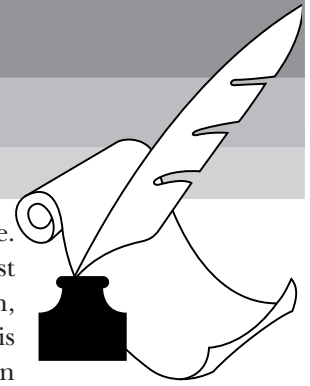
Terry Sanford and the New South, the excellent recent PBS documentary about the former North Carolina governor, is testimony to the power of a governor with vision and conviction. Sanford's progressive leadership in the field of civil rights coupled with his commitment to education changed more than just his state. His accomplishments include blazing the trail for Research Triangle Park, which sparked an economic surge in the state. He also established the North Carolina School for the Arts to keep creative students in their home state. Today it attracts nearly as many students from outside the state as from within it.

For understandable reasons legislatures are seldom the subjects of documentaries. If today someone were to make a documentary about the 2007 regular session of the Kentucky General Assembly, it might focus more on what did not pass than on what did. A proposal to reform the state employee and teachers retirement systems and proposals to fund university buildings were not passed. The session was, in the words of one lawmaker, "a missed opportunity." In all, lawmakers introduced 795 measures of which 123 passed. Of those, we summarize 49 in this issue's review of bills affecting local government.

Many of the bills that received attention in the popular press had little to do with local government. These include measures to protect coal miners, raise speed limits, and boost the minimum wage. One exception was the "Boni Frederick Bill," Senate Bill 59. The bill establishes a new safety protocol and appropriates \$6 million to hire new "front line" social workers in the hope that improved working conditions will prevent tragedies like the death of Boni Frederick. This concern for the safety of public employees is laudable, but it should not end with this bill. Many public employees not on the "front line" are potentially vulnerable as well. It is easy, for example, to overlook the fact that the faculty members killed at Virginia Tech recently were public employees, too.

Tragedy also prompted another change in law, this one perhaps of special interest to the fire service. Kentucky became the most recent state to require sales of fire-safe cigarettes when it passed Senate Bill 134. It was partially a response to the death of 10 people in a Bardstown fire

caused by a smoldering cigarette. In 2004 New York was the first state to adopt such legislation, and officials there say the law is producing a noticeable reduction in fires and fatalities. It has been a long time coming. More than 20 years ago, I worked on the issue as counsel to the New York Office of Fire Prevention and Control.



As Senate Bills 59 and 134 show, it is often only after a tragedy that government programs and institutions change. A refreshing departure from that pattern is Senate Bill 104. It authorizes the Department for Mental Health and Mental Retardation Services to coordinate the development of a regimen to train law enforcement officials to intervene with persons who may have a mental illness, substance abuse disorder, mental retardation, or developmental disability. The model is the highly successful program of the police department in Memphis, Tennessee. The Memphis program recognizes that traditional police methods, misinformation, and a lack of sensitivity cause fear and frustration among this segment of the community. Memphis describes its program as a model committed to preventing tragedy.

Those engaged in emergency services will also welcome Kentucky's adoption of the Uniform Emergency Volunteer Health Practitioners Act, House Bill 287. An outgrowth of lessons learned in the course of the Gulf Coast hurricanes in 2005, the act provides a structure to incorporate into disaster relief operations the services performed by volunteer private sector health practitioners. Among the bill's provisions are procedures to recognize the valid and current licenses of practitioners from other states for the duration of an emergency. It also requires that volunteer health practitioners adhere to the scope of practice standards during the emergency, and it reduces the exposure of the practitioners and those that employ or use them to disciplinary sanctions based on actions during the emergency.

Those are all significant developments that hold out the prospect of long-term benefits to public employees and the people they serve. However, the bill that holds out the prospect of the greatest impact on local governments – House

Bill 549 – passed with little fanfare. It expands and restructures the tax increment financing (TIF) tools used by state and local governments to provide incentives for public and private redevelopment. Immediate beneficiaries of the bill will be the Museum Plaza project in Louisville and the Ovation project in Newport. More generally, the bill creates a

mechanism for offering state and local financial incentives for projects of various sizes in all communities.

If in the future someone were to make a documentary about the 2007 regular session of the Kentucky General Assembly, it might judge the legislature less harshly.

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identifying information. In such circumstances, FPCO said, “FERPA does not allow release of the education record in any form without consent because the irreducible presence of ‘personal characteristics’ or ‘other information’ make the student’s identity ‘easily traceable.’”⁹ FPCO noted that a student’s identity might also be easily traceable in the release of aggregated or statistical information derived from education records. The letter concluded:

In sum, where a disclosure of personally identifiable information in education records does not fall within an exception to the prior written consent rule, an educational agency or institution itself is in the best position to determine, at least at the outset, what information must be removed from education records in order to ensure that a student’s identity is not easily traceable. If, because of other records that have been released, or other publicly available information, the redaction of names, identification numbers, and dates and times of incidents is not sufficient to prevent the identification of a student involved in a disciplinary proceeding, including student victims and student witnesses, then FERPA prohibits an educational agency or institution from having a policy or practice of releasing the information. The educational agency or institution must either remove or redact all of the information in the education record that would make a student’s identity easily traceable or refuse to release the requested education record at all.¹⁰

As FPCO would explain to the Texas attorney general in a later letter, this meant that “FERPA does not permit the District to disclose personally identifiable information from students’ education records to the [Office of the Attorney General], without prior written parental consent, for the purpose of determining whether the District is in compliance with the PIA.”¹¹

The Texas Public Information Act has in it a provision similar to that in the Kentucky Open Records Act that exempts from disclosure “public records or information the disclosure of which is prohibited by federal law or regula-

tion.”¹² Texas law and Kentucky law are also similar in that they afford a procedure by which the attorney general can review records that an agency proposes to withhold pursuant to the claimed exemption.¹³ Despite the existence of these state law procedures, the position of FPCO was that federal law, not state law, controlled access to school records.

In its letter to the attorney general’s office, FPCO noted that an exception in FERPA allows an educational agency or institution to disclose education records to “authorized representatives” in certain instances.¹⁴ However, FPCO concluded that the Texas attorney general was not an “authorized representative” within this exception because the attorney general was not under the direct control of the district in this matter (as would be the case, for example, with outside counsel).

Since the OAG is neither a “State educational authority” nor an authorized representative of a State educational authority ... the District may not disclose personally identifiable information from education records to the OAG, without consent, under §§ 99.31(a)(3) and 99.35 of the FERPA regulations.... FERPA does not require educational agencies and institutions to redact the minimum information necessary in order to provide the maximum information possible to an outside party requesting access under State open records laws. *Since only parents and eligible students have a right to inspect and review education records under FERPA, there is no FERPA compliance issue if the District removes more than the absolute minimum of personally identifiable information when disclosing records, without consent, to a third party.*¹⁵

What concerns advocates of open government is that the advisory lets schools police themselves and shields them from challenges because they cannot disclose what they have blocked.¹⁶ Any appeals that did arise would have to go to the U.S. Department of Education where prospects for success appear dim.

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KENTUCKY V. DAVIS: A QUESTION OF TAX PARITY IN A FLAT WORLD*

By Caryl Stephens Johnson**

Before this article is published, the U.S. Supreme Court (the “Court”) should have determined whether to hear *Kentucky v. Davis*,¹ on a petition by writ of certiorari by the Commonwealth of Kentucky (the “Commonwealth” or “Kentucky”). This case is of significance to the states and their political subdivisions engaged in borrowing funds through the authorization and issuance of tax-exempt municipal securities² because, if affirmed by the Court, it will nationalize the market for municipal bonds of any state. Further, this case is important to the municipal securities industry where underwriting tax-exempt bond mutual funds is currently limited to state-specific offerings. It is hoped that the Court will hear this case and provide bright line guideposts in the nascent concept of tax parity of municipal securities to assist municipal securities practitioners.

Kentucky v. Davis arose from an appeal by taxpayers to a grant by the trial court of summary judgment in favor of the Department of Revenue of the Finance and Administration Cabinet for the Commonwealth of Kentucky over the issue of Kentucky’s state policy of taxing the interest on tax-exempt municipal bonds issued by “sister states.” The central issue in the case is the constitutionality under the dormant Commerce Clause of the U.S. Constitution³ of a state exempting from taxation the interest on bonds issued by the state or its political subdivisions while taxing the income on out-of-state bonds, which are tax-exempt under the Internal Revenue Code and under the tax laws of such “sister” state. The Kentucky Court of Appeals⁴ ruled in favor of the taxpayers to the effect that taxing out-of-state bonds while exempting in-state bonds from taxation was found to be discriminatory in violation of the Commerce Clause without the benefit of any judicially recognized exception. The Kentucky Supreme Court refused to hear the case on further appeal, and the Commonwealth sought certiorari on the ground of unconstitutionality and a contrary holding on similar facts in an Ohio decision, *Shaper v. Tracy*,⁵ causing a split among state courts.⁶

In the *Shaper* case, an Ohio appeals court found that under identical facts, Ohio taxpayers were not entitled to relief from paying tax on out-of-state tax-exempt bonds they owned on the theory that Ohio’s tax regime violates the Commerce Clause. The court in *Shaper* applied recognized exceptions to finding unconstitutionality under the

dormant Commerce Clause (discussed *supra*) and upheld the state tax prohibiting the exemption from taxation of interest on non-Ohio municipal securities.

The dormant Commerce Clause forbids states from interfering with interstate commerce by protecting in-state economic interests at the expense of out-of-state economic interests. In analyzing the constitutionality of a statute under the Commerce Clause, one that is found to be *per se* discriminatory will be upheld under a strict scrutiny standard if there exists a reason unrelated to economic protectionism to justify the discriminatory action.⁷ Alternatively, if a court finds that the statute is not facially invalid, but its impact is discriminatory, a court may apply a balancing test to determine if there is any legitimate reason for the discriminatory action.⁸

This analysis has led the Court to create several exceptions to the application of the dormant Commerce Clause, namely, the “market participant” exception, the “sovereign entity” exception, and the “subsidy” exception. The “market participant” exception sanctions a state’s discriminatory actions when the state is a market participant, for example, when the state is a buyer or a seller (say, as an issuer of municipal securities).⁹ In *Kentucky v. Davis*, the Commonwealth argued the “market participant” exception, not as a business enterprise, but as a sovereign acting on behalf of itself, in a manner to favor itself over other sovereign states.¹⁰ Further, the Commonwealth argued that the Court has not found a constitutional basis that would prohibit a state from favoring its own citizens over out-of-state citizens,¹¹ and that the in-state tax exemption is an inducement to Commonwealth residents to purchase the Commonwealth’s bonds instead of corporate securities or bonds of other states.¹² The Commonwealth pointed out to the Court that the issuance and sale of tax-exempt bonds by any state that exempts from taxation the income earned by its citizens from its bonds while taxing the income earned by its citizens on “sister state” tax-exempt obligations is a question that needs to be formally addressed by the Court to prevent further division.¹³

In the appeal to the Court, the respondent-taxpayers, the Davises, argued that Kentucky’s tax statute is facially invalid and violates the dormant Commerce Clause *per se*, and that the court of appeals decision (finding the statute

unconstitutional) is consistent with the Court's jurisprudence in this area.¹⁴ The respondents argued that reduced borrowing costs for the Commonwealth's tax-exempt bonds is a form of economic protectionism and, therefore, not constitutionally permissible.¹⁵

Some commentators have equated the concept of the tax exemption on in-state municipal securities to that of a subsidy, which the Court has found to be permissible¹⁶ (i.e., when an increase in yield on a municipal security inures to the benefit of in-state bondholders). This argument most recently was advanced in *West Lynn Creamery v. Healy*.¹⁷ The Court, in *West Lynn Creamery*, determined that, when a pure subsidy is funded out of the general revenue and paid for by all taxpayers, there is no burden on interstate commerce.¹⁸ Applying this analysis to *Kentucky v. Davis*, all taxpayers pay for a state tax exemption equally from the general fund of the state, therefore, providing the exemption does not burden interstate commerce. However, the court of appeals did not adopt this view.

Because of the novelty and importance of *Kentucky v. Davis* to the municipal securities industry, some observers believe the Court will hear the case. An affirming decision from the Court may provide definitive rules by which to apply dormant Commerce Clause analysis. Indeed the dissents in *Camps Newfound/Owatanna v. Town of Harrison, Maine* evidence pause for concern among the Justices that the Court's jurisprudence in the area of the dormant Commerce Clause may have gone astray. Interestingly in Justice Thomas's dissent, he finds another basis a taxpayer could use to challenge state taxation of municipal securities: the Import-Export Clause.¹⁹ Justice Thomas's dissent includes a discussion of the historical significance and meaning of the Import-Export Clause and its application to the imposition of taxes on written property that crosses state borders.²⁰ It is Justice Thomas's contention that the Import-Export Clause prohibits not only taxation of foreign imports, but also the taxation of commerce between the states.²¹

Should the Court hear the case, there are at least two important outcomes. First, the Court could decide to uphold the Kentucky Court of Appeals decision and clarify the dormant Commerce Clause in that context. States would have to decide whether to tax all municipal securities or exempt all municipal securities from state taxation. State concern as to how much revenue would be gained or lost from taxation would take center stage. Further, state concern would focus on potentially significant borrowing rate increases, if all state and local government bonds are taxed at the state level. With affirmation by the Court, there

may suffer the demise of single-state mutual funds.²² Some estimate that the interest rate on single-state mutual funds may be between 10 to 25 basis points lower than the mutual funds of those states that do not provide the state tax exemption. Those states that do not offer tax exemptions may realize reduced borrowing costs because they would no longer have to offer taxable high-yield bonds to attract investment dollars.²³

What are the implications for states like Louisiana that have seen their credit ratings slide in the wake of natural disasters? A thought worth considering is whether a national or multi-state bond fund would be considered less risky than a state-specific fund because the investment pool would be more diverse. The fund theoretically would be more sensitive to national economic cycles and less sensitive to geographic economic cycles — and tax-exempt or not at the state level depending on the Court's decision in *Kentucky v. Davis*.

Second, the Court could overturn the court of appeals and adopt an exception to the dormant Commerce Clause doctrine for municipal securities while ignoring Justice Thomas's argument that the Import-Export Clause should apply to domestic commerce. In that case, the ruling of *Kentucky v. Davis* will extend no further than Kentucky, and as to state taxation of municipal securities, it will not be a flat world²⁴ after all.

Certainly, creating a national or multi-state market for municipal bonds would seem to be the direction Congress and the U.S. Securities and Exchange Commission would like the Court to move. Likewise, market makers in municipal securities could greatly expand their product mix and investment offerings in a national market, replete with all the trappings of full disclosure and transparency that accompany flat world thinking. With regulators and the regulated community both cheering on the Court to accept certiorari and affirm, the outcome of this case will not go unnoticed.

Endnotes

* "*Kentucky v. Davis: A Question of Parity in a Flat World*" by Caryl Stephens Johnson published in *State and Local Law News*, Volume 30, No. 3, Spring 2007. Copyright © 2007 by the American Bar Association. Reprinted with permission.

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1. *Kentucky v. Davis*, No. 2004-CA-001940-MR, 2006 Ky. Ct. App. (6th Cir. Jan. 6, 2006) (to be published). [Cert. granted 5/21/07. – Ed.]

2. I.R.C. §§ 103(a) et seq. & 144 et seq. (1986).
3. U.S. Const., art. I, § 8, cl. 3.
4. Kentucky v. Davis, No. 2004-CA-001940-MR, 2006 Ky. Ct. App. (6th Cir. Jan. 6, 2006), *petition for cert. filed* (No. 06-666).
5. Shaper v. Tracy, 647 N.E.2d 550 (Ohio Ct. App. 1994).
6. Kentucky v. Davis, No. 2004-CA-001940-MR, 2006 Ky. Ct. App. (6th Cir. Jan. 6, 2006), *petition for cert. filed* (No. 06-666).
7. New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 278 (1988).
8. Camps Newfound/Owatanna, Inc. v. Town of Harrison, Maine, 520 U.S. 564, 598 (1997) (quoting Piker v. Bruce Church, Inc., 397 U.S. 137, 142 (1970)).
9. *Shaper*, 647 N.E.2d at 763.
10. Kentucky v. Davis, No. 2004-CA-001940-MR, 2006 Ky. Ct. App. (6th Cir. Jan. 6, 2006), *petition for cert. filed* (No. 06-666), at 14.
11. *Id.* at 15.
12. *Id.* at 16 (citing Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 810 (1976)).
13. Kentucky v. Davis, No. 2004-CA-001940-MR, 2006 Ky. Ct. App. (6th Cir. Jan. 6, 2006), *petition for cert. filed* (No. 06-666), at 13.
14. Brief for Respondent at 4, *Kentucky v. Davis*, No. 2004-CA-001940-MR, 2006 Ky. Ct. App. (6th Cir. Jan. 6, 2006) (No. 06-666).
15. *Id.* at 7.
16. Dan T. Coenen, *Untangling the Market-Participant Exemption to the Dormant Commerce Clause*, 88 Mich. L. Rev. 395, 474 (1989).
17. 512 U.S. 186 (1994).
18. *Camps Newfound/Owatanna, Inc.*, 520 U.S. at 564.
19. No state shall, without the consent of the Congress, lay any imposts or duties on imports produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. U.S. Const., art. I, § 10 cl. 2.
20. *Camps Newfound/Owatanna, Inc.*, 520 U.S. at 621.
21. *Id.*
22. At current estimates, there are over 1300 single-state mutual funds.
23. John Birger, *A Bomb in the Muni Market?*, *Fortune*, Feb. 5, 2007, at 112, *available at* http://money.cnn.com/magazines/fortune/fortune_archive/2007/02/05/8399181/index.htm.
24. Thomas L. Friedman, *The World Is Flat: A Brief History of the Twenty-First Century* (Farrar, Straus & Giroux 2005).

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Endnotes

1. Tara Copp, *Schools Given More Controls Over Records*, Cox News Service (April 25, 2007), *available at* <http://www.coxwashington.com/news/content/reporters/stories/2007/04/25/TARA15.html>. See Lee R. Remington, *School Internal Investigations of Employees, Open Records Laws, and the Prying Press*, 31 J.L. & Educ. 459 (2002) (discussing a school district's duty to turn over internal investigations involving disciplinary procedures to requesting entities under state open records laws).
2. 20 U.S.C. § 1232g; 34 C.F.R. Part 99.
3. U.S. Department of Education Online Library, *Letter to School District re: Disclosure of Education Records to Texas Office of Attorney General* (April 6, 2006), *available at* <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/tx040606.html>.
4. The Family Policy Compliance Office home page is at <http://www.ed.gov/policy/gen/guid/fpco/index.html>.
5. *Id.*
6. U.S. Department of Education Online Library, *Letter to Texas Office of Attorney General re: Disclosure of Education Records by School District* (July 25, 2006), *available at* <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/txago072506.html>.
7. 20 U.S.C. § 1232g(a)(4)(i) and (ii). See also 34 C.F.R. § 99.3 "Education records."
8. 34 C.F.R. § 99.3.
9. Letter to School District, *supra* note 3, at page 3.
10. *Id.* at page 4.
11. Letter to Texas Office of Attorney General, *supra* note 6, at page 1.
12. KRS 61.878(1)(k). Compare Texas Government Code § 552.101 ("Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.").
13. See KRS 61.880(2) and 40 KAR 1:030(3). Compare Texas Government Code § 552.301.
14. 34 C.F.R. §§ 99.31(a)(3)(iv) and 99.35(a); 20 U.S.C. § 1232g(b)(3) and (b)(5).
15. Letter to Texas Office of Attorney General, *supra* note 6, at pages 4-5 (emphasis added).
16. For a criticism of FERPA in a similar vein, see Matthew R. Salzwedel and Jon Ericson, *Cleaning Up Buckley: How the Family Educational Rights and Privacy Act Shields Academic Corruption in College Athletics*, 2003 Wis. L. Rev. 1053.

THE 2006 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 2007 Regular Session of the Kentucky General Assembly will be effective on the first moment of Tuesday, June 26, 2007.” Opinion of the Attorney General 07-002 at pages 2-3.

ALCOHOLIC BEVERAGES

AN ACT relating to alcoholic beverages. Adds a new section to KRS Chapter 242 to authorize a local option election for the limited sales of alcoholic beverages by the drink in the precinct of the county where there is a qualified historic site and amends other sections of KRS accordingly; adds a new section to KRS Chapter 242 to authorize a local option election on the sale of alcoholic beverages by the drink at restaurants and dining facilities that seat a minimum of 50 persons and derive a minimum of 70 percent of their gross receipts from the sale of food; amends KRS 243.033 to extend caterers’ licenses to serve malt and alcoholic beverages in cities and counties in certain instances; and amends KRS 244.290, 244.295, and 244.480 to allow an urban-county government to extend Sunday sales. HB 138 (Acts ch. 99).

AUTHORITIES, BOARDS, COMMISSIONS, AND SPECIAL DISTRICTS

AN ACT relating to special districts. Amends KRS 65.065, 262.280, and 262.763 to increase from \$400,000 to \$750,000 the threshold for the performance of an annual audit. HB 448 (Acts ch. 114).

AN ACT relating to the administration of boards established by local ordinance. Amends KRS 147.670 to allow area planning commissions to enter into interlocal agreements with cities, counties, and other public and private agencies and organizations for certain purposes; amends KRS 65.8811 to require code enforcement boards to have at least three members and to provide for staggered terms. HB 355 (Acts ch. 106).

BUILDINGS AND BUILDING CONSTRUCTION

AN ACT relating to heating, ventilation, and air conditioning and making an appropriation therefor. Adds new sections to KRS 198B.650 to 198B.689 to require a permit for the installation of HVAC systems, impose inspection requirements, grant the Office of Housing, Buildings, and Construction authority to regulate the permitting process, allow local governments to act as the agent for the office, set qualifications for HVAC inspectors and define their powers, allows county, city, or Commonwealth’s attorneys, or the attorney general, to represent the office or its agents, and grants aggrieved parties the right to an administrative hearing. SB 10 (Acts ch. 86), portions effective July 1, 2008, other portions effective January 1, 2009.

CITIES

AN ACT changing the classification of the City of Crestview Hills in Kenton County. Reclassifies the city of Crestview Hills, in Kenton County, from a city of the fifth class to a city of the fourth class. HB 177 (Acts ch. 98).

AN ACT relating to local government. Repeals KRS 97.405 pertaining to boards of park commissioners in cities of the second class and amends other sections of KRS Chapter 97 to conform. HB 115 (Acts ch. 10).

COUNTIES

AN ACT relating to county law libraries. Amends KRS 172.100 and 172.200 to allow locations for the library beyond the courthouse and to allow the provision of online legal resources by the library. HB 273 (Acts ch. 35).

COURTS

AN ACT relating to jury service. Amends KRS 29A.100 to excuse breastfeeding mothers from jury service. SB 111 (Acts ch. 102).

AN ACT relating to the certification of court security officers. Adds new sections to KRS Chapter 15 and amends several others to provide for the certification of court security officers; adds new sections to KRS Chapter 70 to prescribe the duties of court security officers and to govern the provision of security services in the courts. SB 153 (Acts ch. 54).

CRIME AND CRIMINAL JUSTICE

AN ACT relating to crimes and punishments. Amends KRS 365.250 to require junkyards and scrap metal dealers to keep a register of purchases of copper and to report the purchases to the appropriate sheriff and police department; amends KRS 365.990 to conform. HB 82 (Acts ch. 81).

AN ACT relating to crimes and punishments. Amends KRS 439.3405 to require notice by the Parole Board to victims, prosecutors, and law enforcement of a pending medical parole hearing; adds a new section of KRS Chapter 441 to allow a local jail to transfer a prisoner to the Department of Corrections for specialized or long-term medical care; adds a new section to KRS Chapter 441 to require insurance carriers to pay for medical care of their insured when in a county jail and not a prisoner of the state; adds a new section to KRS Chapter 441 to require, with certain exceptions, the use of the state pharmacy and medical, dental, or psychological care access plans; confers authority on the Secretary of the Justice Cabinet in extraordinary circumstances. HB 191 (Acts ch. 128).

ECONOMIC DEVELOPMENT

AN ACT relating to economic development, making an appropriation therefore and declaring an emergency. Adds a new Subchapter 25 to KRS Chapter 154, adds a new section to KRS Chapter 141, and makes conforming amendments to other sections to establish an economic development incentive program for companies within the jurisdiction of a consolidated local government; appropriates \$10,000,000 to the Cabinet for Economic Development for use by the Bluegrass State Skills Corporation and provides that an amount not to exceed \$8,000,000 during the 2006-2008 biennium be available to fund training grants for the Bluegrass State Skills Corporation. HB 536 (Acts ch. 91), effective March 23, 2007.

AN ACT relating to tax increment financing and urban redevelopment. In part, adds new sections to KRS Chapter 65 and amends others to restructure tax increment financ-

ing (TIF) tools for use by state and local governments to provide incentives for public and private redevelopment and investment; provides for the establishment local development areas and development areas, the Commonwealth Participation Program for Real Property Ad Valorem Tax Revenues, the Signature Projects Program, and the Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas; establishes the State Tax Increment Financing Commission; and establishes the Division of Tax Increment Financing within the Department of Revenue. HB 549 (Acts ch. 95).

ELECTIONS

AN ACT relating to elections and declaring an emergency. Amends KRS 117.255 to provide that a person with a disability may have longer than two minutes in which to cast a ballot; amends KRS 118.215 to change the deadline for certification of nomination in a presidential election year and amends KRS 118.365 to conform. SB 14 (Acts ch. 133).

AN ACT relating to elections. Amends KRS 118.105 to provide for the nomination of a replacement candidate in certain circumstances and amends KRS 118.305 to impose on the political party offering a replacement candidate the costs of any necessary reprogramming of voting machines. HB 66 (Acts ch. 46).

AN ACT relating to voting rights for persons with disabilities. Amends KRS 387.590 to remove the automatic loss of the right to vote upon the appointment of a guardian and amends KRS 387.580 to provide that at the hearing convened to determine the disability the court shall, without a jury, determine whether the person retains the right to vote. HB 374 (Acts ch. 58).

EMERGENCY MEDICAL SERVICES

AN ACT relating to the Uniform Emergency Volunteer Health Practitioners Act. Establishes a new KRS Chapter 39G, styled the Good Samaritan Act of 2007, adding new sections to allow health practitioners licensed in other states voluntarily to provide services in Kentucky during an emergency declaration, to authorize the limitation, restriction, and regulation of practice by volunteer health practitioners, to create a registration system for volunteers, and to requires volunteer practitioners to adhere to the scope of practice for similarly licensed practitioners in Kentucky; amends numerous sections of KRS to conform. HB 287 (Acts ch. 96).

FINANCE

AN ACT relating to uniform financial information reports for local governments. Amends KRS 65.905 to delete specific content requirements for uniform financial information reports and allow the Governor's Office for Local Development to prescribe the content of the report by regulation; makes technical amendments to other sections of KRS; repeals KRS 65.915 pertaining to the date of filing for the first uniform financial information report. SB 60 (Acts ch. 20).

AN ACT relating to jail canteen accounts. Amends KRS 441.135 to require that, except in urban county governments and consolidated local governments, jail canteen accounts be at prescribed minimum levels on the first day of each fiscal year. HB 114 (Acts ch. 64).

FIRE SERVICE

AN ACT relating to cigarettes. Adds new sections to KRS Chapter 227 to require that cigarettes sold in Kentucky be so-called "fire-safe" cigarettes; sets standards for cigarette ignition propensity, requires manufacturers to submit written certifications to state, sets out requirements for cigarette package markings, specifies civil penalties for violations, confers powers on state fire marshal, and creates a special Fire Prevention and Public Safety Fund. SB 134 (Acts ch. 70).

AN ACT relating to incompatible offices. Amends KRS 61.080 to provide that service as a volunteer firefighter in a volunteer fire department district or fire protection district is not incompatible with holding any civil office in the commonwealth. HB 107 (Acts ch. 26).

AN ACT relating to local government. In part, adds a new section to KRS Chapter 75 to provide that if taxes were collected by a fire district when no taxes were due for the tax year beginning January 1, 2005, any unrefunded tax moneys will not escheat to the state but will be available for expenditure by the fire district board. SB 74 (Acts ch. 37).

GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT

AN ACT relating to local government. In part, adds a new section to KRS Chapter 147A to require the Department for Local Government to encourage and track broadband investment and adoption in the state and to contract with

a nonprofit organization to accomplish the goals of the section. SB 74 (Acts ch. 37).

AN ACT relating to reorganization. Confirms Executive Order 2006-678 except for the provision abolishing the East Kentucky Corporation; changes the name of the Department for Local Government to the Governor's Office for Local Development; amends KRS 147A.002 to establish the organizational structure of GOLD, amends KRS 147A.003 to attach the Kentucky Infrastructure Authority to GOLD; amends and repeals various statutes to abolish the Division of Flood Control, Kentucky Community Development Office, Kentucky Appalachian Commission, West Kentucky Corporation, Water Resource Development Commission, Appalachian Development Council, Flood Control Advisory Commission, County Officials' Compensation Board, Local Government Advisory Commission, State-Federal Council for Balanced Economic Growth, and Kentucky Urban Affairs Council; provides directions to the reviser of statutes. SB 76 (Acts ch. 47).

LAW ENFORCEMENT

AN ACT relating to police in consolidated local governments. Amends KRS 67C.319 in connection with promotional examinations regarding credit for seniority and the setting of cutoff scores when the number of applicants exceeds the number of positions available. SB 100 (Acts ch. 131).

AN ACT relating to mental illness. Amends KRS 210.365 to require the Department for Mental Health and Mental Retardation Services to coordinate the development a training regimen patterned on the model of the Memphis Police Department Crisis Intervention Team to train law enforcement officials to intervene with persons who may have a mental illness, substance abuse disorder, mental retardation, or developmental disability. SB 104 (Acts ch. 49).

AN ACT relating to peace officers. Amends KRS 431.007 to confer on certain certified peace officers the same power of arrest in another jurisdiction as in their own when that other jurisdiction officially requests assistance. SB 126 (Acts ch. 108).

AN ACT relating to peace officer certification. Amends KRS Chapter 15.400 to permit an officer to retain certification if employed within 60 days by another law enforcement agency that is subject to certification; amends KRS 15.380 to allow commonwealth detectives and county detectives

to participate in the peace officer certification program; amends KRS 15.386 and 15.392 to conform; and makes provisions retroactive to July 1, 2004. HB 78 (Acts ch. 76).

AN ACT relating to criminal justice. In part, adds a new section to KRS Chapter 15 to provide for revocation of peace officer certification for reasons stated; amends KRS 15.382 to include a bad conduct discharge as a disqualifying condition for peace officers; amends KRS 15.386 to prescribe the training required of an inactive peace officer returning to active status; amends KRS 15.404 to permit an extension of time to complete or a waiver of in-service training in certain instances. HB 358 (Acts ch. 139).

MOTOR VEHICLES

AN ACT relating to a student's license or permit to operate a motor vehicle. Amends KRS 159.051 to remove the provision that did not allow revocation of a student's license unless a local school district operated an alternative education and amends KRS 186.470 to require that the application of any minor under the age of 18 for a license or permit include parental consent for the release of academic and attendance information required under KRS 159.051. HB 232 (Acts ch. 36).

AN ACT relating to motor vehicle registration. Amends KRS 186.162 to reduce the threshold eligibility from 70 percent to 50 percent the service-connected disability for disabled veteran license plates. HB 144 (Acts ch. 23).

AN ACT relating to motor vehicle special license plates. Amends KRS 186.164 to permit the reissuance of a special license plate for use on another vehicle leased or acquired by the licensee during the current registration period upon payment of the \$3 clerk fee and requires an owner or lessee who has a special license plate reissued for a vehicle previously registered in this state to return the regular license plate being replaced. HB 215 (Acts ch. 40).

AN ACT relating to special Gold Star Mothers license plates. Amends KRS 186.162 to eliminate all fees for special Gold Star Mothers license plates and amends KRS 186.041 to allow persons eligible for a Gold Star Mothers license plate to receive up to two plates annually for vehicles they own or lease. HB 390 (Acts ch. 39).

PUBLIC HEALTH AND SAFETY

AN ACT relating to fertilizer. Adds a new section to KRS

250.361 to 250.451 to prohibit any local government to adopt or continue any ordinance or other law regarding the registration, packaging, labeling, sale, storage, distribution, use, and application of fertilizers; mends KRS 217B.270 to add fertilizer as a product subject solely to state regulation; amends KRS 217B. 270 to preserve local planning and zoning authority. SB 91 (Acts ch. 17).

AN ACT relating to waste tires. Amends KRS 224.01-010 to define tire-derived fuel and to exclude it from the definitions of solid waste, household waste, commercial waste, and industrial waste and amends KRS 224.50-856 to remove local determination requirements for facilities proposing to use tire-derived fuel. SB 125 (Acts ch. 30).

AN ACT relating to consumer protection. Amends KRS 367.374 to permit the governor, during a Homeland Security Condition Red or during a declared state of emergency under KRS 39A.100, to prohibit by executive order for a period of 30 days the sale of listed goods or services at a price that is grossly in excess of the price prior to the declaration. HB 228 (Acts ch. 109).

PUBLIC OFFICERS AND EMPLOYEES

AN ACT relating to safety for state social workers, declaring an emergency, and making an appropriation therefor. Adds a new section of KRS Chapter 194A to name the bill in honor of Boni Frederick; amends KRS 194A.065 and adds new sections to KRS Chapters 194A and 605 to improve safety for state human services workers and appropriates monies to hire more staff. SB 59 (Acts ch. 1400), effective April 5, 2007.

AN ACT relating to employee interest in contracts between a public postsecondary education institution and a business. Adds a new section to KRS Chapter 164 to allow the governing board of each public postsecondary education institution to adopt regulations by which the board may approve a specific instance of an employee having an interest in a contract between the institution and a business and amends KRS 164.131, 164.390, and 164.821 to conform. SB 130 (Acts ch. 113).

AN ACT relating to oaths. Amends KRS 62.040 to allow any person authorized by KRS 62.020 to administer the oath taken by a peace officer that he or she will endeavor to detect and prosecute all gamblers and others violating the laws against gaming; amends KRS 70.010 to allow any person authorized by KRS 62.020 to administer the oath taken by a county sheriff; amends KRS 62.020 to add a member of

the General Assembly to those who may administer an oath anywhere in the state. SB 145 (Acts ch. 132).

AN ACT relating to workers' compensation. Amends KRS 342.340 to provide that a public sector self-insured employer that has authority to raise taxes, raise tuition, issue bonds, raise fees or fares for services provided, or has other authority to generate funds for its operation is not required to deposit with the Department of Workers' Claims funds as security, indemnity, or bond to secure the payment of liabilities; amends KRS 304.13-167 to direct the executive director to approve rating plans that give specific identifiable consideration in the setting of rates to employers who implement a drug-free workplace program, provide for a credit of at least five percent, and authorize the executive director to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that contain certain criteria for safety programs. HB 296 (Acts ch. 93), effective March 23, 2007.

AN ACT relating to the assumption of duties by local elected officers and declaring an emergency. Amends KRS 62.010 to provide that in years in which the first Monday in January falls on January 1, each person elected to an office has an additional 30 days in which to take the required oath of office; similarly amends KRS 62.050 for the giving of a bond; amends KRS 62.020 to allow members of the General Assembly to administer the oath of office statewide; provides that the act applies to any elected officer required to take the oath of office and execute bond by the first Monday of year 2007. HB 514 (Acts ch. 56), effective March 21, 2007.

SCHOOLS AND SCHOOL DISTRICTS

AN ACT relating to nutrition. Adds new sections to KRS Chapter 260 to create the Kentucky Farmers Market Nutrition Program, which will in part establish strategies to introduce fresh, locally grown fruits and vegetables into school nutrition programs. SB 25 (Acts ch. 116).

AN ACT relating to local school board members. Amends KRS 160.280 to increase from \$2,000 to \$3,000 the maximum annual reimbursement for expenses allowed to local school board members; amends KRS 18A.225 to include any elected member of a local board of education in the definition of employee as it relates to the state health insurance plan; amends KRS 161.158 to require a local school board member to adopt policies respecting certain deductions from per diem and actual expenses. HB 50 (Acts ch. 88).

AN ACT relating to school districts. Amends KRS 150.150 to prescribe that for the purpose of establishing a student's status as a truant, the student's attendance record is cumulative for an entire school year and in the case of a student transfer the receiving school must incorporate the student's attendance information at the previous school; amends KRS 159.170 to require exchange of certain information when a student withdraws from or enrolls in a school; amends KRS 45A.352 to provide that a guaranteed energy savings contract that does not involve construction or the installation of physical improvements does not require the approval of the commissioner of education. HB 145 (Acts ch. 122).

AN ACT relating to the operation of school buses. Adds a new section to KRS 281A to ban certain uses of cellular telephones by school bus drivers and amends KRS 281A.190 to establish the fine for using a cellular phone while driving a school bus. HB 230 (Acts ch. 138).

AN ACT relating to nonresident student contracts. Amends KRS 157.350 to prescribe the factors the commissioner of education and the Kentucky Board of Education must consider when settling a dispute between school districts about nonresident student contracts. HB 285 (Acts ch. 104).

AN ACT relating to high school athletics. Amends KRS 156.070 to exempt a student with an individual education program, under certain conditions, from the age restrictions imposed on high school athletes. HB 380 (Acts ch. 112).

TAXES AND FEES

AN ACT relating to taxation. Amends KRS 67.750 and 141.010 to update references to the Internal Revenue Code and to disallow the dividend paid deduction to captive real estate investment trusts. HB 258 (Acts ch. 52).

AN ACT relating to delinquent property taxes. Adds a new section to KRS Chapter 134 to limit attorney's fees recoverable by a private purchaser of a certificate of delinquency and impose other restrictions; amends KRS 134.460 and 134.500 to allow the county attorney to recover actual costs in pursuing delinquent property tax claims; amends KRS 134.480 to clarify lien status for the payer of a certificate of delinquency; amends KRS 134.490 to require a private purchaser to include specified information in the notice to the taxpayer required of the private purchaser of a certificate of delinquency.

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