

SESSION SUMMARY
2013 Kentucky General Assembly
Prepared for the Kentucky Restaurant Association
April 12, 2013

Legislation championed by the Kentucky Restaurant Association to permit Election Day sales of alcoholic beverages was one of the more than 125 measures enacted during the 2013 Session. Although it was the so-called “short session”, there was clearly no shortage of issues introduced for consideration by lawmakers this year. Nearly 700 bills were introduced and more than 50 substantive resolutions were filed. Most bills that passed during the 2013 Session will take effect on Tuesday, June 25; the exceptions being legislation that had a specific effective date or an emergency clause making provisions of the bill effective as soon as it was signed by the Governor.

Since lawmakers approved changes to the pension plan for public employees, along with a funding bill to address the system’s current unfunded liability shortly before they adjourned “sine die” on March 26, the possibility of a special session later this year is much more unlikely.

The following narrative summary is arranged alphabetically by issue area and provides information about the key legislation affecting Kentucky businesses that lawmakers considered this session. The electronic version of KRA’s 2013 Session Summary includes links to the legislative website so you can easily access additional information about individual pieces of legislation. These links provide the complete summary prepared by legislative staff and a chronological list of actions on the legislation. You can also access the complete text of each bill or resolution by way of the link.

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Alcoholic Beverage Sales Issues

Election Day Sales: For several years, KRA has advocated removal of the statutory prohibition on the sale of alcoholic beverages on the day of a primary or general election. The Election Day sales ban was a topic of discussion in the interim prior to the 2013 Session and legislation was introduced early in the session by both Senator John Schickel (R-Union) and Representative Arnold Simpson (D-Covington). In mid-February, the legislation introduced in the Senate cleared that chamber on a 29-8 vote. But it was on the last day of the 2013 Session before the House acted on [SB 13](#). It was approved on the House floor by a 50-46 margin after provisions of other pending alcoholic beverage legislation was added to the bill by way of a floor amendment filed by Representative Dennis Keene (D-Wilder).

Kentucky is one of only two states that have laws on the books prohibiting sales while the polls are open. The legislation enacted this year will repeal the statewide ban and instead authorize a local government to enact an ordinance to prohibit Election Day sales within its jurisdiction if it chooses to do so. The bill, which was signed by the Governor on April 4, also eliminates the provision of state law that requires any business holding an ABC license to close the day that a local option election is held.

Task Force Recommendations: Even non-controversial changes in Kentucky's laws governing the sale of alcoholic beverages faced an uphill battle during the 2013 Session. Many lawmakers, particularly those who represent "dry" areas of the state, would prefer to avoid consideration of alcohol-related legislation. [HB 300](#), a 113-page bill, resulted from recommendations made by a task force appointed by Governor Steve Beshear last summer. The Kentucky Restaurant Association had a representative on the panel that was charged with identifying needed changes in the current laws relating to alcoholic beverages.

Most of the bill's provisions were designed to streamline the current licensing system and procedures. It called for the consolidation of several existing licenses in order to reduce the total number of license types. Most existing restaurant licenses will be incorporated into a new NQ2 (non-quota type 2) license that will eliminate the need for a licensee to obtain a separate beer license. However, the bill separates the current malt beverage license into either a by-the-drink or package license. Both will be non-quota licenses and the holder of one type will be able to secure the other type for a reduced fee of \$50. The limited restaurant license that permits alcoholic beverages sales in areas that have voted to allow "restaurant only" sales will remain as a separate license type. The final version of the legislation also largely eliminated the difference in license fees based on the size of the community in which the business is located. It also included language that KRA representatives helped to craft to prevent major increases in local license fees.

The bill contained a provision initiated by KRA's representative on the task force to create a master file for businesses that hold multiple licenses as a way to reduce the paperwork required for each individual license application. [HB 300](#) also contained revisions to KRS Chapter 242 to clarify the rules affecting local option elections and proposed a change in the "disorderly premises" law to specifically include employees of an ABC-licensed business in the ban on certain behavior.

The bill was sponsored by Representative Dennis Keene (D-Wilder) who chairs the House Licensing and Occupations Committee and served on the Governor's panel. It passed the House in late February but languished in the Senate without action by the committee to which it was referred. It was late in the day on the 30th and final day of the session when the bill's provisions were added to [SB 13](#), the so-called Election Day bill, on the House floor. The Senate approved the House changes and the revised bill was delivered to the Governor shortly before the session ended. It was signed by Governor Beshear and will become law this summer.

Local Option Elections: The Senate approved [SB 142](#) that would have changed the timing of local option elections but the bill died in the House. The bill, introduced by Senator Ernie Harris (R-Crestwood) proposed that local option elections be held on the same day as either the primary or general election rather than being conducted on a different date. A Senate floor amendment was added that allowed these elections to be held separate from the regular election only if the petitioners paid for the cost of the special election.

Breweries: The House approved legislation introduced by Speaker Pro Tem Larry Clark (D-Louisville) to legalize the sale of beer produced at a microbrewery without first transferring the product to a distributor. [HB 440](#) required that the microbrewery hold a retail sales license, have a written contract with a distributor and assume responsibility for the collection of the wholesale tax. The House-passed version of the bill also included a 288-ounce daily limit on the amount of beer a customer would be allowed to purchase for off-premises consumption.

Additional provisions were added to the bill when it was taken up by the Senate Licensing and Occupations Committee. The language in [SB 24](#) broadening eligibility for a historic site type of ABC license was added as were provisions creating a craft distillery license for micro-distilleries that produce no more than 50,000 gallons of product each year. The House did not act on the revised bill before the veto break and [HB 440](#) ultimately was used as the vehicle for financing the plan to address the unfunded liability in the state pension plan. Although the alcoholic beverage provisions of the bill were removed, the changes regarding microbrewery sales of the beer they produce and the historic site license eligibility were incorporated in the final version of [SB 13](#) that won final legislative approval and was signed by the Governor. Lawmakers also enacted [HB 315](#) that permits sampling of malt beverages at the brewery where the beer is produced. The amount is limited to 16 ounces per patron and the bill specifies that sampling is allowed only if the brewery is located in a “wet” territory.

DUI: Both [HB 32](#) and [HB 286](#) proposed to increase penalties for DUI offenders but neither bill was enacted.

Credit & Collection Issues

Credit Card Surcharges: What started as a simple proposal to require a business that imposes a surcharge for use of a credit card as payment to give customers advance notice became a major problem for restaurants and other retailers as it advanced. [HB 259](#), introduced by Representative Hubert Collins (D-Wittensville), was amended in the House to require that the notice be posted at the register, but it was the changes made in the Senate Banking and Insurance Committee that caused the most concern. The Senate panel approved an amended version of the bill put forward by the state bankers organization that not only restricted the amount of the surcharge but also established mandatory disclosures that would have to be listed on the customer receipt. Among these was a requirement that the surcharge be broken down based on the percentage of the total sale for each item purchased and that amount be listed as a “merchant surcharge” next to each item on the receipt. In addition, the amended bill required that merchants post notice of the surcharge not only at the point of sale but also at the store entrance or in the case of an on-line merchant, on the home page of the seller’s website.

After objections to the new provisions were raised by the lobbyists that represent KRA with both Senate leadership and the bill’s sponsor, it died without being scheduled for a vote on the Senate floor.

Two bills imposing an outright ban on surcharges were also introduced but no action was taken on either [SB 194](#) or [HB 256](#).

Energy Issues

Renewable Energy Portfolio: A measure was introduced again this year calling for a Renewable Energy Portfolio Standard in Kentucky but as in prior sessions, no vote was taken on the bill by the committee to which it was assigned. [HB 170](#) would have required that a portion of the electricity generated or purchased by Kentucky utilities be renewable energy with the percentage required increasing each year. The bill authorized utilities to recover any additional costs they incur because of the renewable standard but left it to the Public Service Commission to determine the cost recovery methodology. Previous proposals have exempted industrial users from the cost recovery provisions which would leave commercial and residential customers bearing all the increased costs.

Environment & Growth Issues

Water Quality: Both commercial and residential development is affected when a decision is made to list a stream or other water body as “impaired” and limits imposed as to the discharges, including stormwater runoff, allowed to these waters. Businesses and other stakeholders that may be affected will have an opportunity for input with the enactment of [HB 378](#). The bill, sponsored by Representative Fitz Steele (D-Hazard) at the urging of the Kentucky Retail Federation and other business groups, requires the state Energy and Environment Cabinet to maintain a list of waters that have been classified as “impaired” as well as those that are being considered for listing on the agency’s website. The bill requires notice to interested parties in advance of submitting to the federal EPA any new waters to be added to the “impaired” list. It also requires advance notice to stakeholders when development of a TMDL (total maximum daily load) begins. It was signed by the Governor on March 22 but the bill gives the state agency until July 1, 2014 to update its website with the new information.

An identical bill ([SB 190](#)) was introduced by Senator Paul Hornback (R-Shelbyville). The legislation was developed to increase transparency and public input in water quality decisions that have the potential to significantly affect a community. If sound data is not used to make listing decisions or to set TMDLs, development could be stymied and rates for wastewater treatment drastically increased.

Food Sales & Service Issues

Tourism Taxes: The issue of locally-imposed restaurant taxes arose this session but in a very different form than the proposals put forward in previous years by the Kentucky League of Cities (KLC). Bills introduced in previous sessions would have permitted every city in the state, rather than only cities of the 4th and 5th classes, to levy a local tax on prepared food and beverages. Instead, Representative Keith Hall (D-Phelps) introduced [HB 258](#) to clarify the restrictions on the use of restaurant and “bed” tax revenues that are currently authorized by state law.

The legislation was crafted by the Kentucky Travel Industry Association with the input and support of both the Kentucky Restaurant Association and the Kentucky Hotel & Lodging Association in response to some controversy and confusion about the use of the funds. An opinion issued last summer by an assistant Attorney General (OAG 12-012) has further clouded the issue. Because of the precise statutory language, the opinion says that

restrictions on use of the transient room tax revenues, including the prohibition on the money being used as a subsidy to a hotel, motel or restaurant, does not apply to money raised from a restaurant tax. Instead, the opinion holds that restaurant tax revenues are simply required to be turned over to the commission.

[HB 258](#) would have corrected the language to ensure that the tax revenues could not be used to support a private business and would have further limited use of the money to promote tourism. After objections were raised by KLC that the proposed language was too restrictive and curtailed local control of the local taxes, no action was taken on the bill.

Health Department Regulatory Authority: Legislation was introduced to eliminate local health departments' authority to issue regulations. Local regulations have been an issue in some communities as a few health departments have adopted rules that go beyond the State Food Code requirements. [SB 172](#), sponsored by Senate Majority Caucus Chair Dan Seum (R-Louisville), would have left existing regulations in place unless the subject matter of the regulation is addressed by the local governing body, either the city or the county fiscal court that may either repeal or amend the regulation issued by the local board of health. The bill was not taken up for action on the Senate floor.

General Business Issues

Public Pension Liability & Reform: With just a few hours remaining in the 2013 Session, an agreement was reached to make major reforms in the pension plan for newly hired government employees and to begin to resolve the system's unfunded liability which is estimated at \$33 billion. A special legislative task force developed a plan to change the pension plan available to new hires from a defined benefit system to a "cash hybrid balance" plan that is essentially a defined contribution plan that guarantees a four percent annual rate of return. The enacted version of [SB 2](#) also requires that cost of living increases for government retirees are pre-funded rather than being automatic which has proven to significantly increase the unfunded liability. The financing plan to address the system debt was included in the final version of [HB 440](#) and is reported on in the Revenue & Taxation section of this report.

Expanded Gaming: Two bills were introduced in the House this year to authorize expanded gaming but it was an amendment to a different measure that received action on the House floor. [HB 52](#) was prefiled by Representative Dennis Keene (D-Wilder) to authorize casino gaming on a limited basis under the state lottery. The bill would have allowed communities in which a horse racing track is located, as well as counties with a population of more than 90,000 to permit expanded gaming by local option election. Representative David Osborne (R-Prospect) introduced [HB 443](#) that proposed a Constitutional Amendment for consideration by Kentucky's voters to authorize casino gambling at up to seven locations in the state. Neither bill was acted on in the House committee to which it was assigned.

But a different fate met legislation introduced by Speaker Greg Stumbo (D-Prestonsburg) and the four other House Democrat leaders. [HB 416](#) was amended in the House Appropriations and Revenue Committee to provide a method for addressing the state's unfunded pension liability. It proposed to allow wagering on historical horse races, also known as "instant racing", and used the tax generated, as well as the proceeds from new lottery games, to pay down the pension debt. The bill passed the House in late February by a

52-47 margin but the Senate refused to accept the legislation, citing the requirement that revenue measures enacted in the odd-year session require 60 votes in the House.

Local Government Procurement: The House approved a bill that allowed a local government to provide a preference for local businesses bidding to provide the goods and services it purchases. [HB 446](#) cleared the House late in the session but was never referred to a Senate committee for further consideration.

Anti-Discrimination: Bills were introduced in both chambers to ban discrimination based on sexual orientation or gender identity. No additional action was taken on either [HB 171](#) or [SB 28](#).

Health Insurance Issues

Federal Health Care Reform: Kentucky lawmakers sought to address a number of issues relating to the implementation of the federal Affordable Care Act (ACA). Competing proposals were filed on the establishment of a state health benefit exchange and a bill was filed to block the expansion of Medicaid coverage without legislative approval. [SB 40](#), introduced by Senate Health and Welfare Committee Chair Julie Denton (R-Louisville), prohibited the Commonwealth from operating a health benefit exchange unless authorized by the legislature. Governor Steve Beshear established the Kentucky Health Benefit Exchange last year by executive order. Meanwhile, House Health and Welfare Committee Chair Tom Burch (D-Louisville) filed two bills ([HB 248](#), [HB 291](#)) ratifying the Governor's executive order. While [SB 40](#) passed the Senate, it ultimately died in the House. Late in the session several attempts were made to revive the issue as an amendment to other health insurance bills but they failed to gain traction. Neither [HB 248](#) nor [HB 291](#) received a hearing. The legislature's inaction on this issue essentially preserved the ability of the Kentucky Health Benefit Exchange to continue preparing for operations later this year since the Governor is expected to reissue the Executive Order. The subject, however, will likely be revisited in the 2014 session since a funding mechanism for the exchange must be determined.

Lawmakers also failed to pass another proposal by Senator Denton that would have prohibited the state from expanding Medicaid coverage without legislative approval ([SB 39](#)). Under the ACA, states may revise Medicaid eligibility to include persons with incomes of up to 133 percent of the federal poverty level effective January 1, 2014. Estimates are that this could add more than 300,000 Kentuckians to the rolls should the state make the change. The administration has not made a final decision on Medicaid expansion but is reportedly leaning towards implementing it by the beginning of next year. The ACA calls for the federal government to pick up the entire cost of the expansion until 2017 when the federal government's share will begin to gradually decrease before reaching a 90 percent federal contribution level in 2020. The bill passed the Senate along straight party lines but died in the Democrat-controlled House.

Mandated Benefits: The legislature passed a new health insurance mandate as part of [HB 366](#), legislation designed to improve infant health. A free conference committee added language requiring health insurers to cover nutritional supplements for low birth weight babies to the bill before it received final passage. The language was originally introduced as a stand-alone bill ([HB 387](#)) but that measure died in the Senate. The nutritional supplement coverage requirement was the only health insurance mandate to receive legislative approval this

session. Measures were introduced to require coverage for brain injuries ([SB 205](#)) and advanced arm and leg prosthetics ([HB 376](#)). Representative Tim Moore (R-Elizabethtown) also filed a proposal to allow health insurance plans without the coverage mandated by state law to be sold in Kentucky. Moore's bill, [HB 264](#), never received a hearing in the House Banking and Insurance Committee.

Labor & Workforce Issues

Workers' Compensation: Significant changes to Kentucky's workers' compensation system were again proposed this year by Senator Tom Buford (R-Nicholasville) and like bills he introduced in 2011 and 2012, this year's legislation was viewed as "unfriendly" to the business community. [SB 113](#) proposed to create a new level of disability classified as "temporary partial", increase income benefits for injured workers and allow for higher attorneys' fees. The one positive provision for employers in the bill would have capped medical benefits at age 70 or five years after the date of injury, whichever is later, rather than providing medical benefits for the worker's lifetime. The bill died in the Senate Judiciary Committee to which it was assigned.

Unemployment Insurance: In response to a federal requirement, legislation was initiated by the state Division of Unemployment Insurance (UI) to penalize employers who fail to respond to agency information requests regarding UI claims. [HB 102](#) proposed to make employers who had a "pattern of failure" ineligible for a credit for UI benefit overpayments. Instead, the credit normally due these employers would accrue to the "pool account." The bill was amended in the Senate at the request of some business groups, including KRA, to define the "pattern of failure" as the higher of six times or two percent of the information requests per calendar year. The House agreed with the Senate changes and the bill has been signed by the Governor.

Employee Misclassification: The issue of properly distinguishing between employees and independent contractors was addressed in legislation introduced by Senator John Schickel (R-Union). [SB 89](#) was backed by a broad coalition of business groups including KRA but the bill died in the House after winning passage in the Senate. The bill established criteria that must be met by a person providing services as a contractor or subcontractor or as a direct seller in order to qualify as an independent contractor and made the Department of Revenue, rather than the Labor Cabinet, the agency that decides issues relating to employee classification.

Domestic Violence Orders Involving Employees: Proposed legislation to extend eligibility for domestic violence protective orders to individuals who have been or are involved in a dating relationship made it further in the legislative process than bills introduced in earlier sessions but still failed to win final passage. [HB 9](#) passed the House and won approval in the Senate Judiciary Committee but was not acted on by the full Senate. Although Kentucky is reportedly one of just a few states without this provision in its law, concerns have been raised about its impact on employers if the business employs both parties and the order restricts contact between the individuals. No action was taken on similar legislation introduced in the Senate ([SB 16](#)).

Comparable Worth: [HB 401](#) was the comparable worth legislation introduced this year by Representative Mary Lou Marzian (D-Louisville). Like her efforts in prior sessions, the bill defined “equivalent jobs” and proposed to make payment of differential wages for these jobs a form of discrimination. The bill cleared the House Labor and Industry Committee which has earned its reputation as a pro-labor panel but no action was taken on the measure by the full House.

Leave for Crime Victims: An employee would have been allowed to take leave time-- accrued vacation time, personal leave time, compensatory time, or sick leave time—to attend court or other proceedings relating to prosecution of a crime in which the employee or a member of his family was the victim if [HB 97](#) had been enacted. The bill prohibited an employer from taking action against any employee that takes such leave but required the employee to provide advance notice of the time he would be off work or, if not practical, to provide documentation to the employer regarding his absence within two days after returning to work. The bill included language making it clear that it is up to the employer if the employee is compensated for time off if he has no accrued leave time. [HB 97](#) passed the House but died in the Senate Judiciary Committee.

Drug-Free Workplaces: A bill introduced by freshman Senator Whitney Westerfield (R-Hopkinsville) proposed to create a voluntary program under which employers could be certified as having a drug-free workplace program if it meets certain standards. These requirements included drug testing of employees and job applicants, along with education and awareness training for both employees and supervisory personnel. [SB 157](#) also required that an employee assistance program be included in the program. Employers with certified programs would benefit from more favorable treatment regarding unemployment insurance (UI) and workers’ compensation claims. The bill specified that failure or refusal to take a drug test required by a certified employer would constitute misconduct on the part of an employee, disqualifying him from receiving UI benefits. An injured employee that had a blood alcohol concentration of 0.04 or more or that tested positive for unlawful or unauthorized drugs at the time of the injury would find it more difficult to qualify for workers’ compensation under the provisions of [SB 157](#). The bill shifted the burden of proof to these employees to prove that the drugs or alcohol were not the proximate cause of the injury. Although the bill was approved by the Senate Economic Development, Tourism and Labor Committee, it ran into problems on the Senate floor and was recommitted to another Senate committee where it died.

Privacy & Security Issues

Felony Theft: Two freshmen House members introduced bills dealing with felony theft including one proposal that the Kentucky Retail Federation (KRF) actively opposed. [HB 231](#), sponsored by Representative Gerald Watkins (D-Paducah), would have raised the felony theft level from \$500 to \$1,000. Objections raised by KRF led to its demise and it remained in the House Judiciary Committee to which it was referred at the end of the session. The other bill, [HB 161](#), was more favorably received and has been signed by the Governor after winning legislative approval. The bill increases the penalty for theft of property valued at more than \$1 million.

Felony Expungement: After being endorsed by the state Justice Cabinet Secretary, along with some former prosecutors, [HB 47](#) won approval in the House Judiciary Committee and later on the House floor. The bill would have allowed certain felony records to be expunged and the crimes omitted from an offender's criminal record. With few exceptions, the bill would have permitted purging of records involving a Class D felony or series of Class D felonies arising out of a single incident five years after the offender completed his sentence or probation. Existing Kentucky law permits misdemeanor violations to be expunged but there is no statutory provision that allows felony convictions to be eliminated from a person's criminal record. [HB 47](#), one of four bills introduced this session to authorize felony expungement, died in the Senate Judiciary Committee.

Cyber-Security: Although a resolution directing a legislative committee to investigate the issue of cyber-security and the need for a data breach law failed to pass both chambers, the issue may still be a topic for discussion during the interim period between sessions. The language in [HCR 89](#) cited the fact that Kentucky is one of only four states without a statutory requirement for notification of consumers when a security breach involving their personal information occurs.

Regulatory & Licensure Issues

Single Business ID: One of the bills that was enacted this year requires state government to consolidate the separate business identification numbers used by various agencies into a single number for each business. [HB 343](#) was introduced by Representative Mike Denham (D-Maysville) with the support of several business organizations including KRA. The bill, which was signed by Governor Beshear, requires that all state agencies utilize the single business identifier within five years.

Statewide Smoking Ban: Representative Susan Westrom (D-Lexington) again proposed a statewide ban on smoking in workplaces and businesses open to the public with the introduction of [HB 190](#). The bill also specifically authorized local governments to impose stricter standards than what were outlined for the statewide ban. [HB 190](#) won approval in the House Health and Welfare Committee as did the bill she introduced in 2012. However, the bill was recommitted to the House Judiciary Committee because of concerns raised about its impact on private property rights. The bill remained in that committee when the session ended.

Firearms: A plethora of gun bills were introduced this year including several measures to exempt firearms and accessories made in Kentucky and used exclusively in the state from federal law but no legislation was enacted.

Local Health Department Regulatory Authority: A bill introduced by Senate Majority Caucus Chair Dan Seum (R-Louisville) proposed to remove the statutory provisions that allow a local board of health to issue regulations it deems needed to protect public health. In a number of instances, local health department regulations have imposed more stringent requirements than state standards in areas such as food safety and sanitation. [SB 172](#) was not taken up for consideration in the Senate.

Revenue & Taxation Issues

Tax Reform: Although the Governor's Blue Ribbon Commission on Tax Reform issued its report in December that included recommendations for significant changes to Kentucky's tax code, the issue of tax reform never gained any real traction in the 2013 Session. However, some of the changes recommended by the commission were included in the final version of [HB 440](#), the legislation that adds nearly \$100 million to the General Fund coffers to address the \$33 billion unfunded liability in the state's pension plan. The group's recommendations to make certain services subject to the six percent state sales tax and to change the apportionment formula for determining tax liability of multi-state companies operating in Kentucky were not included in the final version of the pension funding bill. Governor Beshear had indicated prior to the start of the session that a special session to consider the issue of tax reform was likely but that changed when lawmakers enacted the revenue package to deal with the pension issue.

During the session, Representative Jim Wayne (D-Louisville) again put forward a proposal for major tax changes in the form of [HB 142](#). As he has previously proposed, his 2013 legislation called for a major overhaul of Kentucky's tax system including an expansion of the sales tax base to include specific services. [HB 142](#) also would have removed existing restrictions on property tax increases; required unitary reporting for Kentucky businesses and increased tobacco taxes. The bill was referred to the House Appropriations and Revenue Committee but was never discussed.

Pension System Reforms and Financing: The major issue that lawmakers did address this year involved the state pension system and its unfunded liability. The issue was one that had drawn a lot of attention prior to the start of the session since the system's \$33 billion unfunded liability was continuing to grow and had begun to affect the state's credit rating.

In early February, the Senate passed [SB 2](#) that encompassed the system reforms that had been endorsed by a legislative task force that had tackled the issue during the interim between sessions. Under the provisions of the bill, the retirement benefits for new hires would switch from a "defined benefit" plan to a "cash hybrid balance" benefit that is basically a defined contribution plan that guarantees a four percent annual rate of return. The bill languished in the House where leaders were focused on identifying a funding source for the ARC (actuarial required contribution) to pay down the system's unfunded liability rather than making changes to the benefit structure. In late February, the House passed a revised version of [HB 416](#) that generated money for the ARC payment through an expansion of the lottery including wagering on "instant racing." The Senate refused to accept the House bill, contending it violated the constitutional requirement that a revenue-raising measure enacted in an odd-year session requires 60 votes in the House rather than the 52 "aye" votes that [HB 416](#) received. When lawmakers recessed for the veto break, action on the pension issue appeared unlikely and Governor Beshear publicly stated he intended to call a special session if it remained unresolved.

Legislative leaders from both chambers continued discussions with the Governor during the recess and after lawmakers returned to Frankfort for the final two days of the 2013 session. Governor Beshear met for more than two hours with the 55 members of the House Democratic caucus shortly after the legislature reconvened trying to win support for a plan he put forward to not only make changes to the retirement plan for newly hired government workers but also to generate nearly \$100 million in new General Fund revenues to begin paying down the debt. House Democrats did not sign off on the funding part of his plan

largely because it proposed to transfer some gas tax revenues from the Road Fund to the General Fund so the Governor and House and Senate leaders from both parties began scrambling to develop a plan that could win support. Closed door negotiations continued and by mid-afternoon on the final day of the session, it was announced that a pension deal had been reached. The deal resulted in bills encompassing the tax package ([HB 440](#)) and changes to the pension system and its benefits for new hires ([SB 2](#)) that passed both chambers later that night. Although it is positive for all Kentucky businesses and residents that the pension issue was addressed, some industry segments, along with individual Kentuckians, are being forced to bear more than their fair share of the costs.

Sales Tax Collection Allowance: The small allowance restaurants and other businesses receive for serving as the sales tax collection agent for state government will get even smaller for most companies beginning this summer as a result of the last-minute deal that was struck to raise nearly \$100 million to address the pension fund's skyrocketing liability. During the final day negotiations on a funding plan to begin to pay down the system's debt, the administration presented legislative leaders a list of options to generate the needed revenue which included an \$11 million decrease in vendor compensation for sales tax collection. According to a document prepared by administration officials and provided to all 138 legislators before the vote, they contended that more than 80 percent of retailers would either see no impact or experience a slight increase in their vendor compensation if the formula was revised and the cap on monthly compensation was reduced from \$1,500 to \$50.

Contact with legislators began as soon as KRA learned of the proposal and to point out that the information that had been provided was misleading. Although several legislators, including some of those directly involved in developing the financing plan, were surprised to learn that businesses with only slightly more than \$50,000 in taxable sales in a month will be hurt by the change, the deal had been struck and there was no appetite for blowing up the pension issue because of the reduction in vendor compensation. Beginning on July 1, a new formula will be in place for determining the allowance for collecting and remitting the state sales tax. The vendor allowance for the first \$1,000 of tax collected in each reporting period remains at 1.75 percent of the tax but the formula for tax collections over \$1,000 was increased from 1.0 percent to 1.5 percent. However, no matter what number results from the calculation, a sales tax permit holder will receive no more than \$50 per return as a collection allowance. Most businesses are required to file returns and remit the tax collected each month.

Local Sales Tax Authority: One of the tax changes endorsed by the Governor's Blue Ribbon Commission on Tax Reform was to amend Kentucky's Constitution to allow cities and counties to impose a local sales tax. Two bills were introduced in the Senate this year proposing this constitutional change and while neither was acted on, the issue is one that will continue to be pushed by local governments, particularly the Kentucky League of Cities and a newly-formed group called LIFT (Local Investments for Transformation). [SB 30](#) and [SB 189](#) called for a constitutional amendment to be presented to Kentucky voters which, if approved, would open the door for a local sales tax provided the proceeds of the tax were used for specifically identified projects and programs. Both bills also required that the tax levy be approved by voters within the jurisdiction proposing the tax prior to its imposition.

Special Taxing Districts: In the wake of a report issued last year by State Auditor Adam Edelen, House Speaker Greg Stumbo (D-Prestonsburg) introduced [HB 1](#) to require special districts such as libraries, fire departments and sewer districts to be listed on a

centralized registry and to make their budgets easily accessible for public viewing. The report revealed there are at least 1,200 special districts spending approximately \$2.7 billion each year with little accountability since special districts are not directly governed by elected officials. Senator Damon Thayer (R-Georgetown) has long voiced concern about the lack of transparency regarding these special purpose government entities and has wanted to make any taxes or fees they levy subject to approval of the city commission or fiscal court. The final version of [HB 1](#) that passed and was signed by Governor Beshear, requires creation of a centralized registry that includes a complete listing of all the special districts that exist or those that are created. It specifies financial reporting regarding these districts that is required to be available on a public website. It also requires that any new fee or tax, as well as any increase of an existing fee or tax, levied by the district be reported to the local governing body in a meeting open to the public. The registry is expected to be up and running in the fall of 2014.

Intercompany Management Fees: One of the recommendations contained in the report issued by the Governor's Blue Ribbon Commission on Tax Reform was to "close a loophole" in Kentucky's tax law dealing with payment of management fees to affiliated companies. The statutory change was included in the final version of [HB 440](#) and is expected to generate an additional \$15 million in tax revenue each year. It disallows deduction of a management fee to related parties, giving these expenses the same tax treatment as other intercompany expense payments.

Income Tax Credits: Proposals to create new tax credits fared no better during the 2013 Session. Among the proposals were several bills that would have created new tax credits for employers ([HB 337](#) and [HB 406](#)) including this year's version of the proposal known as the "Goodwill Bill" ([HB 10](#)) since it called for a tax credit to employers who contract with a nonprofit organization for services performed by blind or disabled individuals.

Tax Zappers: Legislation initiated by the state Revenue Department proposed to criminalize the use of software designed to reduce a retailer's tax liability but the measure failed to win final approval. [HB 185](#) targeted the use of devices known as "tax zappers" and other types of phantom-ware to mask point-of-sale information on which sales tax remittances are based. The bill died in the Senate after passing the House.