To hear some state legislators talk, nothing is more sacred than privacy—especially their own.

In Indiana, members of the legislature were so intent on shielding their emails from the prying eyes of the media they passed legislation this spring—later vetoed—exempting themselves from open records statutes, known as sunshine laws.

In Iowa, several lawmakers are working to prevent the public release of concealed weapons permits and applications.

In Wyoming, lawmakers have already succeeded in shutting off public access to concealed gun records. Now state officials are working behind closed doors on a more restrictive open records law that would greatly limit access to police investigation files.

In Kentucky and New Mexico, government officials are trying to block access to meetings and information by concealing agendas and content. Some public agencies in Kentucky are demanding to know the reason for inspecting records and are basing the release of information on whether they deem the explanation acceptable.

In North Carolina, the legislature has repeatedly rejected bills that would force local governments to end the practice of holding closed-door meetings on public matters.

And in Maine and Colorado, legislators are still making decisions over public issues in private, despite constituent complaints and threats of lawsuits charging violations of open meetings laws.

In fact, all over the country the people’s representatives are busy trying to limit public access in every way they can not only to their own records and deliberations, but to other forms of government information as well. Hundreds of bills aimed at weakening open records laws have been introduced this year. While many of them are harmless, lawmakers are increasingly using growing concerns about personal privacy as a catalyst for putting traditionally-accepted forms of public information out of public reach. Nowhere are they acting more committed to rolling back sunshine laws than in Florida, where lawmakers introduced 134 bills this year limiting public access.

Last month, for example, Republican Gov. Jeb Bush touched off a heated debate over how far the state could go in limiting access to public records by signing into law a bill prohibiting the release of autopsy photos. His action, following a plea by stock-car driver Dale Earnhardt’s wife and NASCAR officials, has led to two lawsuits by first amendment advocates claiming the new statute violates the state’s constitutional guarantee of public access to government information.

The law’s passage slowed two newspaper investigations into whether Earnhardt was wearing a protective head restraint at the time of his tragic death in this year’s Daytona 500 race. The restraint information was considered by the papers to be crucial in determining how Earnhardt died.

Although the autopsy measure appeared to have the backing of Floridians concerned the Earnhardt photos would be published or posted on the Internet, most of the 134 bills introduced this year imposing exceptions on state open records laws did not. Only 31 of the bills passed before the legislature adjourned earlier this month, and nearly all of them closed off or limited access to information that had long been

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“No man’s life, liberty, or property is safe while the legislature is in session.” Final Accounting of the Estate of A.B., 1 Tucker (N.Y. Surr.) 247, 249 (1866).

Kentucky’s current constitution, its fourth, dates to 1891. The members of the convention that shaped that constitution would have been sympathetic to the sentiment expressed by the Surrogate. As one source puts it, “the delegates did not trust government or its leaders very much . . . [T]he framers had reflected the will of a state fearful of power, distrustful of politicians, and careful of prerogatives . . . .” Lowell H. Harrison and James C. Klotter, A New History of Kentucky, 264-5.

Slowly, through the process of amendment, the Constitution has edged away from those sentiments. In November 2000, it took a larger step; Kentucky voters approved amendments to sections 36 and 42 of the Kentucky Constitution. The change allows the General Assembly to meet in annual sessions, ending the historical practice of biannual sessions. The vote was 576,081 in favor, 524,877 against. Voters also approved second constitutional amendment to abolish the Railroad Commission. The vote was 547,020 in favor, 535,025 against. These were the thirty-seventh and thirty-eighth amendments to the Constitution in its history.

The annual sessions amendment provides that in odd-numbered years the General Assembly will meet for a thirty-day session. In even-numbered years the General Assembly will meet for its usual sixty-day session. As a further limitation on the General Assembly, the amendment provides that in an odd-year session “no bill raising revenue or appropriating funds shall become a law unless it shall be agreed to by three-fifths of all the members elected to each House.”

Proponents of the amendment saw it as a means to make the legislature more accessible, more efficient, and more accountable. In their view, annual sessions would permit the legislature to react more quickly to changing conditions and federal mandates. Prior to the amendment the legislature might have to wait as long as twenty-one months to confront major problems, act upon administrative regulations, review executive orders, or confirm gubernatorial appointments.

Some proponents also argued, based on other states’ experience, that annual sessions would reduce the need for special sessions and would provide for the more orderly introduction of legislation. Others argued that annual sessions were important to restore the balance in a state government that had shifted additional power to the governor by allowing the governor to succeed himself. Still others said that annual sessions would allow the legislature to budget smarter than the two-year guesswork required by prior practice.

Not everyone agreed, of course. Voters narrowly defeated a similar proposal in 1998. Opponents of that measure made similar arguments about this one. They saw the amendment as a step toward bigger and more costly government having more regulatory power, toward full-time, professional state legislators, and toward less stable public policy.

The first annual session met from January to March. In it 579 bills were introduced in the House and Senate combined, as compared to the 1,441 bills introduced during the 2000 regular session. One-third as many bills and resolutions were enacted — approximately 160 in 2001 compared to 480 in 2000. However, as in the previous session as many as one-third of the bills directly affected local government in one way or another. A feature of this issue is a topical review of selected acts of the 2001 General Assembly affecting local governments.
available to the public, according to the Florida First Amendment Foundation (FAF).

The foundation, however, was instrumental in killing one of the more controversial measures. It would have barred the release of adverse incident reports doctors are required to file with the state detailing everything from wrongly prescribed medicines to surgical errors resulting in death. The medical report exemption was never brought up for a final vote.

“These (reports) are required by law to be filed (with state health authorities). This is a situation where the doctor realizes the doctor has made a mistake... And they wanted to keep that covered up,” said FAF Executive Director Barbara Petersen.

But open records advocates were not able to stop an equally controversial bill expected to shut off access to nursing home accident and death reports.

The situation in Florida may be an extreme example of what’s happening around the country. But more and more legislators are challenging existing laws meant to protect the public’s right to know what government is up to. Some lawmakers are moving to further remove themselves from public scrutiny by using personal privacy issues as an excuse for their actions.

In Indiana, Gov. Frank O’Bannon has just vetoed a bill that would have exempted state legislators from open records laws. Although a provision dealing with computer emails was dropped from the final version, it still would have given lawmakers the power to decide on their own which legislative records should be released and which ones should be kept secret.

The bill was introduced as an angry reaction by some lawmakers to a request from a television reporter for access to their emails. In his veto message, O’Bannon chastised the bill’s sponsors for overreacting to the media request even though he agreed with complaints that it may have been “needlessly invasive.” Nonetheless, the governor insisted “the legislature’s records should be open to the public, with a few carefully crafted exceptions” designed primarily to facilitate the “making of sound public policy.”

Next door in Illinois, bills aimed at strengthening public access to information and reinstating a legislative code of ethics, which was struck down in a court decision last year, are now stalled in a subcommittee for further study.

Although legislative leaders claim they are not intentionally holding up the bills, Dave Bennett, the executive director of the Illinois Press Association, says lawmakers have a habit of dragging their feet indefinitely on legislation they hate.

“As anyone who has been around this process knows, a subcommittee is like being sent to the Black Hole of Calcutta. It’s the easiest way to kill a bill with nobody’s fingerprints on it,” Bennett told The State Journal-Register in Springfield.

The apparent proliferation this year of public access bills - that seem designed to accomplish the opposite of what their titles suggest - can in part be explained by Internet-driven public concerns over personal privacy and by recent court rulings giving lawmakers more leeway in deciding what to keep private.

For example, the Tennessee Supreme Court’s refusal recently to hear a television station’s challenge to closed-door meetings by lawmakers left intact a lower court ruling that the state’s open records law does not apply to the legislature.

Such rulings are chilling to advocates of open government.

“We do see a lot of decisions and bills each year based on making things more confidential,” says Rebecca Dougherty, who heads the Freedom of Information Service Center at the Washington, D.C.-based Reporters Committee For Freedom of the Press.

“I think the whole (personal) privacy issue is largely out of control...The public certainly wants its government to be transparent and held accountable. But if you start closing off access, then what kind of government do you have?” adds Dougherty.

Petersen, who served recently on the governor’s task force on privacy, concedes that some of the bills passed by the Florida Legislature this year dealing with individual medical and financial privacy issues probably are necessary. But most others, she says, go too far.

“What they’re doing is stretching the privacy issue out of shape to cover almost anything they don’t want the public to see,” she says. “They’re not thinking...What they should be doing is making distinctions between an individual’s personal right to privacy and the public’s right to access government records.”

1 Greg McDonald is a Senior Writer for Stateline.org. This article is reprinted with permission.

2 See, for example, 01-ORD-8 summarized at page 13 of this issue.
DECISIONS OF NOTE

Kentucky Supreme Court

Judges - Removal from Office

The Judicial Conduct Commission removed a District Court Judge for misconduct in office. Because it appeared that the judge intended to run in the special election to fill the office from which he had just been removed, the Commission sought to prohibit his candidacy. To address the issue the Supreme Court invoked its powers under section 110 of the Constitution “to exercise control of the Court of Justice.”Citing with favor a case from Louisiana, the Supreme Court interprets removal under section 121 of the Constitution to prevent a removed judge from immediately regaining the office from which he was removed. Judicial Conduct Commission v. Woods, 25 S.W.3d 470 (Ky. 2000).

Occupational License Fees - Double Taxation

Pursuant to KRS 92.281 a city imposed an occupational license fee on all persons employed or self-employed within the city. Later, pursuant to KRS 67.083(2), the county imposed an identical tax on all persons employed or self-employed within the county. Taxpayers in the city were subject to both taxes. Because the county ordinance did not allow a taxpayer to credit the city occupational license fee against the county occupational license fee, taxpayers challenged the ordinance on constitutional grounds. The court held that two taxes on the same privilege did not offend either section 2 (arbitrary power) or section 171 (uniform taxation) of the state Constitution. The court also rejected an equal protection claim based on the different treatment of the tax credit in counties with populations of less than 30,000 as opposed to those counties with populations of 30,000 or more. Preston v. Johnson County Fiscal Court, 27 S.W.3d 790 (Ky. 2000).

Taxation - Loss of Favorable Treatment

Corporations occupied property and conducted business under lease agreements with city/owners of the property. The cities acquired the funding needed to acquire the sites and construct the buildings by issuing industrial revenue bonds. While the bonds were outstanding, the corporations received favorable state tax rates and local tax exemptions under KRS 132.020(1) and 132.200(8). The corporations challenged the loss of those benefits when the bonds were fully repaid and retired. Finding the intent of the statutes to be unclear, the court construes them against the taxpayers and in favor of the taxing authorities. The taxpayers cannot benefit from the favorable treatment indefinitely. Owens-Illinois Labels, Inc. v. Commonwealth, 25 S.W.3d 798 (Ky. 2000).

Boards of Education - Removal from Office

Members of the board of education of a financially troubled school district were removed by the State Board of Education for nonfeasance in office. They failed to apprise themselves of the district’s financial condition and they accepted their superintendent’s explanations for incomplete financial information. The Supreme Court found that the removal of the members required a knowing violation on their part of the conduct prescribed by the applicable statutes. Here the members lacked that knowledge, so the members are restored to office. Hale v. Combs, 30 S.W.3d 146 (Ky. 2000).

Officers and Employees - Whistleblower Act

KRS 61.102(1) prohibits retaliation against state employees who in good faith report instances of official wrongdoing. A state agency found to have violated the provision challenges it as unconstitutionally vague, but fails. The agency also challenges the award of $2 million in punitive damages to the affected employees. Again the agency fails. The Supreme Court finds the punitive damages provision of the Whistleblower Act (see KRS 61.103(2)) is in harmony with Kentucky common law on punitive damages. Commonwealth Department of Agriculture v. Vinson, 30 S.W.3d 162 (Ky. 2000).

Teachers - Sexual Harassment

Current and former teachers sued a board of education complaining of sexual harassment by a coworker. Over the course of years the employees had complained about the lewd and inappropriate conduct, but the response of the administration was inadequate. Ultimately the offending employee was fired,
but his coworkers still filed a civil rights claim against the board. They also included a number of other claims, which the court dismisses on sovereign immunity grounds. However, sovereign immunity does not preclude a claim under the Kentucky Civil Rights Act (KRS 344.010 et seq.). Nevertheless, the court finds this claim barred by the five-year statute of limitations in KRS 413.120(2). In doing so, the court declines to apply the continuing violation doctrine. On the facts of this case, the acts of sexual harassment could not be linked into a single chain to defeat the statute of limitation. Ammernan v. Board of Education of Nicholas County, 30 S.W.3d 793 (Ky. 2000).

County Development Authority - Immunity

The chairman of a county development authority assured a contractor that interim financing for a construction contract was in place when it was not. The authority defaulted on its payments and the contractor sued. The authority claimed sovereign immunity, and the chairman claimed official immunity for discretionary acts. Applying the test of Kentucky Center for the Arts v. Berns, the court finds the authority is a municipal corporation unprotected by sovereign immunity. Similarly, the chairman is unprotected by official immunity. His communication of unambiguous, concrete information was a purely ministerial act. Kea-Ham Contracting, Inc. v. Floyd County Development Authority, 37 S.W.3d 703 (Ky. 2000).

Kentucky Court of Appeals

Sewer lines - City Liability

Homeowners who suffered damage from the backup of sanitary sewage into their basements sued the city and the sanitation district for the injuries. The flooding was the result of a collapsed lateral sewage line that the court concluded was the private property of the complaining parties. The city had connected a storm water drain to this line, but that was not enough to convert it to a public system nor to impose on the city liability for its repair. The city's use of a private sewer line for the purpose of diverting storm water does not appropriate or dedicate that private line to a public use for which the city bears responsibility. Neither did the city's attempt to accommodate the property owners attach liability to the city. The court granted summary judgment for the district and the city. Heitzman v. Sanitation District No. 1, 26 S.W.3d 794 (Ky. Ct. App. 2000).

Ordinances - Invasion of Privacy

A county ordinance included a requirement that owners of boarding kennels and catteries divulge the names and addresses of pet owners to animal control authorities upon request. Owners of kennels challenged the ordinance as an invasion of privacy. The court concludes that the purpose of the ordinance was to encourage licensing and vaccination of animals. Consequently, the public interest in preventing rabies outweighs the minimal invasion of privacy here. The release of the home address would occur only in the event of an inspection that revealed an unlicensed pet. Bluegrass Boarding and Training Kennels v. Jefferson County Fiscal Court, 26 S.W.3d 801 (Ky. Ct. App. 2000).

Zoning - Compliance with Comprehensive Plan

The urban county council denied a requested zone change despite the fact that the change was in compliance with the comprehensive plan and recommending for approval by the planning commission. The property owners challenged the determination as both arbitrary and a denial of due process. The court affirms that a rezoning does not have to occur "solely because a request in in accordance with a comprehensive plan or its recommended land use element." Here the council set forth seven specific reasons for denying the change based on testimony received at a public hearing. The council acted within its statutory power, the owners received due process at every level, and the decision was based upon substantial evidence. Further claims that council members' attendance at neighborhood meetings was sufficient to prejudice them, and so invalidate the action, were unpersuasive. Contact by elected officials with their constituents does not by itself constitute improper ex parte contact. Hougham v. Lexington-Fayette Urban County Government, 29 S.W.3d 370 (Ky. Ct. App. 2000).

Schools - Classified Employees

A school employee, near the end of her fourth one-year contract, received notice that the board of education would not renew her contract for the following
year. Upon receiving the notice, she asked for a statement of reasons, arguing that she was a “four-year employee” within the meaning of KRS 161.011(5)(b). If within the scope of that provision, she could be dismissed only for cause. Because the board gave notice before the completion of the fourth year of service, the court found the employee was entitled only to the rights afforded under KRS 161.011(5)(a). Holding that the reasons given for nonrenewal under that provision must at least be true so as not to render the requirement meaningless, the court allows the suit to go forward. Kidd v. Board of Education of McCreary County, 29 S.W.3d 374 (Ky. Ct. App. 2000).

Counties - Sovereign Immunity

A state prison inmate serving a sentence in a county jail was injured while operating a front end loader for the county road department. After an unsuccessful attempt to sue in circuit court, the inmate filed an action with the Board of Claims against the fiscal court for his injuries. The Board dismissed the claim on the ground that it did not have jurisdiction over claims against counties. Holding that the Board of Claims Act does not waive the sovereign immunity of counties, the court sustains the Board’s determination. Board of Claims of Kentucky v. Banks, 31 S.W.3d 436 (Ky. Ct. App. 2000).

Compatibility - Deputy Circuit Clerk and City Council Member

A deputy circuit clerk campaigned for and won election to a seat on a city council. When informed by the Administrative Office of the Courts that the positions were incompatible, she filed a declaratory judgment action to prevent the office from discharging her. Section 165 of the state Constitution and KRS 61.080(1) forbid a “deputy state officer” from holding a city office. KRS 30A.010(2) provides that circuit clerks are state officers, and it follows that the deputy circuit clerk is a deputy state officer. Thus the offices of deputy circuit clerk and member of a city council are incompatible. Court of Justice v. Oney, 34 S.W.3d 814 (Ky. Ct. App. 2000).

Inmates - Medical Treatment

An inmate who suffered from kidney failure missed a dialysis treatment while incarcerated. The inmate sued, alleging that denial of medical treatment was deliberate indifference on the part of the county detention center in violation of his constitutional rights. To establish deliberate indifference, the inmate had to show that there was a detrimental effect from the delay in treatment and that the prison officials had a sufficiently culpable state of mind. Here the inmate could not show that he suffered a detrimental effect in being kept from his treatment. His claim fails. Napier v. Madison County, 238 F.3d 739 (6th Cir. 2001).

United States Court of Appeals (6th Cir.)
Commonwealth Attorney - Extortion Conviction

A former Commonwealth Attorney was convicted of extorting money from a local bookmaker in violation of the Hobbs Act (18 U.S.C. § 1951). He challenged his conviction in part on the ground that his conduct lacked a sufficient connection to interstate commerce to state an offense under the Hobbs Act. The court found that there was a “realistic probability” that some of the money the attorney attempted to extort would come from the proceeds of interstate gambling, enough to sustain the federal charges. The court rejected the other challenges to the conviction as well. United States v. Carmichael, 232 F.3d 510 (6th Cir. 2000).

Education - Student Yearbooks

Unhappy with several aspects of the student yearbook, including its quality and appropriateness, Kentucky State University confiscated all copies and withheld them from the university community. In response the students sued, alleging that the confiscation and failure to distribute were violations of the students’ First Amendment rights. Finding the yearbook to be a “limited public forum,” the court holds that the university’s actions were arbitrary and unreasonable. The court returned the case to the district court with instructions to enter judgment in favor of the students. Kincaid v. Gibson, 236 F.3d 342 (6th Cir. 2001).
Public Officials - Immunity

Parents of a student killed in a dormitory fire sued two public officials in their personal capacities for the wrongful death. Holding that under Kentucky law, individuals who knowingly commit intentional torts or wrongful acts are not entitled to immunity, the court finds that the parents state a valid claim against one of the officials. The other official is immune because the claim against him amounts only to a claim of negligence in the performance of a discretionary function within the scope of his official duties. Minger v. Green, 239 F.3d 793 (6th Cir. 2001).

U. S. DISTRICT COURT
(E. D. KY.; W. D. KY.)

Public Employees - First Amendment Rights

A former Commissioner of the Kentucky State Police wrote a letter to the Secretary of the Justice Cabinet complaining about waste, mismanagement, and unlawful employment policies within the Kentucky State Police. The writer was told to withdraw the letter or be fired. He did not withdraw the letter, and the Secretary fired him. The writer then sued alleging violations of his right to free speech. Public employees do not lose their rights to speak out on matters of public concern. The matter here, however, was a matter of internal office politics, unrelated to matters of public concern. As such, it was properly a basis for the termination. Rose v. Stephens, 117 F.Supp.2d 607 (E.D. Ky. 2000).

Jails - Use of Telephones

Recipients of collect calls from county jail inmates sued the fiscal courts running the jails and the telephone companies providing service to the jails alleging antitrust and equal protection violations. Applying the “filed rate doctrine,” the court dismissed all claims for damages under the Sherman Act and 42 USCA § 1983, but left open the possibility of injunctive relief. The court dismissed the equal protection claims entirely. The court finds that inmates and non-inmates are not similarly situated. Inmates alone define the group, and all inmates are treated in the same manner. Daleure v. Kentucky, 119 F.Supp.2d 683 (W.D. Ky. 2000).

Schools - Dress Codes

Students and parents challenged a high school dress code as violating rights of free speech, free exercise of religion, and due process of law. The dress code was a response by the school-based decision making council to address the problem of gangs, to promote student safety and prevent student-on-student violence, and to enable officials to more easily identify non-students. The court rejects all of the challenges. Of particular interest is the inclusion of the dress code as an appendix to the decision. Long v. Board of Education of Jefferson County, 121 F.Supp.2d 621 (W.D. Ky. 2000).
THE 2001 KENTUCKY GENERAL ASSEMBLY:
A TOPICAL REVIEW OF SELECTED ACTS AFFECTING LOCAL
GOVERNMENTS

A Note on Effective Dates

"[T]he effective date of legislation passed during the 2001 Regular Session of the Kentucky General Assembly, other than general appropriation bills, and acts containing emergency or delayed effective date provisions, is the first moment of Thursday, June 21, 2001." Opinion of the Attorney General 01-4 (April 6, 2001).

CITIES

AN ACT relating to increment financing. Creates new sections of KRS Chapter 65 to allow cities and counties to contract with an agency for increments received by it in return for benefits accrued from a project locating in a development area. House Bill 238 (Acts ch. 148).

AN ACT relating to nonelected city offices and officers. Amends KRS 83A.080 to provide that a city shall create the offices of city clerk, city manager, city administrator, chief of police, and fire chief (other than a volunteer fire chief); permits the creation of additional appointive offices; requires city, upon removal of a nonelected officer at will, to give the officer a written statement setting forth the reason or reasons for the removal. House Bill 259 (Acts ch. 118).

AN ACT relating to cities. Transfers the city of Brodhead, in Rockcastle County, from the sixth to the fifth class of cities. Amends KRS 81A.530, concerning the annexation of a city of the sixth class to a city of the third, fourth, or fifth class, to provide that the vote on the annexation can no longer occur at a primary election. House Bill 304 (Acts ch. 152).

AN ACT relating to architectural firms. Creates a new section of KRS Chapter 65 to prevent a local government from employing the same entity to provide both architectural services and construction management services on the same capital construction project. Also prevents a local government officer from knowingly hiring a firm in which a family member has an interest. House Bill 347 (Acts ch. 154).

COUNTIES


AN ACT relating to increment financing. Creates new sections of KRS Chapter 65 to allow cities and counties to contract with an agency for increments received by it in return for benefits accrued from a project locating in a development area. House Bill 238 (Acts ch. 148).

AN ACT relating to training of county officials. Amends KRS 64.5275 to condition incentive pay on completion of forty hours of training annually and to impose other conditions. House Bill 343 (Acts ch. 71).

AN ACT relating to architectural firms. Creates a new section of KRS Chapter 65 to prevent a local government from employing the same entity to provide both architectural services and construction management services on the same capital construction project. Also prevents a local government officer from knowingly hiring a firm in which a family member has an interest. House Bill 347 (Acts ch. 154).
AN ACT relating to the Court of Justice. Amends KRS 23A.020, 23A.040, and 24A.050 to alter the boundaries of certain judicial circuits and add judges to several circuits. House Bill 324 (Acts ch. 72), effective April 1, 2001.

ECONOMIC DEVELOPMENT

AN ACT relating to the establishment of a program to encourage retirees to make their homes in Kentucky. Creates a new section of KRS Chapter 148 to establish and maintain a Kentucky Certified Retirement Community Program. House Bill 40 (Acts ch. 50).

AN ACT relating to reorganization. Creates a new section of KRS Chapter 154 establishing the Eastern Kentucky Exposition Center Corporation as an independent municipal corporation and political subdivision of the Commonwealth to develop, operate, and manage the Eastern Kentucky Exposition Center. House Bill 86 (Acts ch. 27).

AN ACT relating to the reorganization of the Economic Development Cabinet. Amends numerous sections of KRS changing the Office of Coal County Development to a department and concerning the Local Government Economic Development Program, a system of grants to counties to attract new industry. House Bill 91 (Acts ch. 34).

AN ACT relating to increment financing. Creates new sections of KRS Chapter 65 to allow cities and counties to contract with an agency for increments received by it in return for benefits accrued from a project locating in a development area. House Bill 238 (Acts ch. 148).

AN ACT relating to environmental protection. Amends numerous provisions of KRS to promote voluntary cleanup and redevelopment of properties suspected of environmental contamination while stimulating economic development and job creation through the construction of new residential, commercial, and industrial facilities. Senate Bill 2 (Acts ch. 128).

AN ACT relating to economic development. Amends numerous provisions of KRS in part to allow cities and counties that create development areas to impose job development assessment fees on those employed in such areas and whose job was created by an economic development project. Senate Bill 47 (Acts ch. 133).

EDUCATION

See also Schools.

AN ACT relating to the Teachers’ Professional Growth Fund. Amends KRS 156.553 to make administrative changes to the Teachers’ Professional Growth Fund. House Bill 66 (Acts ch. 135).

AN ACT relating to career and technical education. Creates new sections of KRS Chapter 158 and makes other amendments concerning school district responsibilities for career and technical education. House Bill 185 (Acts ch. 123).

AN ACT relating to high school athletics. Amends KRS 156.070 to delete varsity wrestling from the list of sports prohibited to seventh and eighth graders and provides that non-teaching personnel may serve as coaches in all sports. House Bill 191 (Acts ch. 147).

AN ACT relating to criminal records checks. Amends KRS 161.148 to provide that criminal records checks for school volunteers are valid for a period of five years unless the school board determines that an additional check is needed earlier. Amends KRS 161.042, and 160.380 to require student teachers to have criminal records checks. House bill 204 (Acts ch. 60).

AN ACT relating to the school term. Amends KRS 158.070 to require the local board of education to adopt a school calendar for the school year that establishes the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days, and days on which schools are dismissed and makes related changes. Senate Bill 108 (Acts ch. 134).
ELECTIONS

AN ACT relating to actions to challenge the qualifications of candidates for office. Amends KRS 118.176 to provide that an action regarding the bona fides of any candidate seeking nomination or election in a primary or general election may be commenced at any time prior to the general election. House Bill 85 (Acts ch. 52).

AN ACT relating to election precinct boundaries and declaring an emergency. Amends KRS 117.056 to require county boards of election to maintain precinct boundaries for particular periods. Senate Bill 28 (Acts ch. 122), effective March 19, 2001.

AN ACT relating to elections. Amends KRS 117.030 to require the State Board of Elections to provide for the conspicuous placement of signs at all precinct polling places, which display the telephone number and mailing address of the county board of elections, and which inform the voters of their right to report any administrative or clerical errors they witness to the county board of elections. Senate Bill 123 (Acts ch. 132).

EMERGENCY MEDICAL SERVICES

AN ACT relating to continuing education about acquired immunodeficiency syndrome. Amends various sections of KRS, including KRS 214.610, to require that emergency medical technicians, among others, obtain continuing education about HIV and AIDS every ten years. House Bill 140 (Acts ch. 61).

AN ACT relating to reorganization. Amends KRS 311.6521 and 311.6523 in relation to the Office of the Kentucky Board of Emergency Medical Services, transferring responsibility for administration of emergency medical services laws from the Department of Public Health. House Bill 172 (Acts ch. 17).

FIREFIGHTERS AND FIREFIGHTING

AN ACT relating to the dismissal of volunteer firefighters. Creates a new section of KRS Chapter 337 providing that no employer may terminate an employee who is a volunteer firefighter because that employee, when acting as a volunteer firefighter, is absent or late for work because the employee responded to an emergency. An employee terminated in violation of the section may bring a civil action against his or her employer. House Bill 101 (Acts ch. 162).

AN ACT relating to the reorganization of the Commission on Fire Protection Personnel Standards and Education. Confirms Executive Order that transferred the Commission on Fire Protection Personnel Standards and Education from the Department of Housing, Buildings and Construction to the Kentucky Community and Technical College System.

LAW ENFORCEMENT

AN ACT relating to gun buy-back programs. Creates a new section of KRS Chapter 237 providing that each law enforcement agency that participates in a gun buy-back program must return any stolen firearms to the rightful owner, taking care to preserve any evidence of a crime. House Bill 108 (Acts ch. 49).

AN ACT relating to transportation of prisoners. Amends KRS 441.510 to delete the authority of a court to authorize someone other than those statutorily designated to transport prisoners to and from jail. Also provides that the transportation of any inmate housed in a county detention center whose court appearance is necessary in any other county shall be transported by the sheriff of the county where the trial or court proceedings are to be held. House Bill 130 (Acts ch. 114).

AN ACT relating to peace officer training. Creates a new section of KRS Chapter 15 to provide the manner in which a police officer who is elected as a jailer can retain eligibility for Kentucky Law Enforcement Foundation Program Fund participation following his or her term of office as jailer. House Bill 131 (Acts ch. 165).

AN ACT relating to racial profiling. Creates a new section of KRS Chapter 15A to provide that no state law enforcement agency or official may stop, detain, or search any person when such action is solely motivated by consideration of race, color, or ethnicity; directs establishment of a model policy against racial
profiling the and dissemination to all sheriffs and local law enforcement officials, including local police departments, city councils, and fiscal courts; requires each local law enforcement agency that participates in the Kentucky Law Enforcement Foundation Program to implement a policy banning the practice of racial profiling that meets or exceeds the requirements of the model policy. Senate Bill 76 (Acts ch. 158).

OFFICERS AND EMPLOYEES

See also Retirement, Firefighters and Firefighting, Police.

AN ACT relating to the training of planning personnel. Creates a new section of KRS Chapter 147A to require initial and continuing education for planning commissioners and other planning personnel. House Bill 55 (Acts ch. 50).

AN ACT relating to peace officer training. Creates a new section of KRS Chapter 15 to provide the manner in which a police officer who is elected as a jailer can retain eligibility for Kentucky Law Enforcement Foundation Program Fund participation following his or her term of office as jailer. House Bill 131 (Acts ch. 165).

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AN ACT relating to architectural firms. Creates a new section of KRS Chapter 65 to prevent a local government from employing the same entity to provide both architectural services and construction management services on the same capital construction project. Also prevents a local government officer from knowingly hiring a firm in which a family member has an interest. House Bill 347 (Acts ch. 154).

POLICE

AN ACT relating to peace officer training. Creates a new section of KRS Chapter 15 to provide the manner in which a police officer who is elected as a jailer can retain eligibility for Kentucky Law Enforcement Foundation Program Fund participation following his or her term of office as jailer. House Bill 131 (Acts ch. 165).

RETIREMENT

AN ACT relating to retirement. Amends KRS 61.637 to deleted the provision that a person retired from a hazardous position who draws his or her retirement and then holds an elected city or county office may choose to continue to receive his or her pension and not contribute to the elected office’s retirement system. Adds a new section to KRS 78.520 to 78.852 to authorize retired hazardous members in an elected city or county office to purchase credit for service in that elected city or county office. House Bill 13 (Acts ch. 41).

AN ACT relating to classified personnel in local school districts. Amends KRS 78.615 to allow non-certified employees of school boards who retire between July 1, 2000 and August 1, 2001 to choose to receive certain credits. House Bill 254 (Acts ch. 151).

SCHOOLS

See also Education.


AN ACT relating to the school term. Amends KRS 158.070 to require the local board of education to adopt a school calendar for the school year that establishes the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days, and days on which schools are dismissed and makes related changes. Senate Bill 108 (Acts ch. 134).

TAXATION AND FINANCE


AN ACT relating to increment financing. Creates new sections of KRS Chapter 65 to allow cities and counties to contract with an agency for increments received by it in return for benefits accrued from a project locating in a development area. House Bill 238 (Acts ch. 148).

AN ACT relating to property taxes. Amends KRS 132.200 to exempt nonferrous metals futures held on warrant in a commodity warehouse from local taxation. House Bill 284 (Acts ch. 55).

AN ACT relating to economic development. Amends numerous provisions of KRS in part to allow cities and counties that create development areas to impose job development assessment fees on those employed in such areas and whose job was created by an economic development project. Senate Bill 47 (Acts ch. 133).

TELECOMMUNICATIONS

AN ACT relating to telecommunications. Amends KRS 65.7629, 65.7631 and 65.7639, which relate to wireless emergency 911 systems, to apportion funds based on the number of subscribers rather than on calls made. Also allows Commercial Mobile Radio Service monies to be used for training and public education. House Bill 99 (Acts ch. 42).

UTILITIES

AN ACT relating to public utilities boards. Amends KRS 96.780 to increase the purchasing authority of superintendents of public utilities. Senate Bill 68 (Acts ch. 127).

ZONING, PLANNING, AND LAND USE

AN ACT relating to the training of planning personnel. Creates a new section of KRS Chapter 147A to require initial and continuing education for planning commissioners and other planning personnel. House Bill 55 (Acts ch. 50).

AN ACT relating to the inspection and certification of on-site sewage disposal and declaring an emergency. Amends KRS 211.350 to provide for inspection and certification of on-site sewage disposal systems by a licensed professional engineer in private practice, rather than by the local health department, in certain instances. House Bill 103 (Acts ch. 117), effective March 19, 2001.
OPINIONS OF THE ATTORNEY GENERAL

SUMMARIES OF SELECTED FORMAL OPINIONS OF THE ATTORNEY GENERAL

OAG 01-1

Subject: Provision of Legal Services by City of Louisville

Syllabus: The City of Louisville is legally entitled to pay the legal defense costs for employees sued for actions arising out of the scope of their employment.

Synopsis: The city of Louisville indemnified two persons for claims brought against them in litigation involving management of the Policemen’s Retirement Fund. The opinion discusses the propriety of the city’s doing so under KRS 65.2005(1). That statute directs a local government to provide a defense to any employee for actions in tort arising against him as a result of an act or omission committed by him within the scope of employment. Finding both persons to be “employees” within the statutory definition of the term, the Attorney General states that the city is legally required to indemnify them.

OAG 01-2

Subject: Issuance of industrial revenue bonds to finance construction of electric generating stations

Syllabus: Fiscal courts may issue industrial revenue bonds to finance construction of electric generating stations because the generation of electricity constitutes manufacturing, and electricity is a commercial product.

Synopsis: In order for a county to issue industrial revenue bonds under KRS 103.210, the generating station must be an “industrial building.” To be an industrial building, generating electricity must qualify as manufacturing and electricity must qualify as a commercial product. The opinion reviews the relevant case law, finds both conditions satisfied, and concludes that a generating station is an industrial building for which bonds may issue.

SUMMARIES OF SELECTED OPEN RECORDS DECISIONS

01-ORD-8

A member of the public directed extensive requests to a city police department for reports of crimes within the city. The police department inquired into the reasons for the requests and, dissatisfied with the answer, denied the requests. The department also objected to the amount of time that it spent responding to previous requests from the same person. The opinion advises that the requester’s purpose in asking for the records is irrelevant (except to determine whether it is a commercial purpose, but that is not a basis to deny access). The opinion also advises that the agency has the burden of proof on the question of burdensome requests for records. The agency must show by clear and convincing evidence that the burden placed on it is unreasonable, a showing not possible in this instance.


01-ORD-17

An agency denied a request for inspection reports on the ground that the reports preliminary documents not subject to disclosure. The Attorney General holds that the reports contain both objective reports of physical facts and subjective expressions of opinion. For records such as these that contain a mix of exempt and non-exempt information, the agency has a duty to separate the two and make the non-exempt material available.

01-ORD-24

A client invoked the Open Records Act in an attempt to obtain records from his attorney, a former public defender. The Attorney General confirms that records in a private attorney’s files relating to his representation of a client in a criminal case are not public records maintained by a public agency. The Open Records Act does not apply.

01-ORD-40

In another attorney-client situation, the client invoked the 25% rule of KRS 61.870(1) (h) in an attempt to open his attorney’s files. The attorney did not receive funds from state and local government, so the Open Records Act did not apply.

01-ORD-47

A newspaper sought access to the investigative files of a police department’s internal affairs unit. Relying on the provisions concerning preliminary documents and the decision in City of Louisville v. Courier-Journal and Louisville Times Company, the city denied access to the records. Affirming the city’s denial of the request, the opinion reviews the decisions addressing internal affairs reports.

01-ORD-62

In response to a request, a county tourist and convention commission furnished copies of certain contracts after removing the name of the contracting party. It withheld the identity of the contracting party on the ground that its release would constitute an unwarranted invasion of privacy. Affirming prior decisions holding that the public is entitled to know with whom public agencies are doing business, the Attorney General holds that the agency failed to show that the privacy interest outweighed the public interest in monitoring the agency.

Under KRS 61.880 the Attorney General reviews complaints alleging violations of the Open Records Act and issues written decisions stating whether an agency violated the act. If no party timely appeals the decision it has the force and effect of law. Copies of the decisions summarized here are available from the Local Government Law Center.

SUMMARIES OF SELECTED OPEN MEETINGS DECISIONS

01-0MD-18

A city board of ethics conducted a closed session to make a preliminary inquiry into charges against the city’s mayor. A newspaper objected on the ground that the mayor was not an employee as to whom the provision for closed sessions applied. In a lengthy opinion, the Attorney General agrees with the board that the exception properly applies to board discussions involving discipline, dismissal, or removal of any city officer or employee.

01-0MD-30

An architect held a briefing about a project for interested members of the fiscal court. A quorum of the fiscal court attended the progress briefing, giving rise to a complaint that the meeting violated the Open Meetings Act. The county maintained that there was no violation because there was no meeting, but the Attorney General disagreed. Reviewing prior cases and decisions regarding instances where a quorum of agency members are present, the opinion says the fiscal court should have complied with the notice provisions of the Open Meetings Act in this situation.

Local Government Law News
In an opinion presenting the question whether a non-profit corporation is a public agency for purposes of the Open Meetings Act, the Attorney General concludes that this particular corporation is not. The corporation was not created by or pursuant to a state or local legislative act, and it did not have a board a majority of which was appointed by a public agency or public official.

A county planning commission held an executive session to discuss pending litigation against the county. The planning commission itself was not a party to the litigation although the suit involved actions and employees of the planning commission. Here the chance that the litigation would involve the planning board was more than a remote possibility. The agency properly relied on the Open Meetings Act to conduct a closed session.

A fiscal court went into closed session to discuss estimated costs of renovating a building. Relying on several provisions of the Open Meetings Act, the fiscal court justified its action on the ground that publicizing cost estimates would likely influence bidding on the project. Narrowly construing the exceptions to the requirement for open meetings, the Attorney General finds that the closed session did not fit squarely within any exception.

Under KRS 61.846 the Attorney General reviews complaints alleging violations of the Open Meetings Act and issues written decisions stating whether an agency violated the act. If no party timely appeals the decision it has the force and effect of law. Copies of the decisions summarized here are available from the Local Government Law Center.
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Phillip M. Sparkes
Director

Kathleen Gornley Hughes
Assistant Director

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