RESIDENTIAL INSPECTIONS WITHOUT SEARCH WARRANTS

A “No Trespassing” sign on the gate to Kenneth Widgren’s driveway warned away “federal officers of the IRS, HEW, HUD, environmental, health, and other unconstitutional agencies” and “all local members of zoning and planning boards.” Over a thousand feet up the driveway, obscured by trees, hills, and overgrowth, was the house Widgren built without obtaining the required permit. After the inadvertent discovery of the house, the zoning administrator and the tax assessor entered the property three times to confirm the zoning violation, to post a notice of infraction on the door of the house, and to conduct a tax assessment through observation of the exterior of the house. When Widgren learned of those visits, he sued, claiming a violation of his Fourth Amendment rights.1

For a long time the assumption was that government could insist upon access to private property to enforce administrative and regulatory schemes without obtaining a person’s consent and without the need to procure a search warrant. From colonial times forward, communities appointed fire wardens to examine buildings for fire hazards and health inspectors to look for conditions likely to spread disease. Legislatures routinely authorized those officials to enter private premises in the performance of their duties and often made refusal to allow them access a punishable offense. An example was the case of a Baltimore resident who refused to allow a city health inspector to conduct a warrantless inspection of the basement of his house to look for vermin. In Frank v. Maryland, 359 U.S. 360 (1959), a closely divided U.S. Supreme Court upheld the resident’s conviction under the city code. The court said that such inspections touched at most upon the “periphery” of the constitutional safeguards against official intrusion and caused “only the slightest restriction on [the occupant’s] claims of privacy.”2

The Supreme Court undermined that long-held assumption and overturned Frank in Camara v. Municipal Court, 387 U.S. 523 (1967). Camara began when an occupant of an apartment building thrice refused city housing inspectors’ demands to allow a warrantless search of his quarters as authorized by the city housing code. The city filed a complaint charging him with refusing to permit a lawful inspection, arrested him, and released him on bail. After the city court refused to dismiss the complaint, he sued to prevent it from proceeding with the case. He argued that the ordinance was contrary to the Fourth and Fourteenth Amendments of the U.S. Constitution because it authorized municipal officials to enter a private dwelling without a search warrant and without probable cause to believe that a violation of the city housing code existed there. Relying in part on the decision in Frank, a state appellate court allowed the prosecution to proceed.

In reversing the state court and overruling Frank, the Supreme Court restated the principle that, except in certain carefully defined classes of cases, a search of private property without proper consent is unreasonable unless a valid search warrant has authorized it.3 From that vantage point, the court reexamined the factors that lead the Frank majority to its conclusion. The Camara court agreed that a routine inspection of the physical condition of private property was less intrusive than a search for evidence of a crime, but it did not agree that such a search was merely peripheral. In the Camara court’s view, the Frank court ignored the fact that individuals have a very tangible interest in the privacy of their premises. It also did not agree that the limitations imposed on inspections by legislators or administrators were an adequate substitute for review by a neutral magistrate of an official’s decision to invade private property. The court was very uncomfortable with the approach in Frank because it left the citizen subject to the discretion of the official in the field. Further, the court did not accept that health and safety needs justified warrantless inspections. The court reasoned that the burden of obtaining a warrant would not frustrate government’s enforcement of fire, health, and housing codes.

Nevertheless, the court acknowledged that the “unique
The 2006 session of the General Assembly saw the introduction of more than 1,000 bills in the two houses. Of those bills more than 200 became law, and about half of those affect local government more or less directly. Some – like those about graduated drivers’ licenses (HB 90), eminent domain (HB 508), primary seat belt legislation (HB 117), display of the Ten Commandments (HB 277), and sex offenders (HB 3) – received considerable attention in the mainstream press. Some – like the $11 million appropriation to the University of the Cumberlands for its pharmacy school and the ban on demonstrations at funerals (SB 93 and HB 333) – were the subjects of lawsuits almost immediately. Some – like the changes to the Uniform Commercial Code (SB 154) and the revisions to partnership law (HB 234) – were significant, although lacking a direct local government impact.

Perhaps the most interesting bill for those with an interest in local government was HB 437 (Acts ch. 246), sponsored by Representatives Arnold Simpson (D-Covington) and Joe Bowen (R-Owensboro). The Kentucky League of Cities called the bill “great news for cities that want to consider merger with their county partner.” It creates new sections of KRS Chapter 67 to allow the voters of any county to unite the county government with one or more cities within the county to form a unified local government.

The bill is in many respects similar to the provisions currently existing in law that authorize charter county government. Indeed, the stated objectives of the new bill – efficiency, economy, and preventing the duplication of services – are the same as those stated in KRS 67.825. A signal of the difference between a charter county and a unified local government comes early in the bill. It requires a vote of a fiscal court and a majority of all cities within a county to start down the path toward a charter county, but a fiscal court and any one city in the county can begin to move to unification. In addition, the petition option for charter county government is absent in the unified local government bill.

The processes of creating a charter county and a unified local government are also similar in their use of a study commission. However, a greater balance between county and cities in the composition and funding of unification review commission replaces the predominance of the county’s role in the charter county study commission. As in existing law, the new law gives the commission considerable latitude to shape the form, structure, functions, and powers of the government that will emerge, subject to the approval of the voters. At the same time, the bill nudges the commission toward a structure that is perhaps more city-like than would result from the formation of a charter county. For example, section 7 of the bill directs that the plan of unification vest legislative authority in a legislative council and vest executive authority in a chief executive officer who is a hybrid of a county judge/executive and a city mayor and who may have authority to employ a chief administrative officer. Another example, section 15, preserves the constitutional offices while permitting the reallocation of their respective powers and duties. Like charter counties, the bill confers on the unified local government “the constitutional and statutory rights, powers, privileges, immunities, and responsibilities of counties and of cities of the highest class within the unified local government.”

As does the statute for charter counties, the bill addresses issues of continuity of employment, continuation of ordinances, the fate of districts, boards, commissions, and interlocal agreements, and matters relating to taxes. Unique to the new bill is its section 21. It provides that cities that do not participate in unification continue to exercise their powers and perform their functions. However, any proposed annexation by a city requires the approval of the legislative council of the unified local government. More strikingly, “After the adoption of a unified local government, there shall be no further incorporation of cities within the county.”

The history of local government consolidation in Kentucky is a fitful one. The city of Dayton’s website proudly announces that it is the product of an 1867 merger between Brooklyn and Jamestown. Nevertheless, others with a bent to the historical may recall that in 1937 voters rejected a constitutional amendment that would have permitted the consolidation of cities and counties. The ‘seventies saw the advent of the urban-county form and its singular success, but it could not be replicated. The ‘nineties saw the advent of the charter county form, and failed consolidation attempts between Owensboro and Davis County, Bowling Green and Warren County, and Ashland, Catlettsburg and Boyd County. This decade saw Louisville finally succeeded in its merger attempt, some twenty years after its initial attempts, but it also saw Frankfort and Franklin County fail in their attempt to merge.
character” of these inspection programs might still require some accommodation between public need and individual rights. As a response, the court adjusted the definition of probable cause to reflect a balancing of the public and private interests involved.

It is obvious that “probable cause” to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling.

Camara v. Municipal Court, 523 U.S. at 538, “Reasonableness,” said the court “is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant.” In a companion case, See v. City of Seattle, 387 U.S. 541 (1967), the court extended the Camara rationale to commercial properties.5

The rule announced in Camara and See – that Fourth Amendment protections apply to so-called administrative searches – depends on the occurrence of a “search,” a term the Supreme Court has struggled to define.6 The Supreme Court has said that not every instance in which the government is looking for something is a search in the Fourth Amendment sense. Whether a search occurs depends on a person’s “reasonable expectation of privacy.” As Justice Harlan put it in his oft-cited concurring opinion in Katz v. United States:

As the Court's opinion states, “the Fourth Amendment protects people, not places.” The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a “place.” My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as “reasonable.” Thus a man’s home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the “plain view” of outsiders are not “protected” because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.

Katz v. United States, 389 U.S. 347, 361 (1967) (citations omitted). In Widgren, the Sixth Circuit had to address this threshold question of whether a search occurred. The plaintiffs in Widgren asserted that each of the three entries onto the property was an illegal search. The court considered each in turn.

The first occurred when one day, while driving nearby, the zoning administrator saw what he took to be a reflection from a window or the roof of Widgren’s house. He was unsure of what he had seen, but was confident that no land use permit had been issued for a house there. He parked on the road near the Widgren’s driveway, walked past the gate and “No Trespassing” signs, and continued to within 200 feet of the house he could then see plainly. Without entering the area around the house that was cleared of trees and mowed, he left, returned to his office, and confirmed that no permit had been issued.

This, the Sixth Circuit said, was not a Fourth Amendment search because the zoning inspector conducted his search in the “open field.” The open field doctrine holds that no reasonable expectation of privacy exists in open fields.8 Over the years, courts have treated as an open field virtually any land outside the curtilage. Curtilage is the legal term referring to land and buildings, usually enclosed in some way, proximate to a dwelling and used for domestic purposes. In United States v. Dunn, 480 U.S. 294 (1987), the Supreme Court identified four factors to use to determine if an area is within the curtilage: the proximity to the home of the area claimed to be curtilage, whether
the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Relying on Dunn, the Sixth Circuit concluded that this “initial visit to the Widgren property, while perhaps a trespass, was not a search under the Fourth Amendment.”

The second entry onto the property was to post a civil infraction notice on the front door of the house. The court had no difficulty concluding that this was not a Fourth Amendment search because “under any definition, no search of any kind occurred.” The zoning administrator merely posted a citation; he was not on the premises to conduct (and did not conduct) an inspection.

The third entry presented a more difficult question. As the court tells it, “Around the time of Mr. Lenz’ [the zoning administrator] initial visit, he told Mr. Beldo [the assessor] about the house. Mr. Beldo examined Township records to confirm the lack of a land use permit and may have reviewed an aerial photograph that appeared to depict the house. Mr. Beldo then drove along Puustinen Road to the Widgren property. Upon reading the “No Trespassing” signs, he drove onto the neighboring property to the south and exited his truck. While still on the neighboring property, he observed the Widgren house. He then walked onto the Widgren property towards the plainly visible house where no one appeared to be home. He observed the house’s exterior, measured it by counting the foundation cement blocks, and took a photograph of the house. While ascertaining its dimensions, Mr. Beldo entered the cleared area but came no closer than four to six feet from the house and did not look into or enter the house. After conducting his assessment, he promptly left and sent Mr. Widgren, Sr., a letter informing him of the assessment.”

Looking again to Dunn, the Sixth Circuit concluded that the cleared area around the house was curtilage. However, that did not end the court’s analysis because “the Fourth Amendment does not absolutely bar all government encroachment upon the curtilage.” Moving to the two-part test set out by Justice Harlan in Katz, the court assumed that Widgren had a subjective expectation of privacy in the assessor’s observation of the house from within the curtilage. The issue for the court was whether this expectation was one that society was prepared to recognize as reasonable. On the facts of this case the court said no, “a property assessor does not conduct a Fourth Amendment search by entering the curtilage for the tax purpose of naked-eye observations of the house’s plainly visible exterior attributes and dimensions – all without touching, entering or looking into the house.” The labor expended to reach that conclusion suggests that this was a close call. Consequently, the court warned, “Tax appraisers would be well advised to obtain consent or a warrant as a matter of course before breaching the curtilage because, in many instances, such an intrusion may be a Fourth Amendment search.”

Widgren fell outside the Camara warrant requirement because, in the court’s opinion, there was no search. Because of their nature, other inspection schemes fall outside the Camara warrant requirement even where there is a search. An example would be inspections necessary to obtain a certificate of occupancy. Not long ago, in Palmieri v. Lynch, 392 F.3d 73 (2nd Cir. 2004), U.S. Court of Appeals for the Second Circuit addressed the propriety of a warrantless, nonconsensual search of residential property in a similar context.

Paul Palmieri owned waterfront residential property on Long Island that included tidal wetlands. Fences that began at the house and ended at the waterfront completely enclosed the side and back yards. In one fence was a gate on which there were two signs. One said “Private Property – No Trespassing” and the other said “Beware of Dog.” Palmieri applied to a state agency for a tidal-wetlands permit to extend his existing dock and add a boatlift. Consistent with the position he took in his earlier dealings with the agency, he refused to allow an on-site inspection of the premises. Nevertheless, the agency specialist assigned to review the permit application visited the property to view the dock and wetlands to determine whether the application accurately reflected current conditions. She went to the door, rang the doorbell, and knocked. When no one responded, she walked to the side of the house and entered the rear yard through the gate with the signs. Palmieri then appeared, holding a video camera and recording the scene. He confronted the specialist, who identified herself and her purpose, and ordered her to leave the property, which she did promptly.

Shortly thereafter, Palmieri filed an action in federal court alleging a violation of his Fourth Amendment rights and common law trespass. The trial court dismissed the Fourth Amendment claims and declined to take jurisdiction of the state law trespass claim. On appeal, the Second Circuit disposed of the Fourth Amendment claim by invoking the so-called special needs exception.

As the Tenth Circuit explained in a different case, “Special needs” is the label attached to certain cases where “special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.” Earls, 122 S.Ct. at 2565, quoting Griffin v. Wisconsin, 483 U.S. 868, 873, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987). In special needs cases, the Court replaces the warrant and probable cause requirement with a balancing test that looks to the nature of the privacy interest,
the character of the intrusion, and the nature and immediacy of the government’s interest. Id. at 2565-67. Justice Blackmun first coined the term “special needs” in his concurrence in New Jersey v. T.L.O., 469 U.S. 325, 351, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). The Court thereafter adopted the terminology in O’Connor, 480 U.S. at 720, 107 S.Ct. 1492, and Griffin, 483 U.S. at 873, 107 S.Ct. 3164, concluding that “in limited circumstances, a search unsupported by either warrant or probable cause can be constitutional when ‘special needs’ other than the normal need for law enforcement provide sufficient justification.” Ferguson, 532 U.S. at 76 n. 7, 121 S.Ct. 1281.

At this stage in development of the doctrine, the “special needs” category is defined more by a list of examples than by a determinative set of criteria. Among the cases said by the Court to involve “special needs” are: a principal’s search of a student’s purse for drugs in school; a public employer’s search of an employee’s desk; a probation officer’s warrantless search of a probationer’s home; a Federal Railroad Administration regulation requiring employees to submit to blood and urine tests after major train accidents; drug testing of United States Customs Service employees applying for positions involving drug interdiction; schools’ random drug testing of athletes; and drug testing of public school students participating in extracurricular activities. The Supreme Court has not told us what, precisely, this set of cases has in common, but the cases seem to share at least these features: (1) an exercise of governmental authority distinct from that of mere law enforcement - such as the authority as employer, the in loco parentis authority of school officials, or the post-incarceration authority of probation officers; (2) lack of individualized suspicion of wrongdoing, and concomitant lack of individualized stigma based on such suspicion; and (3) an interest in preventing future harm, generally involving the health or safety of the person being searched or of other persons directly touched by that person’s conduct, rather than of deterrence or punishment for past wrongdoing.

However, the Second Circuit agreed with the district court that this interest in privacy was “severely diminished.” This holding stemmed in part from the existence of an unexpired permit and from conditions imposed under previous permits. Further, said the court, the applications to construct on state-regulated wetlands further diminished the privacy interest.15 The court saw the situation as somewhat analogous to the exception carved out in United States v. Biswell, 406 U.S. 311 (1972), for pervasively regulated businesses.16 The court acknowledged, “circumstances can combine to create a zone of privacy interests that ‘can perhaps be seen as falling somewhere between “open fields” and curtilage, but lacking some of the critical characteristics of both.’”17 Turning to the character of the intrusion, the lower court found that the level of intrusion was “minimal,” and the appeals court agreed. At worst, explained the lower court, the state employee committed a trespass, but noted the Court of Appeals, “[t]echnical trespasses have been found not to constitute unreasonable searches.”18 Given the minimal intrusion and the fact that the employee left immediately when told to do so, the court found that this second factor weighed heavily against Palmieri.

The court next considered the nature of the governmental interest at issue, agreeing with the district court that the government’s interest in protecting natural resources, public beaches, and waterways was “serious.” Indeed, while there is no case law directly on point with respect to an environmental inspection of residential property, there can be no principled distinction made between the need to inspect commercial property and the need to inspect residential property where the residential property consists of protected tidal wetlands. Such wetlands are a well regulated zone in the public sphere of concerns. It is axiomatic in this day and age that the state’s interest in performing regulatory inspections associated with applications to permit construction on protected tidal wetlands in unquestionably of the highest order.

Palmieri, 392 F.3d at 85. This interest in regulating construction on tidal wetlands overrode any asserted expectation of privacy in the areas outside the house adjacent to the water.

In closing, the court sounded a note of caution.

As a final point of clarification, in response to any concern that our application here of the special need balancing test could be interpreted as making all other types of routine regulatory inspections permissible, we note that we are not holding that any warrantless visit to premises under any environmental regime is permissible.


_In Palmieri_ the Second Circuit analyzed each of the factors of the balancing test of _Board of Education v. Earls_. Like the Sixth Circuit in _Widgren_, the Second Circuit had no difficulty with the first prong of the _Katz_ test; it found that Palmieri had a legitimate subjective expectation of privacy.
Rather we hold merely that an environmental regulatory scheme involving warrantless searches may be subject to a special needs “factspecific balancing” test. . . We recognize only that there are cases that fall within the “limited circumstances[] [where] the Government’s need to discover . . . latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed . . . without any measure of individualized suspicion.”

Palmieri, 392 F.3d at 86 quoting Board of Education v. Earls, 536 U.S. at 829. Even so, a dissenting opinion took the majority to task what it called “an aggressive shift in our Fourth Amendment jurisprudence away from the rights of individuals to maintain control of their homes toward the privilege of government agents to invade without either receiving consent or casting their claims of need into the crucible of judicial review.”19

Although their approaches differed, both the Sixth and Second circuits allowed government agents without warrants to invade the curtilage of a residence to enforce a regulatory scheme. However, those tempted to generalize from these cases would do well to hearken back to the rule in *Camara*: except in certain carefully defined classes of cases, a search of private property without proper consent is unreasonable unless a valid search warrant has authorized it. The court in *Camara* recognized that most citizens allow inspection of their property without a warrant and, consequently, most inspections will occur by consent. In fact, the *Camara* court seemed to give the consent alternative preferred status: “warrants should normally be sought only after entry is refused.”20 Inspectors should remember that, absent consent, the answer to the question whether a warrantless search of a home is reasonable and hence constitutional is, in most instances, no.21

**Endnotes**


3. *Camara*, 387 U.S. at 529-529. Aside from consent, the classical exception to the warrant requirement is the exigent circumstances exception. The court stressed that its holding was not “intended to foreclose prompt inspections, even without a search warrant, that the law has traditionally upheld in emergency situations.” As to this exception, “it would seem that an emergency is very seldom likely to be present in the housing inspection context, particularly when the inspection contemplated is nothing more than part of a larger area or periodic inspection program.” Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* §10.1(f) (4th ed. 2004).


5. *See* involved a refusal to permit a representative of a city fire department, without a warrant and without probable cause to believe there was a violation of the fire code, to enter and inspect a locked commercial warehouse. The court reasoned that a “businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private property.” Warrantless inspection of business property is beyond the scope of this article. See, generally Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* §10.2, Inspection of Businesses (4th ed. 2004).

6. See *Kyllo v. United States*, 533 U.S. 27, 31-2 (2001) (“[T]he antecedent question whether or not a Fourth Amendment ‘search’ has occurred is not so simple under our precedent.”)


9. *Widgren*, 429 F.3d at 580. “Conduct otherwise a trespass is often justifiable by reason of authority vested in the person who does the act as, for example, an officer of the law acting in the performance of his duty. Thus, a law enforcement officer is privileged to commit a trespass if he is exercising his lawful authority and if he exercises it in a reasonable manner causing no unnecessary harm.” Am. Jur., Trespass § 103. Moreover, “[i]n the case of open fields, the general rights of property protected by the common law of trespass have little or no relevance to the applicability of the Fourth Amendment.” *Widgren*, 429 F.3d at 579-80, quoting *Oliver*, 466 U.S. at 183-84.


11. Id. at 581.

12. Id. at 582, citing *California v. Ciraolo*, 476 U.S. 207 (1986).

13. Id. at 585-6.


15. Prof. Samuel Rickless noted the overlap between “special needs” and “diminished interests.” See Samuel C. Rickless, *The Coherence of Orthodox Fourth Amendment Jurisprudence*, 15 George Mason University Civil Rights Law Journal 261, 280-1 (2005). “To [the warrant requirement and the probable cause requirement], the Court has found a number of exceptions, all but one of which it has classified under five main headings of its own devising: Exigent Circumstances, Special Needs, Diminished Interests, Consent, and History. A situation may fall within more than one of these general exception-making categories, but its falling under one of these categories is sufficient for it to count as an exception to the relevant requirement(s). Under Exigent Circumstances, we find the “hot pursuit” exception, prison searches, and searches of burning buildings. Under Special Needs, we find “stop and frisk,” housing inspections, administrative
A NOTE ON EFFECTIVE DATES

“[L]egislation (except for general appropriation measures and those containing emergency or delayed effective date provisions) passed during the 2006 Regular Session of the Kentucky General Assembly will be effective on the first moment of Wednesday, July 12, 2006.” Opinion of the Attorney General 06-001 at page 3.

ADMINISTRATIVE PROCEDURES

AN ACT relating to administrative regulations. Amends KRS 13A.250 to require an agency that promulgates an administrative regulation to analyze the cost that the regulation may cause the state or a local government to incur and to require the submission of a fiscal note. SB 98 (Acts ch. 197).

AN ACT relating to the removal of Social Security numbers from marriage licenses. Amends KRS 402.100 to delete the requirement to include parties’ Social Security numbers on a marriage license and direct the county clerk to request the Social Security number as a form of identification for forwarding to the agency responsible for enforcing child support. HB 111 (Acts ch. 101).

AN ACT relating to legal publications. Amends KRS 83A.060(9) concerning the published summary of a city ordinance; amends KRS 91A.040 concerning publication requirements for city financial statements; amend KRS 424.120 concerning the criteria for selection of a newspaper for publication of legal advertisements; amends KRS 424.130 concerning publication of a notice of delinquent taxes; amends KRS 424.160 concerning rates charged for publishing notices; amends KRS 424.220 concerning publication of certain other financial statements; and amends KRS 424.330 to increase publication fees from $3 to $5 per name on a list of delinquent taxpayers. HB 171 (Acts ch. 101).

AN ACT relating to mobile and recreational vehicle parks. Amends KRS 219.310 to 219.310 to require each cabinet secretary to designate a small business ombudsman. HB 374 (Acts ch. 166).

BUILDINGS AND BUILDING CONSTRUCTION

AN ACT relating to the Kentucky Board of Architects. Amends KRS 323.031, 323.095, and 323.210 with respect to the requirements for and use of an architect’s seal; amends KRS 323.080 to modify fees; amends KRS 323.120 to increase a fine; and amends KRS 323.990 to make a violation of the architecture practice act a Class A misdemeanor. SB 62 (Acts ch. 53).

AN ACT relating to the Kentucky Board of Home Inspectors. Amends KRS 198B.704(2)(a) to change the manner of gubernatorial appointments to the Kentucky Board of Home Inspectors. SB 66 (Acts ch. 77).

AN ACT relating to the Office of Housing, Buildings and Construction and its related boards and committees. Amends various sections of KRS to prescribe new review and comment procedures for any administrative regulations promulgated by the Board of Housing, Buildings and Construction other than for internal business. SB 224 (Acts ch. 256; became law without the Governor’s signature).

AN ACT relating to mechanical inspections. Amends numerous section of KRS Chapter 198B (“Housing, Buildings, and Construction – Building Code”) to expand the scope of mechanical inspections administered by the Office of Housing, Buildings and Construction, especially as to “fixed guideway systems,” i.e. trams. SB 225 (Acts ch. 157).

AN ACT relating to electricians and electrical contractors. Creates a new section of KRS 227.450 to 227.500 to enhance enforcement powers of electrical inspectors; amends KRS 227.480 to require local governments to follow Office of Housing, Buildings and Construction standards for necessity of electrical inspections; amends KRS 227.491 to forbid an electrical inspector to certify an unlicensed or unlawful electrical installation; amends KRS 227.500 to allow local governments, on the recommendation of an electrical inspector, to fix a monetary penalty for code violations; and amends KRS 227A.030 to further restrict the work of unlicensed, nonresident electricians. HB 28 (Acts ch. 83).

AN ACT relating to mobile and recreational vehicle parks. Amends KRS 219.410 to exclude mobile home and recreational vehicle parks owned and operated by local governments from the provisions of KRS 219.310 to 219.410.
HB 94 (Acts ch. 111; became law without the governor's signature).

AN ACT relating to disclosure of information about sprinkler systems in long-term care facilities. Creates a new section of KRS 216.537 to 216.590 to require that a long-term care facility without a sprinkler system in each resident room explain the details of the facility's sprinkler system prior to a person's admission and to require it to obtain a written form signed by the person or the responsible party for the person acknowledging the person's awareness that the facility does not have a sprinkler system. HB 121 (Acts ch. 46).

AN ACT relating to code enforcement boards. Amends KRS 65.8505, 65.8808, and 65.8811 to authorize any local government through an interlocal agreement to expand its code enforcement board to include additional cities or counties and to provide for the features of that joint code enforcement board. HB 126 (Acts ch. 12).

AN ACT relating to the Office of Housing, Buildings and Construction. Amends KRS 198B.030 to alter certain powers of the Office of Housing, Buildings and Construction; amends KRS 318.054 to require a person renewing or reviving a master or journeyman plumber's license to present evidence of completion of continuing education requirements. HB 427 (Acts ch. 167, amendments to KRS 318.054 effective July 1, 2007).

AN ACT relating to manufactured and mobile home community permit fees. Amends KRS 219.340 to alter the schedule of fees for a permit to operate a manufactured or mobile home community. HB 611 (Acts ch. 136).

AN ACT relating to tax credits for rehabilitation of historic structures. Amends KRS 171.397 to allow pre-approval of credits, establish a cap on non-residential projects at $400,000, and permit the carryforward of any cap amount or credits not used to the next fiscal year. HB 663 (Acts ch. 196, effective January 1, 2007).

CITIES

AN ACT changing the classification of the City of Taylorsville, in Spencer County and declaring an emergency. Reclassifies the City of Taylorsville from a city of the sixth class to a city of the fifth class. HB 81 (Acts ch. 100, effective March 30, 2006).

AN ACT relating to the relocation of a city in a county containing a city of the first class or a consolidated local government. Amends KRS 81.380 to allow a city that is in the process of relocating, in addition to one that has completed relocation, to change its name. HB 178 (Acts ch. 220).

AN ACT relating to local government. Creates new sections of KRS Chapter 67 to allow the voters of any county to unite the county government with one or more cities within the county to form a unified local government. HB 437 (Acts ch. 246).

COMMONWEALTH

AN ACT relating to the promotion of history and declaring an emergency. Creates new sections of KRS Chapters 42, 65, and 158 to reflect recent court decisions concerning display of the Ten Commandments in public spaces in certain instances. HB 277 (Acts ch. 34).

AN ACT relating to reorganization. Establishes KRS Chapter 39G and creates new sections to establish the Kentucky Office of Homeland Security and set forth its duties including duties with respect to local governments; confirms Executive Order 2005-563. SB 59 (Acts ch. 193).

COUNTIES

AN ACT relating to local government. Creates new sections of KRS Chapter 67 to allow the voters of any county to unite the county government with one or more cities within the county to form a unified local government. HB 437 (Acts ch. 246).

AN ACT relating to the receipt of payments by county governments. Amends KRS 64.840(3) to allow a county government to accept payment of any fine, forfeiture, tax, or fee by check, draft, electronic funds transfer, debit, or credit card account, or other similar means of payment and to recover any transaction fee. HB 553 (Acts ch. 135).

COURTS

AN ACT relating to the Court of Justice. Creates a new section of KRS Chapter 30A to provide that a clerk may accept payment of any fine, forfeiture, tax, or fee by debit or credit card and in such instances may recover the transaction fee charged by the issuer. HB 395 (Acts ch. 237).

CRIME AND CRIMINAL JUSTICE

AN ACT relating to general principles of justification. Creates a new section of KRS Chapter 503 to establish a presumption in favor of people who use deadly force against an attacker in their homes or cars and to provide immunity from prosecution in certain use of force cases; amends KRS 503.010 which defines terms; amends KRS 503.050, 503.070 and 503.080 relating respectively to use of force for self protection, for the protection of another, and for the protection of property in part to add provisions specifying that a person does not have a duty to retreat prior to the use of deadly force. SB 38 (Acts ch. 192).

AN ACT relating to crimes and punishments and declaring an emergency. Creates a new section of KRS Chapter 525 to establish the crime of disorderly conduct in the first degree, a Class A misdemeanor; amends KRS 525.060 to
establish the crime of disorderly conduct in the second degree, a Class B misdemeanor; creates a new section of KRS Chapter 525 to establish the crime of disrupting meetings and processions in the first degree, a Class A misdemeanor; amends KRS 525.150 to establish the crime of disrupting meetings and processions in the second degree, a Class B misdemeanor; and creates a new section of KRS Chapter 525 to establish the crime of interference with a funeral, a Class B misdemeanor. SB 93 (Acts ch. 50, effective March 27, 2006).

AN ACT relating to sex offenses and the punishment thereof. Amends and creates numerous provisions in multiple chapters of KRS pertaining to sexual offenders; provides in part that it is the intent of the General Assembly to occupy the entire field of legislation relating to persons who have committed violent offenses or sex crimes and forbids local ordinances or other regulations relating to the control, management, registration, monitoring, or housing of such persons. HB 3 (Acts ch. 182).

AN ACT relating to the evacuation and relocation of prisoners in jails and regional jails. Creates a new section of KRS Chapter 441 directing the Department of Corrections through administrative regulations to develop emergency evacuation and relocation protocols for jailers of local and regional jails to follow in the development of individual evacuation and relocation plans for prisoners housed within the jails or regional jails. HB 258 (Acts ch. 69).

AN ACT relating to crimes and punishments and declaring an emergency. Creates new sections of KRS Chapter 525 and amends others in a manner similar to that of SB 93 above addressing disruptions at funerals. HB 333 (Acts ch. 51, effective March 27, 2006).

AN ACT relating to jail canteen accounts. Amends KRS 441.135 to prescribe the purposes for expenditures from a canteen account and to set the level of funds a fiscal court must transfer into the jail canteen account. HB 530 (Acts ch. 147).

**DISTRICTS, AUTHORITIES, AND SPECIAL PURPOSE GOVERNMENTS**

AN ACT relating to water districts. Repeals KRS 74.260, which prescribed certain procedures in connection with the letting of work, and amends KRS 353.651 to conform. SB 226 (Acts ch. 158).

AN ACT relating to management districts. Amends KRS 91.756 to change the elements of the ordinance that establishes a management district; amends KRS 91.758 to require the district board to publish both the annual budget and economic improvement plan; amends KRS 91.760 to change the qualifications for membership on the board and to limit the debt the board may assume; and amends KRS 91.762 to change the procedure for dissolution. HB 23 (Acts ch. 47).

**ECONOMIC DEVELOPMENT**

AN ACT relating to tobacco warehouses. Amends KRS 154.01-010 to include repair, restoration, or conversion of tobacco warehouses within in the definition of projects eligible for economic development funding. HB 78 (Acts ch. 84).

AN ACT relating to the provision of broadband service. Creates a new section in KRS Chapter 224A and amends KRS 224A.011 and 224A.112 to establish a Broadband Deployment Account managed by the Kentucky Infrastructure Authority and direct that monies of the account be used to assist in the provision of broadband deployment projects. HB 550 (Acts ch. 134).

**EDUCATION**

See also “Schools and School Districts” and “Teachers and School Employees”

AN ACT relating to the primary program. Amends KRS 158.030 and 158.031 to allow a school district to advance a student of kindergarten age through the primary program if the district determines that the student has the academic and social skills taught in kindergarten and to treat the student as other than a kindergarten student for purposes of funding. SB 35 (Acts ch. 20).

AN ACT relating to Veterans Day programs in schools. Amends KRS 158.075 to require all public schools, not just high schools, to hold Veterans Day programs. SB 47 (Acts ch. 142).

AN ACT relating to reorganization. Amends KRS 151B.025 to designate the Kentucky Workforce Investment Board as the sole state agency responsible for the administration of vocational and technical education and the supervision of the administration of vocational and technical education; confirms Executive Order 2005-327. SB 57 (Acts ch. 151).

AN ACT relating to educational assessment and accountability. Amends KRS 158.6453 principally to require that beginning in 2008-2009 the assessment program under the Commonwealth Accountability Testing System for high schools include the ACT examination in English, reading, mathematics, and science in grade 11. SB 130 (Acts ch. 227).

AN ACT relating to students called to military active duty. Amends KRS 38.470 to provide that a student called to active duty by the President, similar to a student called to active duty by the Governor, shall receive credit for academic work and reasonable time to make up missed work. HB 80 (Acts ch. 19).

AN ACT relating to end-of-course examinations. Creates a new section of KRS Chapter 158 to direct the Kentucky Department of Education to develop standardized
end-of-course examinations in Algebra I, Algebra II, and Geometry; conduct pilot tests at the end of the 2007-2008 academic year; and administer the test in all public schools in 2008-2009 and thereafter. HB 197 (Acts ch. 119).

AN ACT relating to education. Directs the Department of Education to conduct a study to determine costs, benefits, feasibility, and implications of adoption of specifications for statewide education data and require the study to include requirements for data security and a notification process when a breach of data security occurs; creates a new section of KRS Chapter 161 to require a teacher to submit to random drug testing if the teacher has been reprimanded or disciplined as a result of illegal use of controlled substances; amends KRS 160.380 to allow reassignment of an employee charged with a felony. HB 341 (Acts ch. 221).

AN ACT relating to the Office of Education Accountability. Amends KRS 7.410 to direct the Education Assessment and Accountability Review Subcommittee to adopt the annual research agenda for the Office of Education Accountability and makes related provisions. HB 581 (Acts ch. 170).

AN ACT relating to health education. Creates a new section of KRS Chapter 158 to encourage public schools to include age-appropriate education on the risks associated with exposure to ultraviolet radiation. HB 589 (Acts ch. 148).

AN ACT relating to expelled or suspended students. Amends KRS 158.150 to define "behavior which constitutes a threat" and to permit a school board to adopt a policy providing for it to review the details of any suspension or expulsion and determine whether it will receive and admit a suspended or expelled student. HB 688 (Acts ch. 139).

ELECTIONS

AN ACT relating to gubernatorial power to reschedule elections during a state of emergency and declaring an emergency. Amends KRS 39A.100 to increase from 20 to 35 the permissible number of days in which to reschedule an election; amends KRS 117.187 and 117.345 accordingly. HB 135 (Acts ch. 7, effective March 8, 2006).

AN ACT relating to elections and declaring an emergency. Creates a new section of KRS Chapter 119 to prohibit a person from providing compensation for registering voters when the basis for compensation is the total number of voters a person registers or the total number of voters a person registers in a particular party, political group, political organization, or voters of independent status and makes violation a Class B misdemeanor; amends KRS 116.025 to provide a registered voter who changes his or her place of residence to a different county and fails to register to vote in the county of current residence prior to the date the registration books are closed shall not be eligible to vote in either county; amends KRS 117.235 to prohibit electioneering on election day within 300 feet of a polling place and prohibit electioneering during the hours of absentee voting within any building where absentee voting is being conducted. HB 301 (Acts ch. 107, effective March 30, 2006).

AN ACT relating to candidates. Amends KRS 118.315 to require two petitioners for a candidate's nominating petition for election to a board of education. HB 361 (Acts ch. 187).

EMERGENCY MEDICAL SERVICES

AN ACT relating to emergency medical services. Amends various sections of KRS Chapter 311A pertaining to the Kentucky Board of Emergency Medical Services to attach the board to the Kentucky Community and Technical College System and adjust its responsibilities. HB 155 (Acts ch. 243).

ENVIRONMENT

AN ACT relating to solid waste management. Amends KRS 224.43-500 and 224.43-505 to delete certain obsolete provisions and, through a program of grants from a portion of the funding currently directed at cleaning up illegal dumps under the Kentucky Pride program, to promote and facilitate recycling and collection of household hazardous wastes by local governments. SB 50 (Acts ch. 21).

AN ACT relating to on-site sewage systems. Amends KRS 211.350 and 211.370 regarding the duties of the Department of Public Health with respect to on-site wastewater systems; amends KRS 212.230 to require local health boards, in hearing appeals, to use the expertise of regional on-site wastewater consultants employed by the Department of Public Health. HB 573 (Acts ch. 191).

FINANCE

AN ACT relating to the issuance of bonds. Creates new sections of KRS Chapters 58 and 103 directing that no local government shall issue revenue bonds for any housing project that is located outside its boundaries without the written consent of the elected legislative body of the local government in which the housing project will be located. SB 28 (Acts ch. 178).

AN ACT relating to revenue bonds for city or county projects. Amends KRS 103.2101 to allocate review authority for certain projects between the state local debt officer and the Kentucky Private Activity Bond Allocation Committee for certain projects and set forth standards for that review, amends KRS 103.200 accordingly, and allows projects under consideration by February 1, 2006 to operate under existing program guidelines. HB 42 (Acts ch. 228).
AN ACT relating to fees and the distribution thereof. Amends numerous sections of KRS to increase a variety of fees including a new schedule of fees due to county clerks; amends KRS 186.245 to require every county clerk to post a permanent notice of fee increases contained in the act. HB 537 (Acts ch. 255, parts to be effective August 1, 2006 and January 1, 2007; became law without the governor’s signature).

**FIRE SERVICE**

AN ACT relating to the Firefighters Foundation Program fund. Amends KRS 95A.250 to require annual payments to the Kentucky Community and Technical College System and the Department of Military Affairs for each qualified fire and rescue coordinator employed; amends KRS 95A.262 to authorize programs related to handling potential man-made and non-man-made threats, a mobile test facility, defensive driving training tactics, and equipment adequacy, among others, and amends KRS 95A.280 to add reporting requirements. HB 273 (Acts ch. 113).

**LAND USE**

AN ACT relating to eminent domain. Creates a new section of KRS 416.540 to 416.680 to provide that every statutory grant of authority to exercise the power of eminent domain is subject to the condition that the authority be exercised only to effectuate a public use of the condemned property and defines public use; amends KRS 416.540 to replace the phrase public purpose with the phrase public use in the definition of “condemn.” HB 508 (Acts ch. 73).

**LAW ENFORCEMENT**

See also “Crimes and Criminal Justice”

AN ACT relating to telecommunications. Amends various sections of KRS Chapter 15 to make the Kentucky Law Enforcement Council rather than the Justice Cabinet responsible for training and certification of telecommunications for law enforcement and to add requirements for psychological testing, polygraph examination, and drug screening. SB 155 (Acts ch. 82).

AN ACT relating to substances in the body. Creates a new section of KRS Chapter 72 to impose a reporting requirement on the State Medical Examiner’s Office; amends KRS 189A.105 pertaining to driving under the influence to require peace officers, in instances of fatal motor vehicle accidents, to seek a search warrant for blood, breath, or urine testing. HB 67 (Acts ch. 116).

**MOTOR VEHICLES**

AN ACT relating to motor vehicle license fees. Amends KRS 150.015 and 150.150 to direct the Department of Fish and Wildlife Resources Commission to establish and expend monies for a program to promote hunger relief through specific wildlife management and conservation efforts and amends KRS 186.050 to require the county clerk to request from each applicant for registration of a motor vehicle a voluntary donation of $2 to support and fund the program. SB 148 (Acts ch. 57).

AN ACT relating to emergency management services license plates. Amends KRS 186.162 to rename the disaster and emergency services license plate the emergency management license plate and amends KRS 186.164 and 186.166 to conform. SB 170 (Acts ch. 40).

AN ACT relating to military license plates. Amends KRS 186.041 to eliminate the requirement that discharged and retired applicants for military license plates show proof of eligibility upon renewal. SB 182 (Acts ch. 146).

AN ACT relating to graduated driver’s licenses for teenagers. Amends existing sections and creates new sections of KRS Chapter 186 to provide for an intermediate license between an instruction permit and an operator’s license and prescribe qualifications for and conditions on the intermediate license. HB 90 (Acts ch. 65, effective as to persons who obtain an original or renewal instruction permit on or after October 1, 2006).

AN ACT relating to lights on slow moving vehicles. Amends KRS 189.050, regarding lighting requirements for vehicles, to require slow-moving vehicles operated between sunset and sunrise to display two rotating yellow beacons and four-way flashers; amends KRS 189.287 to conform. HB 278 (Acts ch. 105).

AN ACT relating to special license plates. Creates a new section of KRS Chapter 186 to allow the owner of a vehicle issued a special license plate to exchange the plate for a different special license plate without having to obtain a regular registration plate. HB 285 (Acts ch. 106).

AN ACT relating to motor vehicle trailers. Amends KRS 189.060 to permit a motor vehicle used as a towing unit whose red lights are not obscured by the towed unit or its load to be equipped with red lights on the towed unit, towing unit, or both; amends KRS 281.600 to exempt bulk type fertilizer spreaders or liquid fertilizer spreaders being towed by a motor vehicle and used in intrastate transportation from the provisions of CFR Title 49, Part 393. HB 499 (Acts ch. 72).

AN ACT relating to motor vehicle registration. Amends KRS 186.050 to delete the gross weight and vehicle load category and fee for commercial vehicles between 6,001 and 10,000 pounds. HB 535 (Acts ch. 132).

**PUBLIC HEALTH AND SAFETY**

AN ACT relating to breastfeeding. Creates a new section of KRS Chapter 211 to permit a mother to breastfeed
her baby or express breast milk in public without its being considered an act of indecency and to prohibit a local government from enacting an ordinance that prohibits or restricts breastfeeding in public. SB 106 (Acts ch. 80).

AN ACT relating to public safety and declaring an emergency. Creates a new section of KRS Chapter 11 to require the Commonwealth Office of Technology, to the extent funds are made available, to establish a statewide planning and mapping system for public buildings for use by response agencies called to respond to an act of terrorism or an emergency, to specify the parameters of the system, and to require state agencies and political subdivisions to participate in the system; amends KRS 198B.010 to exclude a building used by 35 or fewer people on average for religious and educational purposes from the definition of “educational occupancy.” SB 171 (Acts ch. 223, amendment to KRS 198B.010 effective April 22, 2006).

AN ACT relating to smoking. Amends KRS 61.165 to require the state government and post-secondary institutions to adopt a smoking policy, to allow local governments to adopt smoking policies for their offices, buildings and facilities in local government office buildings or workplaces, and to permit those policies to restrict indoor smoking. HB 55 (Acts ch. 115).

AN ACT relating to youth smoking. Amends KRS 438.311 to prohibit family members from providing tobacco products to children in the custody of the state; amends KRS 605.110 to permit children in the custody of the state to participate in smoking cessation services at local health departments at no cost. HB 92 (Acts ch. 17).

AN ACT relating to public health. Amends numerous sections of KRS to create a statewide program for genetic testing of at-risk persons and other target populations of children under age six years of age and pregnant women; amends KRS 189.515 to require persons age 16 and older to wear protective helmets when riding or operating an ATV; amends KRS 189.125 to establish a primary seat belt law; creates a new section of KRS chapter 189 prohibiting roadblocks for the sole purpose of checking for seat belt violations. HB 117 (Acts ch. 18).

AN ACT relating to weapons. Amends KRS 15.383 to require law enforcement agencies to retain a record of each of its officers having met the annual marksmanship qualification; amends KRS 237.110 to update the procedures of the Department of State Police for issuing and renewing licenses to carry concealed firearms; amends KRS 237.120 and 237.122 respecting renewal of an instructor’s lapsed certification; creates a new section of KRS Chapter 237 to limit the ability of a person, unit of government, or governmental organization to suspend, revoke, limit the use of a concealed deadly weapon license; creates a new section of KRS Chapter 237 to limit the seizure of lawfully owned weapons and ammunition during disasters and emergen-

PUBLIC OFFICERS AND EMPLOYEES

See also “Teachers and School Employees”

AN ACT relating to urban-county governments. Amends KRS 67A.6901 to define “corrections personnel” and “firefighter personnel”; amends KRS 67A.6902.6906, 67A.6908, and 67A.6910 to include those terms. SB 102 (Acts ch. 177).

AN ACT relating to retirement for police and firefighters in urban-counties and declaring an emergency. Amends numerous sections of KRS Chapter 67A (“Urban-County Government”) as they pertain to the Police and Firefighters’ Retirement and Benefit Fund. SB 108 (Acts ch. 144, effective April 4, 2006).

AN ACT relating to health insurance. Amends various sections of KRS pertaining to public employee health insurance plans and creates other sections addressed to a mail-order drug option, a comprehensive dental insurance plan, and payment for services rendered by optometrists. HB 131 (Acts ch. 164).

AN ACT relating to public officers. Amends KRS 69.360 to clarify the powers of county detectives with respect to civil process and amends KRS 61.365 to confer peace officer powers on law enforcement rangers of the National Park Service. SB 204 (Acts ch. 222).

AN ACT relating to termination of employment. Amends KRS 337.100 to provide that no employer may terminate an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer,
or member of an emergency management agency who is absent for a period of no more than twelve months from the employee's employment because of injuries incurred in the line of duty. HB 256 (Acts ch. 30).

**ROADS AND HIGHWAYS**

AN ACT relating to highways. Amends KRS 189.580, pertaining to the duties of motor vehicle operators in the event of a traffic accident, to require the driver under certain circumstances to move the vehicle off the roadway of an interstate highway or parkway to avoid obstructing traffic, to allow other persons in other circumstances to clear away obstructions, and to impose on operators a duty to notify or duty to report in certain instances; amends KRS 189.990 and 189.993 to exclude certain covered acts from the penalty provisions. SB 44 (Acts ch. 110).

AN ACT relating to highways. Amends provisions of KRS Chapter 189 in a manner substantially similar to SB 44 above to provide for “quick clearance” of traffic accidents. HB 272 (Acts ch. 109).

AN ACT relating to public roads. Amends KRS 178.025 to create a presumption regarding the width of a public road right-of-way; amends KRS 178.290 to allow a city, county, urban-county, consolidated local government, and charter county to build and repair sidewalks along public roads. HB 501 (Acts ch. 236).

**SCHOOLS AND SCHOOL DISTRICTS**

See also “Education”

AN ACT relating to the School Facilities Construction Commission. Amends KRS 157.622 to change from 4 years to 8 years the period for which the commission may escrow offers of assistance to local school districts for building school facilities. SB 205 (Acts ch. 156).

AN ACT relating to emergency procedures in public schools. Creates a new section of KRS Chapter 158 to require authorities to establish procedures to perform a building lockdown, including protective measures to take during and immediately following the lockdown. HB 206 (Acts ch. 120).

AN ACT relating to pupil attendance policies. Amends KRS 159.140 to permit an assistant to the director of pupil personnel to perform the required duties of the director of pupil personnel and requires that the school be notified of the home conditions of habitual truants; amends KRS 159.080 to conform. HB 479 (Acts ch. 130).

**TAXES AND FEES**

AN ACT relating to revenue and taxation and declaring an emergency. Amends numerous provisions in several chapters of KRS to clarify aspects of the Tax Modernization Act of 2005. HB 403 (Acts ch. 6, various effective dates).

AN ACT relating to the local occupational tax. Amends KRS 67.750 to update the reference to the internal revenue code; amends KRS 68.197 to clarify that provisions for a credit of occupational taxes apply to a city located in more than one county. HB 520 (Acts ch. 168).

AN ACT relating to the taxation of watercraft. Creates six new sections of KRS Chapter 136, amends KRS 136.120, and repeals KRS 136.181, 136.182, 136.183, 136.187, 136.184, and 136.187 to change the way watercraft are assessed and taxed. HB 562 (Acts ch. 169).

**TEACHERS AND SCHOOL EMPLOYEES**

AN ACT relating to public employees. Amends KRS 161.155 to provide that a teacher or employee shall suffer no loss of income or benefits for work time lost because of an assault while performing the teacher's or employee's assigned duties for a period of up to one year after the assault; amends KRS 156.026, 161.157, and 161.623 to conform. SB 51 (Acts ch. 52).

AN ACT relating to a school employee on active military duty. Amends KRS 161.168 pertaining to certified employees ordered to active military service and on leave of absence to provide that the state will pay the member contribution to the retirement system and amends KRS 161.550 to conform. HB 51 (Acts ch. 52).

AN ACT relating to educational rank. Amends KRS 161.1211 to provide a teacher who qualified for Rank I status based on his or her national board certification may not retain that classification if the national board certificate is revoked for misconduct or voided for other reasons. HB 125 (Acts ch. 87).

AN ACT relating to retired teachers, making an appropriation therefor, and declaring an emergency. Amends several sections of KRS Chapter 161 to adjust payments to and from the Kentucky Teachers' Retirement System. HB 555 (Acts ch. 189, effective July 1, 2006).
Be it ordained ....

Administrative Search Warrants

Kentucky has no general statute applicable to search warrants. In the absence of a statute, the Rules of Criminal Procedure include Rule 13.10 for the sake of convenient reference. Its principal concern is the authority of the person who issues a search warrant. According to the commentary, the rule “is intended merely to restate the common law.”

Search warrant forms in common use in Kentucky direct execution and return of the warrant by a peace officer. However, Rule 13.10 provides only that “[t]he officer executing a search warrant shall make return thereof to the appropriate court within a reasonable time of its execution.” The officer to whom the rule refers must always be a public officer, but at common law that officer need not always be a peace officer. The warrant can issue to any officer who has the authority so to act in the performance of his duties. CJS Searches and Seizures § 192. See, for example, Opinion of the Attorney General 83-11 suggesting that a property valuation administrator must in some instances resort to an administrative search warrant.

The authority of an administrative officer to apply for and execute a search warrant is seldom made express. Consequently, erring on the side of caution, those who issue administrative search warrants often direct their execution and return by peace officers. Because the peace officer usually lacks the expertise necessary to ascertain a violation of a building code, fire code, zoning law, or similar regulatory scheme, the building inspector, fire marshal, or the like must accompany the peace officer to execute the warrant and make a proper return. This is cumbersome and wasteful.

Some communities have adopted ordinances to clarify the authority of inspection and enforcement personnel to apply for and execute administrative search warrants. The sample that follows is a composite of several such ordinances.

AN ORDINANCE ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE ISSUANCE OF ADMINISTRATIVE SEARCH Warrants

1. Administrative search warrant defined. An administrative search warrant is a written order of a judge or other officer authorized by statute to issue search warrants that commands the search or inspection of any property, place, or thing, and the seizure, photographing, copying, or recording of property or physical conditions found. An administrative search warrant authorizes an officer to enter any premises to conduct any inspection, sampling, and other functions required or authorized by law to determine compliance with the provisions of an ordinance, code, or other regulation including, but not limited to, those relating to the use, condition, or occupancy of property or structures.

2. Who may apply for warrant. (a) Whenever a law requires or authorizes an inspection or investigation of any place or thing, the administrative officer charged to enforce that law, acting in the course of his or her official duties, may apply for an administrative search warrant. For this purpose, administrative officer includes a building inspector, code enforcement officer, fire marshal, their deputies, or other duly authorized representative, as the case may be.

(b) Before filing an application for an administrative search warrant, the administrative officer shall consult with counsel as to its legality in both form and substance.

3. Contents of application. (a) The application shall:

(i) be supported by affidavit sufficient under Section 10 of the Kentucky Constitution and be sworn to before an officer authorized to administer oaths as provided in the Kentucky Rules of Criminal Procedure or other applicable law;

(ii) state the applicant's status in applying for the warrant, the ordinance or regulation requiring or authorizing the inspection or investigation, and the nature, scope and purpose of the inspection to be performed;

(iii) describe the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

(iv) state (A) that, for the purpose of making an inspection, access to the property has been sought from and refused by the regulated party, or (B) that, after making a reasonable effort, the applicant has been unable to locate the regulated party, or (C) that the facts or circumstances reasonably show that the purposes of the inspection or investigation might be frustrated if entry were sought without first procuring a warrant; and

(v) state the basis upon which sufficient cause exists to search or inspect for violations of the ordinance or regulation specified.

4. Grounds for issuance. (a) An administrative search warrant may issue upon a showing that probable cause for the inspection or investigation exists and that the other requirements for granting the warrant are satisfied. Probable cause may be shown by:

(i) reasonable legislative or administrative standards for conducting a routine, periodic, or area inspection and that those standards are satisfied with respect to the location;
(ii) a reasonable administrative inspection program exists regarding the condition of the property and that the proposed inspection comes within that program;

(iii) a health, public protection or safety ordinance, regulation, rule, standard or order and that specific evidence of a condition of nonconformity exists with respect to the particular location; or

(iv) an investigation is reasonably believed to be necessary in order to determine or verify the condition of the location.

(b) A copy of the administrative search warrant and supporting affidavit shall be retained by the issuing officer and filed by such officer with the clerk of the court to which the warrant is returnable.

5. Contents of warrant. (a) The warrant:

(i) may direct its execution and return by the administrative officer charged to enforce the ordinance or regulation specified in the application;

(ii) shall specify the property, place, structure, premises, vehicle or records to be searched, inspected or entered upon in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

(iii) may contain a direction as to the time and manner of its execution; and

(iv) shall command the return to the appropriate court of any evidence of ordinance violations found, or of any property seized pursuant thereto, or a description of such property seized, to be dealt with according to law.

6. Execution and return. (a) Unless otherwise prescribed in the warrant, the officer executing an administrative search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.

(b) Except as provided in the following sentence, in executing a search warrant the person authorized to execute it shall before entry make a reasonable effort to present credentials, authority and purpose to an occupant or person in possession of the location designated in the warrant and show him or her the warrant or a copy thereof upon request. In executing a search warrant, the person authorized to execute the warrant need not inform anyone of his or her authority and purpose, as prescribed in the preceding sentence, but may promptly enter the designated location if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition, but shall orally announce their credentials and authority to execute the warrant prior to entry.

(c) If any property is seized incident to the search, the officer shall give the person from whose possession it was taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search in a conspicuous place. The return shall be accompanied by any photographs, copies, or recordings made, and by any property seized, along with a copy of the itemized receipt of such property required by this section.

(d) The officer may summon as many persons as he deems necessary to assist him in executing the warrant and may request that a peace officer assist in the execution of the warrant.

Residential Inspections without Search Warrants

continued from page 6

searches of regulated businesses, searches of probationers, searches of students, workplace searches of public employees, drug testing of public employees, sobriety checkpoints, and highway safety checkpoints. Under Diminished Interests, we find many of the cases already canvassed under the heading of Special Needs, but also the “automobile” exception, and the taking of blood samples. Under Consent, we find consensual searches, and finally, under History, we find three long standing and historical exceptions, namely the “arrest” exception, the “search incident to lawful arrest” exception, and border searches. The last remaining exception, one that does not fall neatly into this classification, is the very special case of inventory searches, in which the predominant consideration is the safeguarding of the searchee’s own property interests."

16 Under the rules announced in Biswell and in Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970), industries and businesses subject to pervasive regulation are subject to inspections without a warrant. See Wayne R. LaFave, 5 Search and Seizure: A Treatise on the Fourth Amendment §10.2(a) (4th ed. 2004).


18 Id. at 84, quoting Reed v. Schneider, 612 F.Supp.2d 216, 221 (E.D.N.Y. 1985).

19 Id. at 88.

20 Camara, 387 U.S. at 529.

21 Kyllo, 533 U.S. at 31.
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