

Kentucky Legislative Report
Week 6
Monday, February 28 – Friday, March 4, 2011

The Kentucky Legislature entered its final hours on Friday passing a slew of bills, but failing to come to an agreement on a plan to fill a hole in the state's two-year budget. The Legislature adjourned Friday without shortening its calendar schedule and will reconvene on Monday to take up the few remaining concurrence bills before a 10-day veto recess period. In the adopted calendar, there is one working day remaining and two days set aside for veto overrides.

Senate Republicans remain at odds with the House Democrats, the Democratic Governor and now the House Republicans, over a budget shortfall in the state's Medicaid program, and the two sides traded barbs Friday. On Friday, Beshear and House Democratic leaders blasted the Senate's plan for across-the-board cuts as "unreasonable and unnecessary" during a Capitol news conference. However, in the biggest surprise of the day, House Republicans joined with the Democrats in opposing the Republican-led Senate's plan to cut education and other parts of state government to shore up the state's Medicaid program.

Gov. Steve Beshear's budget plan, approved by the House, calls for \$166.5 million in state Medicaid funds for the 2011-12 fiscal year to be transferred to the current year to resolve the Medicaid funding shortfall created when the federal government did not extend the higher match rate for Medicaid. The Governor promises to fill the hole in next year's Medicaid budget by implementing new "managed care" approaches to delivering services.

However, Senate President David Williams, who is running for Governor against Beshear, says Beshear will not be able to live up to his promise and that the result will be a huge shortage of Medicaid funds next year. The Senate passed its own plan, which calls for spending cuts of about one half of 1 percent to most state agencies in the last quarter of this fiscal year, which ends June 30, and a cut of about 2 1/4 percent to all agencies in 2011-12. Modest cuts now in state spending to deal with the shortage will avoid a much larger budget problem next year, Williams has said.

House Minority Leader Jeff Hoover said that cutting education to fix problems in Medicaid was a bad idea. "I and the other 41 members of the Kentucky House Republican Caucus do not believe it is good policy to shift funding from education at a time when many of our school districts are counting pennies to balance their own budgets," Hoover said. "It's a step in the wrong direction."

House Democrats said they will not agree to the Senate's cuts and are sticking to their proposal to shift the funds. Beshear says the Senate's proposed cuts would affect funding in the following ways:

- **Education:** \$47.4 million from K-12 education, including \$38.4 million from SEEK, the basic funding for formula for classroom teaching. These cuts to SEEK are in addition to estimated shortfalls of \$49 million shortfall this fiscal year and \$29 million next year.

- **Higher Education:** \$28 million from higher education, including \$22 million from institutions' base budgets and \$4.3 million from student financial aid.
- **Health and Family Services (non-Medicaid):** \$19 million from non-Medicaid programs in the Cabinet for Health and Family Services, including social workers, public health departments and Meals on Wheels services.
- **Justice and Public Safety:** \$17.4 million from public safety programs, including state troopers, local jail support and juvenile justice programs, as well as \$12.1 million from the Corrections Department.
- **Judicial Branch:** \$8.5 million from the Judicial Branch, which has suffered from layoffs under previous cuts.
- **Everything else:** \$28.2 million from the rest of state government, including job creation programs, state parks, environmental and worker safety programs and veterans assistance programs.

The Senate voted Friday morning to stand by its approach to the problem, and both chambers later named members of a conference committee to try to resolve the conflict. The conference committee met briefly late Friday afternoon and formally "agreed to disagree" and seek the appointment of a free conference committee. Legislative leaders plan to reconvene in conference at 10am on Monday in hopes of reaching an agreement. The full House and Senate convene at noon.

If no agreement is reached, the Governor will be faced with a short list of unattractive options, including calling a special session to balance the budget or making draconian cuts to the Medicaid program to try to balance it before the end of the fiscal year (June 30).

In other significant action, the Legislature passed and the Governor signed into law a landmark penal reform bill, which will likely be hailed as the most significant accomplishment of the session and one of the biggest accomplishments this decade. HB 463 tackled the punitive sentencing in the so-called War on Drugs, and addressed the large financial toll the sentencing of non-violent offenders has become on the state budget.

Kentucky has about 20,500 prison inmates and spends about \$440 million a year on Corrections. As recently as 2008, the Pew Research Center reported Kentucky had the fastest growing prison population in the nation. The bi-partisan reform bill is designed to keep non-violent drug offenders out of prisons and in treatment, under community supervision. It is estimated the bill will net \$147 million in clear savings over the next decade from reduced jail and court costs, even after paying for treatment programs and probation and parole monitoring. Total savings including money plowed back into treatment, could reach \$420 million.

The legislation arose from months of work by a blue ribbon task force of prosecutors, judges, defense lawyers, police, lawmakers, corrections officials and others. The Pew Center, a national resource in helping states cope with exploding Corrections costs even as recidivism rates worsen, helped the task force in its work. Kentucky's penal code has not had a comprehensive review and revision since 1975.

Here is how several other high-profile pieces of legislation fared this week:

- Legislation aimed at curbing methamphetamine production continues to stall. House Leadership made no secret of the fact that the Senate would have to be the first chamber to move on a prescription-only measure, which would burden consumers of common cold medicines by requiring a prescription for products such as Sudafed and Claritin-D – both of which contain ingredients for making meth. SB 45 was the bill intended to do just that, and it has languished in the Senate Orders of the Day for nearly a month. There are potential bills to which the language could be added, but the Senate has not built enough consensus among members to move forward at this point.
- A utility rate hike last year, coupled with one of the harshest winters in memory, led Eastern Kentucky legislators of both parties and in both chambers to rail against utilities and the entity that regulates them in the Commonwealth. The Senate passed a version of SB 151, which would change the PSC from a 3-member commission whose members are appointed by the Governor, to a 7-member group popularly elected by the public. The House watered the bill down to a study, and even then barely passed by a vote of 48-46. The study bill was sent back to the Senate, where they have yet to act on it.
- Amidst the very public bombast regarding the budget ‘fix-it’ bill, the General Assembly passed a bill that expands the types of fireworks Kentuckians can purchase and shoot off – a moment entirely apropos of the final day of the week. Kentuckians commonly cross bridges and borders to neighboring states both north and south to procure more explosive (and dangerous) fireworks. HB 333 had the support of firefighters and retailers alike, and was sent to the Governor’s desk this afternoon.