SESSION SUMMARY
2016 KENTUCKY GENERAL ASSEMBLY
Prepared for Members of the Kentucky Restaurant Association

(May 5, 2016)

Restaurateurs operating in Kentucky can breathe easier because of the failure of two bills that KRA actively opposed. One proposed to increase the state minimum wage while the other would have allowed every city in the state to levy a local restaurant tax and use the proceeds to finance a wide range of projects and programs.

One major item that did win approval was adoption of a two-year spending plan for state government although it wasn't until the final day of the 2016 Session when the budget bill was passed after long hours of negotiations between the House and Senate to work out an agreement. The final bill devotes well over a billion dollars to address the unfunded liability in the pension plans for both teachers and state employees and does so without generating more revenue by increasing a broad range of taxes.

The focus on the pension problems meant there was little appetite for bills that would reduce state revenues including a proposal to create a tax credit available to restaurants that donate prepared food.

The following narrative summary is arranged alphabetically by issue area and highlights some of the key issues affecting Kentucky restaurants that were considered during the 2016 Session. The electronic version of our 2016 Session Summary includes links to the legislature's website so you can easily access additional information on specific bills including the full text of the legislation as it was introduced along with changes made or proposed as it moved through the process.

ISSUE INDEX

Alcoholic Beverage Sales Issues

A host of changes in the state's ABC laws will take effect this summer with the passage of **SB 11** during the 2016 Session. The provisions of **SB 11** increase the production limits for microbreweries and small farm wineries; ban the sale of powdered alcohol and create a new license type for a commercial quadricycle business. The legislation revises numerous other sections of the law but some of the key provisions affecting restaurants are outlined below.

Election Day Sales**:** When the statutory ban on the sale of alcoholic beverages while the polls are open was lifted in 2013, the legislation preserved the right of cities and counties to prohibit Election Day sales within their jurisdictions by local ordinance. **Senate Bill 11** contains language requiring local governments to pass an ordinance after June 25, 2013 (the date the statewide ban was repealed) in order to institute limits on Election Day sales. This makes it clear that local ordinances adopted before that date are not valid.

Local Option Elections**:** This year's legislation removes the population restrictions on city local option elections. Under current law, only cities with populations of 3,000 or more could hold a local option election to authorize alcohol sales within their communities but when **SB 11** takes effect this summer, all cities, regardless of size, will be able to hold an election. In addition, the bill permits the legislative body in a city or county that has previously authorized "restaurant only" sales in restaurants seating at least 100 to extend the sales authority to include dining facilities with a minimum of 50 seats. The local governing body would have to determine that an "economic hardship" exists within the community and find that expanded by-the-drink sales could aid in economic growth. Drink sales in the 50-seat restaurants would be subject to the current statutory restrictions which require that alcoholic beverages be sold only in conjunction with a meal and prohibit the restaurant from having an open bar.

***Common Renewal Dates for State and Local Licenses*:** With the exception of licenses issued by Louisville's metro government, local ABC administrators will be required to mirror the state license renewal schedule starting on January 1, 2017. The bill includes language for prorated fees during the transition to common renewal dates.

***By-the-Drink Licenses*:** The bill also permits bed and breakfast (B&B) facilities and distilleries to qualify for non-quota, by-the-drink licenses (NQ3). It limits B&B sales to its overnight guests but contains no similar restrictions on distilleries. Senator John Schickel (R-Union), chair of the Senate Licensing and Occupations Committee and sponsor of the bill, authored an amendment to ensure that distilleries would pay the same fee that restaurants pay for by-the-drink licenses. The amendment cleared the Senate but was mysteriously removed in the House where the bill was significantly altered. The fee disparity still exists in the final version of **SB 11** which means distilleries will pay significantly lower fees for privileges identical to those granted restaurants under their NQ2 licenses. The annual state fee for a NQ2 license issued to a restaurant is $830 while the fee a distillery will pay is $310. There is an even greater difference in local fee amounts. Restaurants are subject to a local ABC licensing fee of up to $1,600 in Louisville/ Jefferson County while the maximum local fee in other areas is $1,000. The local fee for distilleries is capped at $300 in all cities and counties. Schickel has committed to address the fee differential in the 2017 Session.

***Sampling*:** Another provision of **SB 11** will increase the maximum amount of free samples of wine and distilled spirits that can be provided to a customer by a license holder who also secures a sampling license. The current sample size limit is one ounce of wine and one-half ounce of distilled spirits and it will increase to six ounces and one ounce, respectively.

Wholesale Tax on Distilled Spirits: No action was taken on legislation reducing the wholesale tax on distilled spirits from 11 percent to 10 percent. **HB 310** proposed that the reductions occur over a three-year period with the rate going to 10.5 percent on August 1, 2016; being reduced another one-quarter of one percent on June 1, 2017 and the final reduction taking effect on June 1, 2018.

Local ABC Regulatory Fees: **Senate Bill 110** proposed to broaden the authority to enact local regulatory fees on businesses licensed to sell alcoholic beverages but it died without a hearing. The bill would have allowed all "moist" and "wet" cities to levy the fee.

Restaurant Reward Programs: Legislation was introduced this year to codify an interpretation by state ABC officials that allows restaurant customers to earn points toward "rewards" through their purchases, including the purchase of alcoholic beverages. **House Bill 485** would have authorized rewards programs that included multiple restaurants within a chain but specifically prohibited the use of reward points for free or discounted alcoholic beverages. The bill was not taken up in the House Licensing and Occupations Committee.

DUI: Numerous bills were introduced proposing changes in the DUI (driving under the influence) laws but only one was enacted. **Senate Bill 56** lengthens the "look back" period for determining if a DUI charge is a repeat offense from five to 10 years. There was no bill filed this year to lower the blood alcohol content level that constitutes a "per se" violation of the state's DUI law.

Energy Issues

Renewable Energy Portfolio: Another unsuccessful attempt was made this year to establish a Renewable Energy Portfolio (REP) for energy generated or purchased by Kentucky utilities. Under the provisions of both **HB 339** and **SB 190**, an increasing percentage of the electricity used in Kentucky each year would be required to come from renewable sources, including a rising annual amount from solar energy. As in previous years, the 2016 legislation authorized the state Public Service Commission to determine the method by which utilities would recover any additional costs they incur because of the REP or energy efficiency mandates contained in the bills.

Environment & Growth Issues

Tax Incentives: Several bills were introduced this year proposing new or expanded tax incentives designed to promote economic development but none won final approval. Two bills (**HB 274** and **HB 610**) proposed specific incentives for rural development while **HB 232** called for a Constitutional change to allow cities to provide specific property tax exemptions for economic development within their jurisdictions. **House Bill 424** would have raised the overall cap on the current historic property rehabilitation tax credit to $10 million while **HB 57** would have expanded eligibility for tax increment financing.

Planning & Zoning Bonds: **House Bill 490** proposed statutory requirements for a supersedes bond for appeals of Circuit Court decisions before the case is transferred to the Kentucky Court of Appeals but the bill did not pass.

Property Assessments: Farmland slated for development would likely have seen an increase in its assessed value and property taxes if **HB 576** had won approval this year. The bill was introduced following a series of articles published by the *Lexington Herald* that revealed that 10-acre residential lots and property slated for commercial development are routinely classified as "agricultural" without any proof required that the land is being used for production. The bill would have limited use of the "agricultural" classification, thereby increasing the value placed on the land as well as the property taxes due. It was not acted on this session but the issue is likely to be a topic for discussion during the interim.

Blighted Properties: Governor Bevin has signed **SB 230** that gives all local governments the authority to address blighted or deteriorated property within their jurisdictions, including the power of eminent domain. The bill also allows the Louisville Metro Council to create a tax delinquency diversion program under which certificates of delinquency would not be available for purchase for up to five years after the property is placed in the program.

Annexation: Legislation was introduced but not enacted to allow additional legal challenges regarding annexations of areas in which there are no residents. **House Bill 251** proposed to give standing to not only property owners within the area being annexed but also those who own property or reside within a precinct contained either wholly or partially within the area.

Food Sales & Service Issues

Local Meals and Bed Taxes: Lawmakers did not approve a bill proposing an expansion of local restaurant taxes in Kentucky but they did authorize Lexington/Fayette County to increase its transient room tax to finance an expansion of its convention center (**HB 55**). The restaurant tax legislation, introduced as **SB**

166, authorized all cities throughout the state, including Lexington's urban county government and Louisville's Metro Council to impose a local tax of up to 3% on prepared food and beverages. In addition, it permitted the local governments to keep up to 75% of the tax proceeds to use for construction, operations and maintenance of "infrastructure that supports tourism, recreation, and economic development within the taxing jurisdiction." Only 25% of the revenues would be required to be turned over to the local tourist commission for tourism promotion and development activities. This year's proposal included a provision banning a city that levies a restaurant tax from also imposing a percentage-based license fee on restaurants.

Tax Credit for Food Donations: Representative Brad Montell (R-Shelbyville) reintroduced his proposal to create a tax credit for restaurants that donate apparently wholesome food but **HB 407** died in the House Appropriations and Revenue Committee. The bill would have created a refundable, but not transferable, income tax credit equal to 20 percent of the fair market value of the donated food.

General Business Issues

Government Competition: Even on the final day of the 2016 Session, Senator Chris Girdler (R-Somerset) continued his efforts to prevent government from having an unfair advantage when the decision is made to compete with private enterprise by engaging in commercial enterprises. Girdler introduced **SB 173** establishing requirements that must be met before a government agency or entity can engage in retail or wholesale sales and procedures that must be followed after sales begin. The bill passed the Senate with only one dissenting vote on March 2. But when it reached the House, it was referred to the Appropriations and Revenue Committee where it languished without further consideration. In response, the Senate added the bill's provisions to **HB 319** in late March and then to **HB 127** on April 15 but the amended measures were never taken up in the House.

Patent Trolls: No action was taken on **HB 190** introduced by Representative Ron Crimm (R-Louisville) to make a bad-faith assertion of patent infringement a violation of the state's consumer protection laws.

Venue for Lawsuits Involving State Government: The Senate again passed a bill allowing civil actions involving the state to be filed in local circuit courts as well as in Franklin Circuit Court but **SB 202** was not acted on in the House Judiciary Committee.

Interest on Judgments: Senator Steve West (R-Paris) tried to reduce the statutory interest rate on judgments from 12 percent to 6 percent with the introduction of **SB 208** but the bill failed to clear the Senate Judiciary panel before the session ended.

Discrimination: Bills were filed again this year adding gender identity and sexual orientation as a basis on which a claim of discrimination may be made but no action was taken on either **SB 176** or **HB 155**. The Senate passed **SB 180** prohibiting government actions that violate "protected rights" including freedom of religion but the bill died in the House.

Campaign Contributions: Despite action by a Senate panel on the session's final day, legislation raising the limit on contributions that can be made to political candidates and organizations did not clear its final legislative hurdle. **House Bill 147** would have increased individual contribution limits to candidates from $1,000 to $2,000; doubled the maximum contribution an individual could make to caucus committees and political parties to $5,000 and permitted corporate contributions to party organization building funds.

Executive Agency Lobbyists: The enacted version of **HB 80** increases the annual registration fee that employers of executive branch lobbyists must pay from $125 to $500. Language in the budget bill (**HB**

303) also permits the Executive Branch Ethics Commission to keep the fines and penalties it collects to cover the costs of hearings it conducts.

Casino Gaming: Although SB 144 was introduced, there was no serious discussion of the proposed constitutional change to permit casino-style gaming this year. Expanded gaming has been a hot topic in previous sessions but the issue drew virtually no legislative attention this year.

Health Insurance Issues

Mandated Benefits: Health issues involving legislators' constituents often drive the introduction of bills to expand the list of benefits that health insurance plans offered in Kentucky are required to cover and this year was no exception. Senate Bill 193, dubbed Noah's Law, was enacted this year to add amino-based elemental formulas to the list of therapeutic foods that insurers that offer drug coverage as part of their health plans, as well as the state's Medicaid program, are required to cover. A provision of SB 18 also requires treatment of mitochondrial disease by therapeutic food, formulas and supplements under health plans that provide prescription drug coverage. The legislature also approved HB 100 that requires an insurer offering a health benefit plan that provides benefits for the treatment of autism spectrum disorders to make available a liaison to help the insured understand their benefits and how to access them.

No action was taken on SB 291 to mandate coverage for smoking cessation programs. Senate Bill 268 and HB 321 proposing limits on co-pays and co-insurance for health plans that cover prescription drugs also failed to pass.

Alternate Health Benefit Plans: Representative Tim Moore (R-Elizabethtown) continued his call for authorizing mandate-free plans to be offered to Kentucky customers with the introduction of HB 415. The bill also allowed any individual or group to negotiate the terms of a health benefit plan with insurers both in Kentucky and those in another state. The bill died without consideration in the House Banking and Insurance Committee.

Assessment on Plans Sold through Federal Exchange: House Bill 80 includes language authorizing the Department of Insurance to set the assessment on health plan premiums in the individual market that are offered on the federal exchange in the 2017 and 2018 plan years.

Labor & Workforce Issues

Minimum Wage: Kentucky's minimum wage will remain tied to the federal rate since legislation calling for an increase in the state minimum wage did not win legislative approval. House Speaker Greg Stumbo (D-Prestonsburg) introduced HB 278 proposing three 95-cent per hour increases with the hike to $8.20 scheduled for August 1, 2016. The second increase, to $9.15 per hour, would have occurred on July 1, 2017 and a $10.10 state minimum wage was proposed to take effect on July 1, 2018.

The original bill passed the House Labor and Industry Committee but a revised version was later passed out of the Appropriations and Revenue Committee. The amended bill proposed a one-time increase, to $8.20 per hour on August 1, and left further increases to the discretion of lawmakers in future sessions. Several floor amendments were filed by House Republicans including two unusual ones by House Minority Leader Jeff Hoover (R-Jamestown). One change proposed by Hoover would delay the $8.20 rate until July 1, 2017 but also called for the rate be adjusted each year thereafter based on the Consumer Price Index (CPI). The other amendment proposed by Hoover also called for an annual CPI adjustment in the state's minimum wage. Although the bill was posted for a vote on the House floor, it was not called up for action so HB 278 died.

However, the minimum wage issue itself is not dead. KRA is one of the plaintiffs in a lawsuit challenging the authority of the Louisville Metro Council to enact a local minimum wage that is set at a rate higher than the state minimum wage. Oral arguments before the Kentucky Supreme Court are set for June 10. Despite the pending litigation, Lexington has also adopted an ordinance establishing a higher local minimum wage that is set to take effect this summer.

Felony Expungement: **House Bill 40** won legislative approval this year to clear the criminal record of those convicted of 60-plus specific felony crimes including theft and is set to become law this summer. The original bill that cleared the House would have required expungement of most non-violent felony convictions five years after an offender completed his sentence or probation. In addition, it would have permitted a judge to mask the records regarding multiple felony convictions.

The bill was significantly changed when it was considered in the Senate but the final version still will restrict access to the records regarding past criminal behavior. The enacted provisions allow an ex-offender to file a petition with the court to vacate his conviction of one of 61 felony crimes five years after he has completed his sentence or probation. The prosecutor must be notified of the petition and given the opportunity to comment. If the petition is granted, the public record of the crime will disappear. The final bill also allows the expungement of multiple misdemeanor convictions rather than the single offense that is permitted under current law.

Supporters of the bill, including the Kentucky Chamber of Commerce, contend that **HB 40** gives ex-offenders a "second chance" and an opportunity to become productive, tax-paying members of society. Other business groups, including KRA, raised concerns about the impact of limiting information available to employers about the criminal background of prospective employees. These concerns were echoed by Senator John Schickel (R-Union) during the Senate floor debate but the revised bill cleared both chambers and has been signed by Governor Matt Bevin.

"Ban the Box": No action was taken on **HB 180** sponsored by Representative George Brown (D-Lexington) to prohibit employers from requiring disclosure of prior criminal history by a job applicant until he or she is selected for an interview or offered a job.

Paid Leave: Bills were filed in the House this year to require employers to provide paid sick leave as well as paid maternity leave but no statutory requirement was enacted. **House Bill 617** would have required that employees be eligible to earn at least one hour of paid sick leave for every 30 hours worked, starting on their first day of employment. The bill specified that employees would not be eligible to use earned sick time until they had been employed at least 90 days and limited the amount of leave an employer would be required to permit the employee to accrue at any one time or carry forward from one year to the next. If the employer has less than 10 employees, the cap would be set at 40 hours; for those with 10 or more workers, the limit would be 72 hours.

The provisions of **HB 627** would have impacted only those employers who have at least 50 employees. The bill would have required that any employee that had been employed at least one year be offered six weeks of paid maternity leave.

Other Worker Protections: Legislation was also introduced this year to require employers to provide additional accommodations for workers who are pregnant or who have recently given birth including longer or more frequent breaks and modified equipment but **HB 18** was not enacted. Also failing this year were repeat efforts to extend anti-discrimination protections to individuals based on sexual orientation or gender identity (**HB 155** and **SB 176**).

Unemployment Insurance: An impediment to employers that take over ailing businesses would have been removed because of the passage of **HB 150** but the measure was vetoed. The final version of the bill that was crafted in a conference committee established a process by which subsequent owners may qualify as new employers rather than successor employers in determining their unemployment insurance contribution rate. The conference report retained the original provisions of the bill to prohibit disqualification for unemployment benefits for a military spouse that quits a job to follow his or her spouse to a new assignment that is at least 100 miles from the worker's current home. Both chambers approved the changes recommended by the conference committee and the bill won final approval in the House and Senate on the session's closing day. However, Governor Bevin vetoed the bill saying that despite its intent to encourage an employer to increase employment during the first year after acquiring a business, "the procedural mechanism set forth in the bill unduly complicates the appellate process and does not adequately address the financial impact of both the retroactive and future adjustments that would be made to the Unemployment Insurance Trust Fund."

Workers' Compensation: Bills were filed in both chambers this year to specifically allow the offset of wages paid to an employee for light duty work against the temporary total disability benefits he or she is due but neither **HB 311** nor **SB 151** were approved. However, the state Supreme Court ruled earlier this year in *Trane vs. Tipton* that return to work, although in a different job, made the employee ineligible for continued TTD benefits. Also failing to win approval this year was **HB 200** to add medical benefits to subrogation recovery.

One measure affecting Kentucky's workers' compensation system was passed this year. The legislature approved **HCR 185** creating a 22-member Kentucky Workers' Compensation Task Force to study the current system and develop consensus recommendations for needed changes. KRF is one of the nine employer groups that will be represented. There are also nine employee representatives and four legislators. The Labor Cabinet Secretary and the commissioner of the Department of Workers Claims will serve as ex officio members of the task force. The task force is directed to complete its work and issue a report by December 1.

Franchises: An opinion released by the National Labor Relations Board raised questions about the relationship between franchisors, franchisees and the employees of each and spurred the introduction of legislation this year by Senator Wil Schroder (R-Wilder). **Senate Bill 198** proposed to amend various sections of Kentucky's labor law to make it clear that neither a franchisee nor its employees are considered employees of the franchisor. Likewise, the bill contained provisions to ensure that employees of the franchisor are not deemed to be employees of the franchisee. The bill passed the Senate but died in the House.

Credit Use in Hiring: No action was taken on **HB 157** to bar an employer from using an applicant's credit history as part of its hiring criteria except in specified circumstances.

School Calendars: Legislation initiated by Kentucky's tourism industry was filed to delay the start date for most public schools until the Monday closest to August 26. But as **SB 50** proceeded through the legislative process, it changed significantly and ultimately died. The Senate approved a revised version of the bill that authorized a newly-created school district calendar committee to recommend a variable calendar that includes a later start date but extends the length of the school day to meet the minimum number of instructional hours.

Right to Work: In previous sessions, the GOP-controlled Senate passed legislation making Kentucky a right-to-work state but the measure died in the House where Democrats hold the majority. That was again the fate of **SB 3**, this year's proposal to add Kentucky to the southern states that have enacted laws that prohibit mandatory membership or financial support of a union as a condition of employment.

Workforce Development: House and Senate proposals to establish a task force to study issues, including funding, relating to workforce development programs did not pass this year but the General Assembly did approve a new "Work Ready" scholarship program as part of **HB 626**. The new program would pay tuition for new high school graduates seeking two-year associate degrees at any college in the state. Although that bill was vetoed by the governor, funding to start the new scholarship program in the second year of the budget survived in **HB 303**. In his veto message, Bevin said a great deal of time and effort will be required to develop and implement the program. "Therefore, the most prudent action is to develop the program for implementation in fiscal year 2017-2018."

Welfare to Work: A bill was introduced but not enacted to allow individuals receiving public assistance to transition from welfare to work. **House Bill 63** proposed a 12-month graduated earnings disregard program under which public assistance recipients could retain some benefits after they started work.

Privacy & Security Issues

Criminal Record Expungement: After years of trying to convince lawmakers to change Kentucky law to allow convicted felons to wipe the slate clean regarding their criminal background, supporters of **HB 40** can declare victory since the bill has been signed by Governor Matt Bevin. The enacted provisions allow an ex-offender to file a petition with the court to vacate his conviction on one of 61 felony crimes including theft five years after he has completed his sentence or probation. The prosecutor must be notified of the petition and given the opportunity to comment. If the petition is granted, the public record of the crime will disappear. The final bill also allows the expungement of multiple misdemeanor convictions rather than the single offense that is permitted under current law.

Former Justice Cabinet Secretary J. Michael Brown who now serves as the Deputy Attorney General, has called a criminal record an "economic death sentence" for ex-offenders. He and other supporters of the bill, including the Kentucky Chamber of Commerce and the criminal defense bar, contend that **HB 40** gives ex-offenders a "second chance" and an opportunity to become productive, tax-paying members of society. KRA was one of the business groups that raised concerns about limiting information available to employers about the criminal background of prospective employees.

Felony Theft Level: After objections were raised by the Kentucky Retail Federation, no action was taken to advance a proposal to increase the dollar threshold at which theft becomes a felony offense. **House Bill 459** called for an increase in the felony theft level from $500 to $2,000 and also contained provisions intended to encourage restitution to the victim by offering lighter sentences if restitution has been made.

"Gross" Misdemeanors: A bill was approved in the House this year to create a new criminal classification called a "gross misdemeanor" that would open the door for reclassifying many property crimes as misdemeanor offenses rather than felonies. This change would effectively eliminate extradition for offenders that live in any of the seven states bordering Kentucky. The penalty for "gross misdemeanors" would be up to two years' imprisonment under the provisions of **HB 412** that died in the Senate Judiciary Committee.

Misdemeanant Arrest: Legislation was approved permitting police officers to make an arrest rather than issue a citation for certain misdemeanors that are committed in their presence. One of the offenses included in **HB 250** is receiving stolen property.

Victims Bill of Rights: Senate Judiciary Chair Whitney Westerfield (R-Hopkinsville) championed a proposed change in Kentucky's Constitution to create a victim's Bill of Rights for individuals that suffer as a result of the commission of a crime. Among the rights enumerated in **Senate Bill 175** is the right to "full and timely restitution." The bill passed the Senate as well as the House panel to which it was assigned. However, it was never called for a floor vote in the House.

Regulatory & Licensure Issues

Administrative Regulations: Several bills dealing with administrative regulations issued by executive branch agencies were filed but only **SB 129** making housekeeping changes to the regulatory process itself was enacted. Proposals to give the legislature the power to stop regulations when the General Assembly is not in session (**HB 370** and **SB 244**) did not make it through nor did **HB 243** calling for a delay in the implementation of any regulation that has a major economic impact until legislation ratifying the change has been approved.

Statewide Smoking Ban: As in previous years, legislation was introduced to institute a statewide ban on smoking in all workplaces as well as businesses open to the public. **House Bill 351**, which died in the House, included a requirement for employers to communicate the smoking prohibition to both current and prospective employees. It also required all affected businesses to post "No Smoking" signs at all entrances to its premises.

Revenue & Taxation Issues

Budget: Just hours before the 2016 Session adjourned *sine die* on April 15, lawmakers gave final approval to **HB 303** that sets the two-year, $21 billion spending plan for the executive branch of state government. The budget bill cuts spending across much of state government by 9 percent and reduces state appropriations over the coming biennium to public colleges and universities by 4.5 percent. The savings will be used to provide more than $1.2 billion to pay down a cumulative $36 billion shortfall in the pension systems for teachers and state employees. In addition, $125 million will be swept from surplus funds in an account used to cover health insurance costs for state employees and placed in a new "permanent fund" to help stabilize the pension systems in the future. The budget bill includes language earmarking other money including unanticipated revenues and settlements from court awards, to be added to the new "permanent fund."

Restaurant Tax Expansion: An expansion of the restaurant tax has long been a priority issue for the Kentucky League of Cities and it was at that group's urging that **SB 166** was introduced this year. This year's bill would have authorized all cities throughout the state, including Lexington's urban county government and Louisville's Metro Council to impose a local restaurant tax of up to 3%. In addition, it allowed the local governments to keep up to 75% of the tax proceeds to use for construction, operations and maintenance of "infrastructure that supports tourism, recreation, and economic development within the taxing jurisdiction." Current law permits only those cities previously classified as cities of the fourth or fifth class to levy a restaurant tax and requires that all the revenues be turned over to the local tourist commission to finance tourism promotion and development. The bill was not taken up in the Senate Appropriations and Revenue Committee to which it was assigned.

Local Option Sales Tax (LOST): Once again, proponents of local option sales taxes (LOST) saw their efforts fall short when the Senate did not act on **HB 2** proposing an amendment to the state's Constitution to authorize the new local tax. The bill passed the House on a 60-31 vote, receiving the minimum number of votes required for legislation proposing a constitutional change. When the bill reached the Senate, it was assigned to the Appropriations and Revenue Committee and no action was taken to advance the bill. Instead, Senate Majority Leader Damon Thayer (R-Georgetown), a long-time opponent of the new tax, filed a floor amendment requiring that 25 percent of the tax proceeds be used to finance local government retirement programs and that a local sales tax be "revenue neutral" in that it would have to replace another local tax.

Senate floor amendments were also filed to **HB 374**, the enabling bill that also cleared the House and established the procedures for levying and implementing the new local tax if the constitutional change had been approved by voters. These amendments proposed to exempt the utilities used by retailers and manufacturers from the new tax. Senator Danny Carroll (R-Paducah) introduced the exemption for retailers while Senator Paul Hornback (R-Shelbyville) filed the manufacturer exemption.

Other Local Taxes: Another bill to broaden the taxing authority of Kentucky's cities was introduced but failed to pass. **Senate Bill 110** would have permitted every city in which alcoholic beverage sales are permitted to enact local regulatory fees on businesses holding ABC licenses. Current law allows only a limited number of cities to impose the local fees.

The General Assembly also did not pass **SB 71** to require local elected officials to review any new or increased taxes or fees that a special district is proposing to levy.

Tax Reform: Although Representative Jim Wayne (D-Louisville) again filed legislation proposing major revisions to Kentucky's tax system, there was no serious consideration of tax reform during the 2016 Session. Instead, both Governor Bevin and lawmakers were focused on getting a budget for the two-year period that starts on July 1. But an overhaul of the tax system is something that will likely be a topic next year since the governor and legislative leaders have identified tax reform as a priority issue.

Wayne's latest proposal to increase state revenues was introduced as **HB 342**. It proposed numerous changes including expanding the sales tax base to include more services including commercial linen services; removing the limitations on property tax revenues and increasing the minimum price used to calculate fuel taxes.

Unitary Filing: Two bills were introduced this session requiring combined reporting of business income under Kentucky's tax code but neither passed. **House Bill 86** proposed to use the new revenue generated by the unitary filing requirement to create a state-level Earned Income Tax Credit. Businesses would also have been required to aggregate the income from all affiliated businesses under the provisions of **HB 342** that called for broad tax reform.

Vendor Compensation for Sales Tax Collection: Representative Ron Crimm (R-Louisville) again sponsored legislation to increase the vendor allowance for retailers to help defray the costs they incur in serving as sales tax collection agents for state government. Unfortunately, no action was taken on **HB 130** which proposed to raise the current $50 cap to $250 per return.

"Cost of Goods Sold": Another repeat measure introduced this year was designed to address the problems caused by a conflict in how Kentucky defines "cost of goods sold" versus the definition used in the federal tax code. Representative Brent Yonts (D-Greenville) introduced **HB 292** to broaden the definition used in the state tax code to include costs allowed by the federal government but the bill failed to pass.

Proposed Tax Credits: A host of bills and amendments were filed creating new tax credits or expanding existing ones but largely because of the focus on reducing the unfunded liability in the pension plans for teachers and state employees, no additional tax expenditures will be made. New tax credits for some Kentucky employers were proposed in **HB 19** for time off provided an employee who donates an organ and in **HB 143** for those who hire unemployed coal industry workers. There was also **HB 407** to offer a tax credit to restaurants that donate prepared food. Proposals were also made to increase the maximum tax credit available for rehabilitation of historic properties including **HB 424**.