

Local Government Law News

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CONGRESS PROPOSES COLLECTIVE BARGAINING FOR PUBLIC SAFETY WORKERS

By Charles Wheatley*

A bill in the current Congress, the Public Safety Employer-Employee Cooperation Act of 2007 (H.R. 980), would provide collective bargaining rights for law enforcement officers, firefighters, and emergency medical services personnel in state and local governments that do not already provide such rights. The legislation has three primary objectives: it requires public safety employers to recognize public safety employee labor organizations freely chosen by a majority of the employees; it compels public employers to bargain with the labor organization once recognized; and it requires that, if any agreements are made, they be committed to a contract or memorandum of understanding.¹

States whose collective bargaining rights for public safety officers substantially comply with the act will retain such rights under the legislation.² States that have no collective bargaining rights, or that prohibit public employee union recognition, become subject to five essential rights and responsibilities: granting public safety officers a right to form and join a labor organization that is to be recognized as the exclusive bargaining representative; requiring that public safety employers recognize employees' labor organizations through bargaining with it, and commit agreements to writing; bargaining over hours, wages, and terms and conditions of employment; making a non-binding impasse resolution mechanism available; and requiring enforcement through state courts.³ The Federal Labor Relations Authority, an independent administrative agency created by the Civil Service Reform Act of 1978, is charged with administering the act and is given broad powers to enforce.⁴

Strikes and lockouts will be prohibited.⁵ The act will not invalidate existing state and local collective bargaining agreements, but rather will bring all states up to the national minimums.⁶ The legislation does not conflict with "right to work" state laws, it allows career firefighters to be volunteer firefighters while off duty, and it sets exemptions for political subdivisions of less than 5,000 population or fewer than 25 full-time employees.⁷

Passage of the act is spearheaded by two of the nation's most respected public sector labor organizations, the International Association of Fire Fighters and the Fraternal Order of Police. Combined, the two organizations can claim only about half a million union members, yet what each wields in influence is not measured in sheer numbers. The success of the IAFF's political involvement was evidenced in

the 2004 presidential primary season, where the fire union was credited with raising the presidential campaign of John Kerry from the dead.⁸ On the current legislation before Congress, the IAFF's Legislative Affairs Office worked with co-sponsors in both the House and Senate, and, in the spirit of compromise, among several supporting and opposing factions to craft the legislation into what is felt to be a passable, veto-proof piece of legislation.

The current legislation is honed from its initial introduction in the fall of 2001 in the 107th Congress, where it was criticized as attempting to gain public sympathy in the wake of the 9/11 attacks. An updated act has been introduced in each Congressional session since then, with each version aimed at ameliorating contentious language. For example, at one time the National Volunteer Fire Council opposed the legislation because of language that prohibited career firefighters from being volunteer firefighters during non-career work hours. The updated act expressly allows such practices.⁹ The current bill passed the House of Representatives in July 2007 with strong bipartisan support, 314-97. With an ample number of co-sponsors, it appeared set for passage in the Senate in December 2007 as an attachment to the Farm Bill but was unable to defeat parliamentary tactics employed by a small group of anti-labor senators.¹⁰

The National League of Cities opposes the bill because it claims the bill will "force every city and town to enter into collective bargaining agreements with their public safety officers."¹¹ The National Right to Work Committee also opposes the bill and claims the legislation would "promote labor-management strife" and "...greatly worsen the problem by expanding government union bosses' monopoly

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DIRECTOR'S DESK

Our lead story this issue is written by one of our students here at NKU Chase College of Law, Charles Wheatley. He is one of the many students who are transitioning to new careers through our part-time program. Chase has many students who have achieved distinction, some in their careers before law school, some in their careers as students. As our class of 2008 leaves us, let me share with you some of those student accomplishments this year.

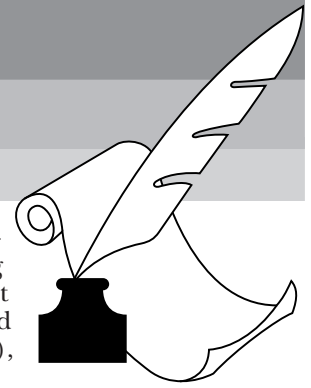
National Jurist recently ranked NKU Chase College of Law among the top 20 schools in the nation in placing students in public interest law jobs. This is nothing new for Chase, which includes among its curricular offerings placements in the Kentucky Innocence Project, the Constitutional Litigation Clinic, and the Indigent Defense Clinic. The Constitutional Litigation Clinic, a collaboration with the Ohio Justice and Policy Center, was featured recently in a story in *CityBeat*. As a result of his participation in the clinic, third-year student Joe Mills was able to argue a case before the Ohio Court of Appeals under the supervision of an OJPC attorney.

Chase students engage in public interests pursuits outside the classroom as well. An example is the Volunteer Income Tax Assistance program under the direction of Chase Professor Ljubomir Nacev and Chase graduate Mary Lepper. The VITA program offers free tax help to low-to moderate-income people who cannot prepare their own tax returns. Through this program the students get real-world experience in assisting clients in the preparation of their tax returns while learning about tax laws. In a similar vein, students at Chase, in conjunction with Northern Kentucky Volunteer Lawyers and professors Caryl Zyenbaard, Alberto Lopez and Frederick Schneider, staffed a pro bono wills clinic to help local residents who cannot afford a lawyer make a simple will.

Students also acquire lawyering skills through participation in various competitions. Many of our teams enjoyed success this year. The Chase National Adoption Law Moot Court Team won the third annual Adoption and Child Welfare Law Moot Court Competition held in March in Columbus, Ohio. Chase entered two teams into the competition and each team won multiple awards, including national champions. The team of Sara Caudill, Bethanie Chaney, Lindsay Lawrence, and Tressa Milburn (coached by Professor Emily Janoski) won the national champion title as well as awards for best brief and best final-round oral advocate (Sara Caudill). The team of Jordan Dallas, Becky Cull, and Christopher Tapia (coached by Professor Lawrence Rosenthal) won runner-up for best brief and were national quarter-finalists.

Another group of students won the Robert F. Wagner Labor and Employment Law Moot Court Competition held in New York City. The team of Benjamin Lewis, Marci Palmieri, and Scott Van Nice, which was coached by Prof. Lawrence

Rosenthal, swept every major category in the competition winning best preliminary round team, best respondent brief, best final round oral advocate (Scott Van Nice), and national champions.



This year, for the first time, Chase competed in the American Bar Association/National Arbitration Forum Arbitration Competition. Chase fielded two teams in the Southeast Regional Competition in Birmingham, Ala. A team consisting of second-year students Ioanna Paraskevopoulos, Nick Maggard, Sue Irion, and Zac Corbin advanced to the semifinal round as the tournament's top seed. A team consisting of second-year students Adam Towe, Katie Morgan, Danielle Lorenz, and Stefanie Brunemann advanced to the semifinal round as the tournament's second seed and eventually went on to become the southeast regional champion.

Chase's National Trial Team has enjoyed consistent success over a period of years thanks to the work of Professor Kathleen Gormley Johnson, assistant director of the Local Government Law Center. This year two teams from Chase made it to the final round of the National Trial Competition Sixth Circuit Regionals in Dayton, Ohio. Anne Bennett Cook, a third-year student, placed third out of 53 competitors for best advocate at the competition. In addition, a team consisting of David Curlin, Kris Ellena, Tyler Fields, Patrick Healy, Lindsay Lawrence, Megan Mersch, Wil Schroder, and Ian Stegmaier advanced to the semifinal round of the AAJ Trial Advocacy Competition (Southern Region) in Memphis, Tenn.

In addition to producing highly skilled new attorneys, Chase is turning out bright young legal scholars. For example, Chase student Lindsay Niehaus took second place in the 2007-08 Louis Jackson National Student Writing Competition in Employment and Labor Law for her article "The Fifth Amendment Disclosure Obligations of Government Employers When Interrogating Public Employees." In addition, Sue Irion recently had her article "The Unconstitutionality of the NLRA's Religious Accommodation Provision" accepted for publication in *Gonzaga Law Review*. Other recent articles published by Chase students include Jamie Ireland, "Federal Question Jurisdiction and the Federal Arbitration Act"; Candace Budy, "Naming a Defendant in an ERISA Action"; and Dustin Riddle, "Disability Claims for Alcohol-Related Misconduct," all co-authored with Professor Rick Bales.

The student-run *Northern Kentucky Law Review* this year presented a symposium on Intellectual Property titled "Divining the Roberts Court's Approach to Intellectual Property: Are Such Rights on Firm Ground, or Are the Sands Shifting?" The program featured five distinguished panelists discussing the significance of recent intellectual property issues addressed by the Federal Circuit and the

Supreme Court. The discussion included the impact of the court's recent decisions on pharmaceutical and biotech industries, how the court has grappled with the norms of competition in intellectual property cases, and predictions for the future.

With the launch of new centers for excellence in advocacy and transactional law and the admission of a talented entering class, prospects for continued student success are bright. The entering class consists of students whose previous studies ran the gamut from accounting to women's

studies and an array of talents from musical to publishing. Many of them come with advanced degrees in business, education, and science and diverse other experience. Some are the first in their family to have attended college, some spent time studying abroad, some served in the military, and some held leadership posts at the collegiate and community level. All of us, in and out of local government, profit from the response of such talented individuals to the call of a profession in the law.

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bargaining privileges." It tags the act as the "Police/Fire Monopoly-Bargaining Bill."¹² Thus far, opposition "heat" has been relatively low. The NLC website lists the act as its most important legislative issue and provides members with sample letters to send senators of states with and without collective bargaining rights. Yet the tone of those letters lacks the conviction one might expect with a national organization's top priority. The letters are careful not to show disrespect for "brave," duty-driven police officers and firefighters, while politely requesting defeat of the act.

One national organization representative stated that federalizing collective bargaining was no guarantee of cooperation.¹³ Testimony before a House of Representatives subcommittee pointed to an "acrimonious" relationship between the St. Paul, Minn., fire chief and firefighters' union as an example of non-cooperation and criticized the act for not being able to address such situations. Another opposition statement before the House subcommittee focused on what the federal legislation might do to preempt already existing state collective bargaining laws.¹⁴ The testimony went on to question the FLRA's ability to determine which states' collective bargaining laws do and which do not "substantially provide" for employees' and employers' rights and responsibilities. However, the testimony failed to connect how the federal legislation has anything to do with St. Paul's labor issues; without the collective bargaining setting in St. Paul, labor-management tensions might have been exacerbated. Also, anecdotal examples of labor relations can lead to a game of one-upmanship, which, if counting, the positive public safety employer-employee cooperation presented before the subcommittee significantly outnumbered the negative.¹⁵

The act calls for the FLRA, within six months of enactment, to analyze the laws of all 50 states to determine whether each state "substantially provides for the rights and responsibilities" as prescribed in the act.¹⁶ While 50 states have 50 different approaches to public sector labor relations, it has been only since 1959 that even one state (Wisconsin) provided collective bargaining rights to public employees. After nearly 50 years of the development and ripening of state and local public employee labor laws, there are still twelve states, mostly in the South, who stand firm against public employee bargaining rights and several more who only allow local governments to opt into collective bargaining for their employees.

Private sector employees emerged with statutorily protected collective bargaining rights with the passage of the National Labor Relations Act in 1935. Public employees, however, were expressly excluded from benefiting from such

rights.¹⁷ President Franklin Roosevelt displayed the thinking of the time, stating that public employees should realize that collective bargaining was not meant for the public sector because the employer is the people and the taxpayers, who are too far removed from the process of bargaining. As labor relations in the private sector progressed, public employees looked for relief in working conditions as well. After a generation of private and public sector employees witnessed the positive effects of collective bargaining, President John Kennedy finally issued an executive order giving all federal public employees the right to join a union and to bargain on non-economic issues. Yet it still took another 15 years before the first federal legislation giving federal public employees bargaining rights occurred with the Civil Service Reform Act of 1978.¹⁸ The CSRA, as does nearly all legislation regarding public sector collective bargaining rights, is premised on it being illegal for public employees to strike or take other job actions against public employers.

While the NLRA applies to all private sector employees, the CSRA applies only to federal public employees, not state and local public employees. State and local government employees have no federally protected bargaining rights. Some argue they may never achieve such rights due to one famous incident that lingers in the minds of the public and legislators – the air traffic controllers strike of 1981. The Professional Air Traffic Controllers Organization strike was broken when President Reagan fired more than 11,000 workers that refused an order back to work. Not only was the firing a setback for public sector labor-management relations, it delivered a blow to the entire U.S. labor movement, which continues to see a decline in the percentage of union workers in the U.S. workforce.¹⁹ Ironically, however, public sector unionism has seen a steady increase despite the PATCO incident and despite the lack of recognition by some states.

Congress has for a number of years considered various pieces of legislation that would require collective bargaining for all public safety officers employed by states or their political subdivisions. As previously mentioned some national organizations argue that this type of legislation is unnecessary and would interfere with state and local options for addressing employee relations. Carried over to the current act before Congress, the argument continues that since 38 states have collective bargaining laws that cover police and fire, and given that states can and have enacted legislation when appropriate, there is no need for a federal public sector labor-relations scheme. Yet tens of thousands of American workers in twelve states and hundreds of political subdivisions continue to operate in a no-man's land of public

sector bargaining. What makes this act more palatable to those twelve states might be that those states will still have the unfettered ability to simply say “no” to any union proposals.²⁰ The legislation, like the NLRA, does not mandate agreement. It mandates recognition and bargaining. But unlike the private sector, public sector emergency workers under the act will not be able to apply economic pressure through strikes and other job actions.

Basically, the public sector employee strives for bargaining rights and impasse procedures. As a result, four general classifications of public bargaining laws have developed: states with no specific provisions for collective bargaining or where bargaining is illegal; states where labor organizations have meet-and-confer rights that compel public employers and employees to discuss workplace issues but carry no duty to bargain; states have a duty-to-bargain provision but no compulsory arbitration law; and states that have a duty to bargain and provide mandatory arbitration.²¹

Passage of the act would, in effect, accomplish a fundamental shift in the way government views public employment, at least compared to Roosevelt’s America. It is argued that such a shift comes at a great price to all consumers, not just the ones exercising their free choice in the open market.²³ The theory is that private businesses go out of business as a result of financial failure when labor costs exceed profit margins. There are no profit margins in the public sector. The taxpayer is the source of funds and in essence is the employer. With labor costs at about 70 percent of a city’s budget, overspending in personnel costs may have severe financial repercussions resulting in financial failure if public employers are not stingy negotiators.

The power-sharing dynamic of collective bargaining is different with private sector and public sector collective bargaining. Desires of the electorate brings the political process into public sector bargaining, whereas economic pressures and market forces drive private sector bargaining. It is more accepted in the public sector arena that sharing management rights is better for the workplace and for morale. When public employers are forced to negotiate with politically strong public labor unions, bargaining power is not as equal as is found in private bargaining, where the threat of economic pressures for both sides levels the playing field.²³

The agreement between public employers and public employees is more than a contract; it is an instrument of government and a product of government decision-making. When police and firefighter contracts call for pay increases and staffing minimums, it indirectly affects the amount of taxes every taxpayer must pay and the level of government services every person will enjoy. What this theory lacks is empirical evidence that emergency workers’ unions are winning at the collective bargaining table to the detriment of services. The premise that public sector unions are in a stronger bargaining position because of being a better position to apply political pressure simply has not proven out. While politicians covet the support of police and fire unions, such support rarely translates into bargaining chips for unions.

The most significant difference between private sector and public sector collective bargaining is impasse resolution. What can public employees do when the public employer makes unacceptable bargaining demands, as in pay

and medical benefits reductions? The current act expressly disallows a strike or an employer lockout.²⁴ The no-strike provision has been in the legislation since its inception. What appears to be a major concession, in essence, is a readily acceptable trade-off.²⁵ Police and fire personnel have long realized the essential nature of their positions. Organized work stoppages are seen as not an option. Nine of the 21 work stoppages in 2007 were by public sector employees; none were police or fire personnel.²⁶ The IAFF representative told Congress that its members simply do not believe in strikes.²⁷

A strike could be considered insurrection, a direct challenge to the state’s sovereignty.²⁸ Pennsylvania allows public employee work stoppages, but not if the strike creates a clear and present danger. No state permits a work stoppage in the public safety employment sector arena.²⁹ The act being considered prohibits strikes, yet provides no enforcement mechanism, which is strongly criticized by opposition groups.³⁰ It is argued that the lack of an enforcement provision shows that the intent of the drafters was to keep the strike option available.

Historically, work stoppages by police, fire, or emergency workers are rare, practically non-existent in recent history. But the lack of work stoppages may actually be having a negative impact on the media’s view of public sector bargaining rights. A *Washington Times* editorial wondered why national bargaining rights legislation was needed when there had been no outcry from emergency first responders.³¹ Are too many politicians counting on public safety employee commitment to duty when it comes to allowing them bargaining rights? Is the public’s mind still filled with the PATCO ordeal? Police and fire labor organizations generally concede that no matter how long it takes to get their message out, it will be done through persuasive argument and not job action.

Federal legislation gives bargaining rights to a high percentage of private sector workers, all federal public employees enjoy the right to a collective bargaining agreement, and two out of three public sector employees that work for state and local governments have some level of labor protection. Yet a handful of states have not come around. State sovereignty and local control keeps many of our nation’s first responders at minimum wage. The IAFF sees this as unfair.

Emergency workers are more at risk and deserve to have the ability to meet and confer with their employers to have substantive discussions on how to improve workplace safety. Firefighter deaths dropped in the 1970s and 1980s, but there now seems to be a plateau of about 100 on-the-job fatalities a year. The IAFF stresses that traditional subjects of bargaining are, of course, important to its members, but that safety issues, too, are critical. In no other field as dangerous as firefighting do tens of thousands of employees have no rights when it comes to workplace safety issues. Elemental notions of fairness dictate that emergency workers – federal, state, and local – operating at an emergency scene of national consequence should possess equal bargaining rights over terms and conditions of employment.

Public employers have a dilemma. They can either continue to resist collective bargaining rights in the name of local control or they can embrace the cooperative workplace model that works well in a very high percentage of public

sector employment situations where management and labor share space around the table. Considering the equity in providing bargaining rights protections for all of this country's emergency responders who are our nation's first responders, it seems a small sacrifice of state sovereignty and local control to pass this act.

Editors Note:

After submission of the paper from which this article derives, the Senate took up H.R. 980. On May 13, 2008, the Senate approved a cloture motion 60-29 and cut off an attempt to filibuster the bill. The same day, the Office of Management and Budget issued a "Statement of Administration Policy" that said, "The Administration strongly opposes this Act because its severe intrusions on State sovereignty and emergency management conflict with the fundamental principles of federalism. If H.R. 980 were presented to the President, his senior advisors would recommend that he veto the bill." (<http://www.whitehouse.gov/omb/legislative/sap/110-2/saphr980-s.pdf>, emphasis in the original.) The Senate Republican Policy Committee took note of the White House position in a "Legislative Notice" it issued on May 13, 2008. The committee also said it expected a substitute amendment in the form of S. 2123, a bill similar but not identical to H.R. 980.

The Senate's consideration of H.R. 980 stalled on a procedural matter the following day, and Senate Democrats dropped the bill after Republicans complained that they didn't get enough time to offer amendments. According to a report by the Associated Press, Senate Majority Leader Harry Reid said he did not have enough votes to force final consideration of the bill. The story reports that the two top senators on the Senate Health, Education, Labor and Pension Committee, Sen. Edward Kennedy (D-Mass.) and Sen. Mike Enzi (R-Wyo.), will try to work out an agreement before the bill comes back for consideration. Prospects for action on the bill are uncertain because of Sen. Kennedy's medical condition.

Endnotes

* Charles Wheatley is a student at NKU Chase College of Law. This article is adapted from a paper submitted in partial satisfaction of the requirements of the course in State and Local Government Law. Mr. Wheatley is also the fire chief of the city of Covington. The views expressed here are his own and not necessarily those of the city of Covington or of NKU Chase College of Law.

1. Public Safety Employer-Employee Cooperation Act of 2007, H.R. 980, 110th Congress. Specifically, the act's "Findings and Declarations of Purpose" section states, "The potential absence of cooperation between public safety employers and employees has implications for the security of employees, impacts the upgrading of police and fire services of local communities, the health and well-being of public safety officers, and the morale of the fire and police departments, and can affect interstate and intrastate commerce." *Id.* § 2(5).
2. H.R. 980, 110th Congress § 4(a)(1).
3. H.R. 980, 110th Congress § 4(b)(1-5).
4. H.R. 980, 110th Congress § 5.
5. H.R. 980, 110th Congress § 6.

6. H.R. 980, 110th Congress § 7.
7. H.R. 980, 110th Congress § 8.
8. Philip Dine, *State of the Unions* 1-55 (2008).
9. H.R. 980, 110th Congress § 8(a)(4).
10. International Association of Fire Fighters, *Anti-Labor Senators Derail Fire Fighter Bargaining Bill*, <http://www.iaff.org/07News/121407CBBillDerailed.htm>.
11. National Leagues of Cities, <http://capwiz.com/nlc/issues/bills/?bill=10417821>.
12. *Bill to Federalize Public-Safety Union Monopoly Looms in Congress*, National Right to Work Newsletter (National Right to Work Committee, Springfield, Va.), July 2007 at 7.
13. *Public Safety Employer-Employee Cooperation Act of 2007: Hearing on H.R. 980 before the House Education and Labor Committee Subcommittee on Health Education Labor and Pensions*, 110th Cong. (2007) (statement of Neil. E. Reichenberg, Executive Director, International Public Management Association for Human Resources).
14. *Public Safety Employer-Employee Cooperation Act of 2007: Hearing on H.R. 980 before the House Education and Labor Committee Subcommittee on Health Education Labor and Pensions*, 110th Cong. (2007) (statement of Theodore Clark, Jr., National Public Employer Labor Relations Association).
15. *Public Safety Employer-Employee Cooperation Act of 2007: Hearing on H.R. 980 before the House Education and Labor Committee Subcommittee on Health Education Labor and Pensions*, 110th Cong. (2007) (statement of Wayne Seybold, Mayor, Marion, Ind.).
16. H.R. 980, 110th Congress § 4(a)(1).
17. National Labor Relations Act, 29 U.S.C. §152(2).
18. 5 U.S.C. §7101-7135 (2000).
19. Bureau of Labor Statistics, (Union Members in 2007) (USDL 08-0092) Jan. 25, 2008.
20. H.R. 980, 110th Congress § 8(a)(3)(D).
21. See note 14.
22. Leo Troy, *Are Municipal Collective Bargaining and Municipal Governance Compatible?*, 5 U. Pa. J. Lab. & Emp. L. 453 (2002-2003).
23. *Id.*
24. H.R. 980, 110th Congress § 6.
25. *Public Safety Employer-Employee Cooperation Act of 2007: Hearing on H.R. 980 before the House Education and Labor Committee Subcommittee on Health Education Labor and Pensions*, 110th Cong. (2007) (statement of Kevin O'Connor, IAFF Assistant to the General President)..
26. Bureau of Labor Statistics, (Major Work Stoppages in 2007) (USDL 08-0202), Feb. 13, 2008.
27. *Public Safety Employer-Employee Cooperation Act of 2007: Hearing on H.R. 980 before the House Education and Labor Committee Subcommittee on Health Education Labor and Pensions*, 110th Cong. (2007) (statement of Kevin O'Connor, IAFF Assistant to the General President).
28. See generally Troy, *supra* note 22.
29. *Id.*
30. Public Service Research Council, *The Case Against Public Sector Unionism and Collective Bargaining* (May, 2003).
31. Unsigned editorial, *A Poor Bargain*, Washington Times, July 6, 2007.

THE 2008 KENTUCKY GENERAL ASSEMBLY: A TOPICAL REVIEW OF SELECTED ACTS AFFECTING LOCAL GOVERNMENTS

A NOTE ON EFFECTIVE DATES

“[T]he effective date of legislation, other than general appropriation bills and acts containing emergency or delayed effective date provisions, passed during the 2007 Regular Session of the Kentucky General Assembly, is *the first moment of Tuesday, July 15, 2008.*” Opinion of the Attorney General 08-001 at page 2.

ADMINISTRATIVE PROCEDURES

AN ACT relating to unemployment insurance. Amends KRS 341.190 to provide that, when a local government requests confidential unemployment insurance information from the Kentucky Division of Unemployment Insurance, it enter into written confidentiality agreement with the Education Cabinet and satisfy the safeguards imposed by federal law; amends KRS 341.990 to provide that violation of the confidentiality provisions is a Class A misdemeanor. SB 146 (Acts ch. 111).

AN ACT relating to special meetings. Amends KRS 61.823(4) to provide that a public agency may satisfy the notice requirements for a special meeting by use of electronic mail for those public agency members and media organizations that have filed a written request with the public agency indicating their preference to receive electronic mail notification. HB 330 (Acts ch. 20).

AN ACT relating to perpetual care and maintenance. Amends KRS 367.952 to exclude cemeteries operated by local governments from the requirement of maintaining a perpetual care and maintenance trust fund and authorize local governments with such funds to petition the Circuit Court to terminate the trust. HB 369 (Acts ch. 168).

AN ACT relating to vehicle accident reports. Amends KRS 189.635 to provide that accident reports filed with the Kentucky State Police under that section are not to be considered open records under the Open Records Act and to limit the release of those reports. HB 696 (Acts ch. 160).

ALCOHOLIC BEVERAGES

AN ACT relating to alcoholic vaporizing devices. Adds a new section to KRS Chapter 243 to ban sale, purchase or use of an alcohol vaporizing device except in limited circumstances; amends KRS 243.990 to provide penalties. HB 202 (Acts ch. 28).

AUTHORITIES, BOARDS, COMMISSIONS, AND SPECIAL DISTRICTS

AN ACT relating to water districts. Amends numerous sections of KRS Chapter 74 and repeals others to modernize the governance and operation of water districts and makes conforming amendments to other sections of KRS. HB 83 (Acts ch. 6).

AN ACT relating to fire district boundaries. Amends KRS 75.020 to add procedures for modifying the boundaries of a fire protection district in instances where the fire protection district proposes to expand into areas served by a fire

department organized under KRS Chapter 273. HB 284 (Acts ch. 166).

BUILDINGS AND BUILDING CONSTRUCTION

AN ACT relating to the Kentucky Board of Architects. Amends various provisions of KRS Chapter 323 pertaining to the powers and duties of the Kentucky Board of Architects; adds a new subdivision 5 to KRS 323.033 providing that, with limited exceptions, the state and its political subdivisions shall not engage in public work unless the plans, specifications, and estimates have been prepared and the administration of construction contracts executed under the direct supervision of a licensed architect or a professional engineer. SB 23 (Acts ch. 59).

AN ACT relating to manufactured housing. Amends KRS 227.570, 227.491, 278.030, and 227.590 to require a certified installer’s seal on a manufactured or mobile home at the time any utility energizes power to the home and require installer to apply for the seal before installing the home. SB 76 (Acts ch. 118), effective January 1, 2009.

AN ACT relating to the promotion of the efficient use of energy and making an appropriation therefor. Amends numerous sections of KRS in part to require that all construction or renovation of public buildings for which 50 percent or more of the total capital cost is paid by the Commonwealth be designed and constructed or renovated to meet high-performance building standards; requires that all buildings leased by the Commonwealth or any of its agencies meet high-performance building standards; adds a new section to KRS Chapter 56 to establish a High-performance Buildings Advisory Committee; adds new sections to KRS Chapter 141 to provide for nonrefundable income tax credits for the purchase of certain energy-efficient products; creates a new section of KRS chapter 160 to require boards of education to enroll in the Kentucky Energy Efficiency Program; makes further amendments to other chapters of KRS. HB 2 (Acts ch. 139).

AN ACT relating to voluntary agreements for the demolition or removal of dilapidated buildings. Adds a new section to KRS Chapter 381 to provide that a county may enter into a voluntary agreement with a property owner for the demolition or removal of a building defined as dilapidated. HB 319 (Acts ch. 73).

CITIES

AN ACT changing the classification of the City of Lancaster, in Garrard County. Transfers the city of Lancaster from the fifth to the fourth class. SB 93 (Acts ch. 12).

AN ACT changing the classification of the City of Whitesburg, in Letcher County. Transfers the city of Whitesburg from the fifth to the fourth class. SB 179 (Acts ch. 115).

AN ACT relating to abatement of nuisances. Amends KRS 82.700 to make the nuisance abatement provisions of KRS 82.700 to 82.725 available to cities of the third and fourth classes. HB 88 (Acts ch. 7).

AN ACT relating to the incorporation of areas containing

city-owned utility infrastructure. Adds a new section to KRS Chapter 81A to limit a city's ability to annex unincorporated areas that includes utility infrastructure owned by another city. HB 506 (Acts ch. 171).

COUNTIES

AN ACT relating to county court house districts. Amends various chapters of Kentucky Acts to sunset the taxing authority of a court house district (the only such district being in Campbell County) and provide that the authority to levy any such taxes shall not transfer to any county or local government. HB 103 (Acts ch. 27).

AN ACT relating to coroners. Amends KRS 64.185 to allow coroners to appoint additional deputy coroners with the approval of the local legislative body of the county. HB 324 (Acts ch. 74).

CRIME AND CRIMINAL JUSTICE

AN ACT relating to victims of sexual offenses. Adds new sections to KRS Chapters 16, 65, 70, and 95 to prohibit law enforcement officers or state prosecutors from requiring the victim of a sexual offense to submit to a polygraph examination as a condition of investigation or prosecution of an alleged sexual offense. SB 151 (Acts ch. 112).

AN ACT relating to metals. Adds new sections to KRS Chapters 15, 16, 65, 243, and 433 and amends sections of other chapters to further regulate persons dealing in scrap metals and creating new associated criminal offenses; authorizes local ordinances relating to the purchase of metals and metal-containing products. HB 106 (Acts ch. 83).

AN ACT relating to status offenders. Amends numerous sections of KRS and adds new sections governing the detention of status offenders to conform to the requirements of the federal Juvenile Justice and Delinquency Prevention Act of 2002. HB 384 (Acts ch. 87).

ECONOMIC DEVELOPMENT

AN ACT relating to the Kentucky Jobs Development Act and declaring an emergency. Amends KRS 154.24-010(19)(b), relating to exclusions from the definition of "service or technology," to include an eligible company that engages in activities involving the performance of work by an individual pursuant to a license issued by the state if 75 percent of the services are provided to persons located outside the Commonwealth. SB 155 (Acts ch. 50).

EDUCATION

See also Schools and School Districts; Teachers and School Employees

AN ACT relating to strategies to improve academic achievement and making an appropriation therefor. Adds new sections to KRS Chapters 158, 161, and 164 and amends numerous other sections of KRS to create the science and mathematics advancement fund and the science, technology, engineering, and mathematics (STEM) initiative fund and to provide for the administration of the funds to provide access to rigorous science and mathematics curricula in schools. SB 2 (Acts ch. 154).

AN ACT relating to educational opportunities for military children. Adds a new section to KRS Chapter 156 making Kentucky party to a compact that seeks to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents

and makes Kentucky a member state of the Interstate Commission on Educational Opportunity for Military Children. SB 68 (Acts ch. 61).

AN ACT relating to Kentucky educational excellence scholarship eligibility. Amends KRS 164.7874 to alter the eligibility requirements for Kentucky Educational Excellence Scholarship awards for students initially enrolled in college in 2009-2010. SB 75 (Acts ch. 137).

AN ACT relating to family resource and youth services centers and making an appropriation therefor. Adds a new section to KRS Chapter 156 to authorize school districts to operate family resource and youth services centers to enhance a student's ability to succeed in school; amends KRS 156.4975 and 156.4977 to conform; adds a new section to KRS Chapter 194A to authorize the Division of Family Resource and Youth Service Centers to promulgate administrative regulations to implement continuation application requirements and establish a continuing education program for coordinators and staff. SB 192 (Acts ch. 120).

AN ACT relating to the safety, learning, and well-being of students. Adds a new section to KRS Chapter 158 to require reporting, notification, and investigation in instances involving student-on-student assaults and related offenses; amends KRS 158.444 to require the Kentucky Board of Education to collect data on incidents affecting school safety and report the data annually; amends KRS 158.148 to require local boards of education to update their codes of acceptable behavior biennially; amends KRS 525.070 and 525.080 to expand the conduct covered by the crimes of harassment and harassing communications. HB 91 (Acts ch. 125).

ELECTIONS

AN ACT relating to elections. Amends KRS 118.245 to eliminate runoff primary for gubernatorial slates and makes conforming amendments to other sections. HB 370 (Acts ch. 129).

AN ACT relating to elections. Amends various provisions of KRS Chapters 83A, 117, 118, 118A, and 119 to make changes, in the words of the Local Mandate Fiscal Impact Estimate, "primarily of a 'housekeeping' nature." HB 479 (Acts ch. 79).

EMERGENCY MEDICAL SERVICES

AN ACT relating to trauma care and making an appropriation therefor. Adds new sections to KRS Chapter 211 to establish a comprehensive statewide trauma care program within the Department for Public Health. HB 371 (Acts ch. 25).

ENVIRONMENT

AN ACT relating to stream restoration and mitigation. Adds new sections to KRS Chapter 151 in part to require restoration and mitigation planning to be on a watershed basis; authorizes the creation of Stream Restoration and Mitigation Authorities and provides for their operation. HB 717 (Acts ch. 97).

AN ACT relating to methamphetamine contamination. Amends KRS 224.01-410 and 224.99-010 to require the Environment and Public Protection Cabinet and the Kentucky State Police to promulgate administrative regulations regarding assessment and decontamination of properties used in the manufacture of methamphetamine and to impose duties on property owners and local law enforcement agencies; amends KRS 198A.040 to require the Kentucky Housing Corporation

to report to the Legislative Research Commission about its program to assist people of lower and moderate income with the costs associated with assessment and decontamination services. HB 765 (Acts ch. 161).

FINANCE

AN ACT relating to state government procurement. Amends KRS 45A.415 to establish equal value procurement criteria for use in the local public agency procurement process under the model procurement code; amends KRS 65.025 to establish best value procurement criteria for use in local government capital construction projects. SB 100 (Acts ch. 47).

AN ACT relating to local government financial obligations. Adds a new section to KRS Chapter 65, amends §§ 65.944 and 66.045, and repeals § 65.7719 to require local government to notify the state local debt officer in writing before entering into any financing obligation; provides that any financing obligation entered into prior to the passage of this section shall be considered in compliance if notification is provided to the state local debt officer no later than one year after the effective date of act. HB 435 (Acts ch. 35).

FIRE SERVICE

AN ACT relating to the Commission on Fire Protection Personnel Standards and Education. Amends KRS 95A.080 to change the procedures for the issuance of certified volunteer firefighter identification cards; amends KRS 95A.040 to require administrative regulations concerning proof of literacy, legal United States residency, age, and integrity for volunteer firefighters; amends KRS 95A.060 and 95A.262 to remove references to Office of Housing, Buildings and Construction. HB 389 (Acts ch. 77).

AN ACT relating to fire department reporting and report summaries. Amends KRS 304.13-380 to require submission of reports and summaries under that section to the Commission on Fire Protection Personnel Standards and Education rather than the State Fire Marshal. HB 475 (Acts ch. 170).

HOUSING

AN ACT relating to mortgages and declaring an emergency. Adds a new section to KRS Chapter 198A to authorize the Kentucky Housing Corporation to establish the Kentucky Homeownership Protection Center for the purpose of providing a centralized location for information on public services to assist a homeowner who is in default or in danger of default on a home loan; makes extensive amendments to KRS Chapter 286, the Kentucky Financial Services Code; amends various other chapters of KRS to address practices in the mortgage industry. HB 552 (Acts ch. 175), effective April 24, 2008.

LAND USE, PLANNING, AND ZONING

AN ACT relating to parks and tourism. Amends KRS 148.795 pertaining to the Kentucky Recreational Trails Authority in part to add provisions allowing agreements between governments and owners of land authorizing the public to utilize the owner's land for a recreational purpose and the government to improve, maintain, and keep up the property; adds new section to KRS Ch. 148 charging KRTA with responsibility for developing and implementing a strategy to increase responsible and legal recreational activity by ATVs on private land. SB 196 (Acts ch. 70).

AN ACT relating to land use planning. Amends KRS

100.193 and 100.197 to require legislative bodies and fiscal courts to act within 90 days on statements of planning goals and objectives and on proposed amendments and provides that if no action is taken the statements of goals and objectives and proposed amendments are deemed approved by operation of law. HB 322 (Acts ch. 167).

LAW ENFORCEMENT

AN ACT relating to deadly weapons. Amends KRS 16.220 to require the Kentucky State Police to sell confiscated firearms and transfer 80 percent of proceeds rather than 100 percent to Kentucky Office of Homeland Security for distribution to local police and sheriff's departments; amends KRS 237.110, the concealed carry law, respecting applications by non-citizens. HB 629 (Acts ch. 96).

MOTOR VEHICLES

AN ACT relating to transportation. Amends KRS 186.172, 186.162, and 186.166 to establish a category of special license plates for firefighters in place of the current special plate for volunteer firefighters. SB 135 (Acts ch. 164).

AN ACT relating to special license plates. Amends KRS 186.041 to allow the surviving spouse of a Kentucky National Guard member or retired member to retain the member's Kentucky National Guard special license plate. SB 150 (Acts ch. 49).

AN ACT relating to special license plates. Amends KRS 186.041, 186.162, and 186.164 principally with respect to special license plates for Gold Star spouses. HB 239 (Acts ch. 30).

PUBLIC HEALTH AND SAFETY

AN ACT relating to personal emergency response systems. Adds new sections to KRS Chapter 438 to regulate providers of "personal emergency response systems," set standards for contracts between providers and customers, confer on the Attorney General and county attorneys concurrent jurisdiction to enforce the provisions of the act, and establish a civil penalty for violations. SB 57 (Acts ch. 102).

AN ACT relating to booster seats. Amends KRS 189.125 to require that a child who is under the age of seven years and who is between 40 and 50 inches tall be secured in a booster seat when riding in a car. SB 120 (Acts ch. 108).

AN ACT relating to impaired adults. Amends KRS 39F.010, 39F.020, and 39F.180 to require rescue squads, with respect to searches for lost or missing impaired adults, to cooperate with local media outlets in notifying the public of a "Golden Alert." SB 125 (Acts ch. 109).

AN ACT relating to animal identification. Amends KRS 257.497 to establish limitations and guidelines relating to the national animal identification program; prohibits local governments from adopting or continuing in effect any ordinance, resolution, rule, or regulation requiring participation in the national animal identification system or any other similar system that regulates livestock or poultry. HB 495 (Acts ch. 85).

AN ACT relating to public health. Adds a new section of KRS Chapter 211 to permit a person with an "eligible medical condition" to have access to an employee toilet facility in a public and semipublic building. HB 594 (Acts ch. 23).

PUBLIC OFFICERS AND EMPLOYEES

AN ACT relating to employees and police officers of local

governments. Amends KRS 90.220 to provide that persons in the classified service may not, while on duty or using public resources, propose or oppose the placement of a question or advocate for the adoption or defeat of a question to be voted upon by the voters; amends KRS 67C.317 to provide that officers may not, while on duty, in uniform, or using public resources, propose or oppose the placement of a question or advocate for the adoption or defeat of a question to be voted upon by the voters; and amends KRS 95.495 to permit police officers in second class cities and urban county governments to agree to work an alternative schedule of hours. SB 16 (Acts ch. 135).

AN ACT relating to health insurance for retired city of the third class police and fire department personnel and their spouses. Amends KRS 95.624(5) to allow a city to provide supplemental health insurance to those retirees and their spouses who are entitled to Medicare benefits or are receiving Medicare benefits if providing the supplemental health insurance will not jeopardize the capacity of the pension fund board of trustees to pay other existing retirement and survivor benefits. SB 47 (Acts ch. 65).

AN ACT relating to Kentucky Teachers' Retirement System and declaring an emergency. Amends KRS 161.540, 161.568, and 161.569 to allow certain university employees who originally elected to participate in the optional retirement plan to change their election and to change the method of calculating the payment by universities of the unfunded liability. SB 65 (2008 Acts ch. 11).

AN ACT relating to survivor benefits for adopted children. Amends KRS 161.520 to delete provision prohibiting survivor benefits from the Kentucky Teacher's Retirement System for legally adopted children. SB 131 (Acts ch. 67).

AN ACT relating to compensatory leave time for local government employees. Amends KRS 337.285 to add city employees to those employees eligible to request compensatory time in lieu of overtime pay. HB 365 (Acts ch. 75).

ROADS, STREETS, AND HIGHWAYS

AN ACT relating to the operation of golf carts on a public roadway. Adds a new section to KRS Chapter 189 to provide that the governing body of a local government may authorize and regulate the operation of a golf cart on any public roadway under its jurisdiction that lies within five road miles of an entrance to a golf course if the local government adopts an ordinance specifying conforming to the new section. SB 93 (Acts ch. 106).

SCHOOLS AND SCHOOL DISTRICTS

See also Education; Teachers and School Employees

AN ACT relating to the selection of school personnel. Amends KRS 160.345 to limit the discretion of school superintendents in appointing school-level personnel in certain instances. SB 86 (Acts ch. 105).

AN ACT relating to surplus local school district technology property. Adds a new section to KRS Chapter 160 allowing a local board of education to adopt a policy for distribution of refurbished surplus technology to low-income students who do not have technology in their homes and amends KRS 45A.425 to conform. SB 129 (Acts ch. 14).

AN ACT relating to education and declaring an emergency. Amends numerous sections of KRS Chapter 161, among them KRS 161.750, 161.760, 161.011, and 161.780, with respect to the timing of notices in various school employment

situations; amends numerous other sections of KRS to change the reference to "regional" universities to "comprehensive" universities. SB 157 (Acts ch. 113), effective April 15, 2008.

AN ACT relating dental care, and declaring an emergency. Amends KRS 156.160 to require the Kentucky Board of Education to promulgate administrative regulations providing for dental screenings of students entering school beginning in the 2010-2011 school year; amends KRS 313.254 to permit a waiver of requirements relating to temporary and reciprocal licensure for a dentist or dental hygienist who volunteers services through a nonprofit, all-volunteer charitable organization. HB 186 (Acts ch. 92), bill section 2 effective April 14, 2008.

AN ACT relating to school health services. Amends KRS 156.4975 and 156.4977 to permit a supplemental grant program to fund employment of a physician or nurse in a family resource or youth services center. HB 640 (Acts ch. 179).

AN ACT relating to school bus transportation. Amends KRS 158.115 to require annual reports from the secretary of the Transportation Cabinet to the Interim Committee on Appropriations and Revenue of data related to providing transportation for nonpublic school pupils. HB 655 (Acts ch. 131).

AN ACT relating to school finance and declaring an emergency. Amends KRS 157.621 to codify certain actions taken in budgets passed since 2003 with respect to districts that meet certain growth criteria or are affected by the base realignment at Ft. Knox. HB 734 (Acts ch. 80), effective April 11, 2008.

TAXES AND FEES

AN ACT relating to property tax administration. Amends KRS 132.480 and 133.220 to require the property valuation administrator to review deeds to property to update addresses to which to send property tax bills; amends KRS 382.135 with respect to the content of deeds; amends KRS 132.380 in part to provide for special examinations for candidates for property valuation administrator. HB 182 (Acts ch. 143), effective August 1, 2008.

AN ACT relating to a property tax exemption for broadcasting equipment. Amends KRS 132.200 to exempt additional broadcasting equipment from local taxation and subjecting it only to state property tax; applies to assessments made on or after January 1, 2009. HB 277 (Acts ch. 81).

AN ACT relating to disabled veterans. Amends KRS 132.810 to excuse certain veterans with a service-connected disability from having to file paperwork with Property Valuation Administrators annually. HB 284 (Acts ch. 4).

AN ACT relating to local government taxes and fees. Adds new sections to KRS Ch. 91A and amends KRS 91A.080 concerning imposition and collection of insurance premium taxes to address situations where erroneous insurance fees or tax payments have been made. HB 524 (Acts ch. 94).

AN ACT relating to tax increment financing. Amends various sections of KRS Chapter 65 with respect to issuance of refunds of sales tax under current tax increment financing laws; establishes a new subchapter 30 of KRS Chapter 154 and repeals, reenacts, and amends various sections of KRS Chapter 65 pertaining to tax increment financing as sections of that subchapter; moves oversight and responsibility for the state portion of the tax increment financing program from the Tax Increment Financing Commission to the Kentucky Economic Development Finance Authority; permits local governments

to impose a wage assessment within a development area or local development area. HB 611 (Acts ch. 178).

TEACHERS AND SCHOOL EMPLOYEES

See also Education; Schools and School Districts

AN ACT relating to survivor benefits for adopted children. Amends KRS 161.520 to extend survivor benefits to a child who is a legally adopted survivor of a member of the Kentucky Teachers' Retirement System. SB 131 (Acts ch. 67).

AN ACT relating to certification of math and science teachers and declaring an emergency. Adds a new section

to KRS Chapter 161 and amends KRS 156.553 to create and administer a certification incentive fund to support the development of institutes for persons seeking alternative certification, especially for middle school and high school teachers of science and mathematics. SB 64 (Acts ch. 185).

AN ACT relating to alternative teacher certification. Amends KRS 161.048 to allow issuance of a five-year statement of eligibility for teaching for a veteran who has completed a total of ten years of active duty service, ten years of service officially credited toward armed services retirement, or ten years combination of such service. HB 607 (Acts ch. 177).

ETHICS REPORT SAYS LOCAL GOVERNMENTS HAVE FAR TO GO

Kentucky law (KRS 65.003) requires that the governing body of a city or county adopt by ordinance a code of ethics applicable to all elected officials and to those appointed officials and employees identified in the ordinance. Kentucky law also establishes a code of ethics applicable to all employees in the executive branch of state government (KRS Chapter 11A) and a code of legislative ethics applicable to legislators and certain personnel in the legislative branch (KRS 6.601-6.849).

Statute charges the Kentucky Executive Branch Ethics Commission and the Kentucky Legislative Ethics Commission to administer and enforce the respective codes of ethics. In the course of doing so, the commissions prepare advisory opinions and make them available online. In their ordinances cities and counties must likewise charge a person or group to administer and enforce the code of ethics required under KRS 65.003. Not surprisingly, that function (and the ethics code itself) tends to be less visible at the local government level than at the state level, and a local government's experience applying a local ethics code tends to grow more slowly than it does at higher levels of government.

The advisory opinions of the Executive Branch Ethics Commission may be instructive in instances where, for example, a provision in a local ethics code resembles one in the Executive Branch Code of Ethics. However, those opinions often deal with situations where people are sensitive to the ethical demands of a particular situation; they seldom deal with instances of "ethical failure."

For that there is the *Encyclopedia of Ethical Failure*. Compiled by Stephen Epstein, the director of the Pentagon's Standards of Conduct Office, the *Wall Street Journal* described it as a "hit parade ... to regale bureaucrats with tales of shenanigans and shockingly bad judgment that have shot down the careers of fellow public servants across government."¹ Unlike some agency ethics officers, Epstein approaches his subject with irreverence and a sense of humor.

The encyclopedia has hundreds of anecdotes involving abuses of official position, misuse of government resources and personnel, bribery, criminal conflicts of interest, misuse of government credit cards, financial disclosure violations, fraud, political activity violations, post-employment violations, time and attendance violations, and travel violations. While drawn from Epstein's experience in federal government, many of the examples will resonate with those who work in state and local government as well. Here are some examples.

A supervisory special agent for the Department of the Treasury was a passenger in a car that was pulled over by a local police officer. When the officer approached the vehicle, the employee presented the officer with her credentials identifying herself as a federal agent. The police officer had not asked to see the employee's identification at all. Because law enforcement officials may be tempted to treat other law enforcement officials more favorably, the Treasury Department determined the employee presented her government credentials to the police officer in hopes of receiving more favorable treatment. The federal employee did not explicitly ask the police officer for any favors, but the circumstances led her agency to the conclusion that she had attempted to use her official position for personal gain. As a result, the employee's agency determined that she was untrustworthy as a supervisor and she was demoted.

An offshore safety inspector found much of the government's equipment to be in need of repairs to meet safety standards. He then referred the business to his brother-in-law's repair shop. The rig operators smelled a rat and called the FBI. They discovered that, in return for each referral, the brother-in-law was treating the inspector to an evening with a lady of dubious morals. The case was brought to trial. In his defense, the inspector claimed that he had not received a "thing of value" in return for the referral. The judge didn't buy it – and neither did his wife.

A contract manager at a Tennessee Valley Authority power plant in Kentucky found himself out of two jobs after investigators learned that he had been moonlighting for the same contractor he was overseeing. As part of his responsibilities with TVA, the contract manager reviewed contract performance. The manager accepted a job with one of TVA's contractors as a part-time supervisor and worked for the contractor in Oklahoma and Indiana on his days off and vacation days. Even though the manager's actions did not result in any identified financial loss, he was terminated from TVA, prosecuted, and sentenced to probation and a \$1,000 fine.

A contracting officer for the General Services Administration wound up in federal court after funneling contracts to her husband's employer. Investigators discovered that the officer had directed more than \$11.5 million to the company that employed her husband over the span of 15 months, all in the form of GSA purchases of food preparation and serving equipment items. As a result of these purchases, the officer's husband received raises and a Jaguar from his employer. The officer pled guilty to violating conflict of interest laws and was sentenced to

180 days of home confinement and five years of probation. She additionally was ordered to pay \$161,000 in restitution.

An FBI agent's job responsibilities included researching and testing the use of pepper spray for the FBI, which resulted in contact with the manufacturers of one particular type of pepper spray. The agent subsequently recommended this pepper spray and in return received \$57,500 in payments from the manufacturer. Following the agent's recommendation, the FBI approved the use of the pepper spray for its agents, resulting in a large purchase from the manufacturer. Additionally, as a result of the FBI agent's research and recommendation, other law enforcement agencies nationwide began to use the pepper spray produced by the manufacturer. The former agent was sentenced to two month's imprisonment followed by three years of supervised release for his conflict of interest. The law prohibits employees from officially participating (in this case, even making a recommendation) in particular matters (in this case, a contract to buy pepper spray) that have a direct and predictable effect on the employee's financial interests or those of the employee's spouse or minor children.

An IT specialist was reprimanded for a trio of offenses committed over the span of a year. Investigators found that the specialist used his government travel card to pay for \$2,735.45 worth of food, gas, and rental cars while on personal trips to Indiana to visit his girlfriend. The specialist additionally claimed per diem allowances for two days on which he was technically absent without leave. Finally, the specialist used his government cell phone to make personal phone calls such that unofficial use comprised anywhere from 30 percent to 50 percent of his total usage.

A senior official left his post after his relationship with a subordinate came to light. Employees told investigators that they had witnessed inappropriate physical contact between the official and a program director. The official allegedly favored the program director by approving leave requests during critical periods, affording her more authority than her position entitled her, giving her leniency regarding her work schedule, and consistently relying on her opinion above others. The official was also accused of creating a hostile work environment by repeatedly demeaning employees. The program director was separately charged with misusing government property by taking excessive leave and misreporting time and attendance. The official resigned his post, and the program director was detailed to a different component and received counseling.

The "Big Boss" was retiring and his second-in-command called the secretary to ask her to set up a retirement party. He directed her to send a memo to the staff advising them of what they were expected to contribute. She was assigned paper plates, napkins, plastic utensils, and a paper tablecloth. Everyone, including the secretary, was expected to contribute \$25 for food and gifts. To the surprise of no one, the second-in-command was selected as the new "Big Boss." His new branch chief called the secretary to have her set up a "promotion" party. The branch chief's memo to the staff advised them of what they were expected to contribute. For the secretary, it was once again paper plates, napkins, plastic utensils and paper tablecloth. Everyone, including the secretary, was again expected to contribute \$25 for food and gifts. To no one's surprise, the branch chief was selected as the new second-in-command. Her senior analyst called the secretary and asked her to set up a "promotion" party. The secretary contacted the ethics office instead, where disciplinary action was initiated.

There are many more entries in the encyclopedia, some of which the reader may find funny, some of which will make the reader angry, and some of which will be useful in avoiding problems in one's own governmental setting. The encyclopedia was compiled as a training tool, and all the entries serve to remind government leaders of the need to communicate with and train employees – two critical components of any ethics program. The entire document is available online.

As stated in the National Government Ethics Survey, released by the Ethics Resource Center in January 2008, "The most important asset of government is public trust. When present, citizens believe that elected officials, political appointees, and career public servants are acting in their best interest. When public trust erodes, government effectiveness is hindered."

That same survey reported that six in ten government employees saw at least one form of misconduct in the last twelve months, one in four government employees works in an environment conducive to misconduct, and the strength of ethical culture in government workplaces is declining while pressure to commit misconduct is growing. The survey found that levels of misconduct were highest in local governments, the most common examples being abusive behavior, putting one's own interests ahead of the organization's, and Internet abuse.

Governments at all levels can mitigate the risk of losing public trust, said the report, when both a well-implemented ethics and compliance program and a strong ethical culture are in place. In this respect, according to the report, local governments have the farthest to go. For leaders at all levels of government, the report makes the following recommendations:

Elevate Ethics on the Agenda. Effective ethics interventions begin with intentional and high-level oversight, with a message and approach that is carried out until it is pervasive in government workplaces.

Focus on Tone at the "Tops." All leaders, not just the leader of the organization as a whole, need to be trained and encouraged to create strong ethical cultures. Employees need to be convinced that their management doesn't just "talk the talk"; the commitments leaders make need to be followed with action.

Evaluate Existing Ethics and Compliance Programs. Having a well-implemented program is a vital step in establishing standards for government conduct and detecting when misconduct is taking place. Merely having a code of conduct or an all-employee training program does not guarantee its usefulness.

Prepare Supervisors to Act on Reports of Misconduct. Supervisors are most likely to receive reports about observations of misconduct, so they need to be prepared to recognize these reports as ethics-related and to respond appropriately. When managers handle reports in consistent and relevant ways, employees perceive that their report makes a difference and are more likely to report in the future.

Create a Catalyst to Inspire Change. Bring leaders from across levels of government and across sectors together to share ideas and create accountability mechanisms for one another.

Endnote

1. Jonathan Korp, "At the Pentagon, An 'Encyclopedia of Ethical Failure,'" *Wall Street Journal*, May 14, 2007 at A1.

The Chase Local Government Law Center

Telephone: (859) 572-6313

Fax: (859) 572-6302

E-mail: clglc@nku.edu

Website: www.chaselocalgov.org

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Phillip M. Sparkes
Director

Kathleen Gormley Johnson
Assistant Director

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