



Kentucky Chamber

# Legislative Agenda

2013



*Policies to get Kentucky back to work*



# The Kentucky Chamber of Commerce

Fighting to improve the business climate and protect your bottom line

**Uniting Business. Advancing Kentucky.** From its beginnings more than 65 years ago, the Kentucky Chamber of Commerce has evolved into the premier business association in the state. Today, the Kentucky Chamber represents 2,700 member businesses – from family-owned shops to Fortune 500 companies – that employ more than half of the Commonwealth's workforce. In 2011, the Chamber was awarded the status of being an Accredited State Chamber by the U.S. Chamber of Commerce.

The Kentucky Chamber's powerful grassroots network, through a partnership with more than 80 local chambers in the state, consists of 25,000 professionals. Strength in numbers continues to help the Chamber influence policymakers in areas such as business taxation and fiscal policy, environmental and safety issues and workers' compensation, health care and education reform.

Our mission is not always easy, but the Kentucky Chamber continues to provide leadership as a catalyst, consensus-builder and advocate to unite business and advance Kentucky.

## Contents

|   |                       |    |                          |    |                          |
|---|-----------------------|----|--------------------------|----|--------------------------|
| 2 | Summary               | 6  | Health & Wellness        | 14 | Government Modernization |
| 3 | Education & Workforce | 10 | Business Competitiveness | 16 | Energy & Environment     |



## Working for you at the Capitol

The Kentucky Chamber Public Affairs Team, from left to right: Ashli Watts, manager; Carrie Rogers, communications manager; Bryan Sunderland, vice president; John Cubine, senior policy analyst; Dave Adkisson, president and CEO; Chad Harpole, director; Betsy Dexter, manager; Beverly Standifer, political affairs manager.

# 2013 Legislative Agenda Summary

## Reform Pension System

Kentucky's unsustainable and drastically underfunded public pension system is the number one fiscal threat facing the Commonwealth.

## Improve Education

To prepare a workforce for future job growth, it is critical to promote and protect rigorous academic standards, ensure degree completion at all levels and keep students from falling behind by increasing our commitment to early childhood education.

## Help Navigate New Healthcare Environment

As public officials move forward with implementation of health care reform, it must be done in the least onerous manner for employers required to participate. In addition to easing compliance burdens, Kentucky leaders need to focus on wellness initiatives to improve overall health.

## Support a Competitive Tax Environment

Pro-business tax reform can improve Kentucky's competitive position and help grow jobs and economic investment. Tax changes designed only to raise revenue and not improve Kentucky's competitiveness will hurt job growth and investment. True pro-business tax reform can help employers grow jobs and raise revenue through long-term economic growth to support important investments.

## Improve Kentucky's Legal Climate

Frivolous medical liability claims are driving up the cost of doing business and increasing costs to taxpayers. In addition to commonsense medical liability reforms, it is critical to ensure Kentucky's statutes of limitations are not out of line with those in other states.

## Support Commonsense Regulations

Kentucky's regulations should be fair, no more stringent than federal regulations and consistently applied.

## Encourage Efficient Government Spending

Lawmakers must continue to focus on efficient and effective spending decisions on Medicaid, corrections and public employee health benefits, to preserve investments in high-return areas like education and economic development.

## Defend Small Business

Kentucky's small businesses are the backbone of Kentucky's economy. Lawmakers must continue to make it easier for small businesses to succeed in Kentucky by using modern technologies to streamline the compliance requirements between small businesses and government. This will allow small business owners to focus on running their businesses and expanding their workforce rather than dealing with government red tape.

# Improving the Education Attainment Level of All Kentuckians

Education is the key to a successful life and a thriving economy. The prosperity of an individual, community, state and nation directly reflects education attainment, and nothing is more important to Kentucky's economic well-being than the education and skills of its citizens. Global competition and its growing intensity and impact make achieving educational excellence more critical by the day. This reality demands that Kentucky be focused and relentless in its work to create a truly world-class system of education. Kentucky's employers have a special understanding of this need and recognize the important role they have to play in helping the state reach its goals to improve the education attainment level of all citizens. It is, after all, the state's employers who face competition every day and who understand the limitations created by an under-educated workforce.

High expectations for student achievement, accountability for performance and continuous, measurable progress at all levels – from early childhood through postsecondary and adult – must be the performance standards for Kentucky's schools and educators to ensure a successful future for the state and its citizens.

## Continue moving forward

The state has made substantial progress since the implementation of the Kentucky Education Reform Act in 1990 and postsecondary education reforms in 1997. Kentucky's education system is now ranked 33rd, up from 48th in the nation in 1990, based on the Index of Educational Progress from the University of Kentucky. While these gains should be acknowledged, continued progress is critical for the health of the state's economy.

A key development is the incorporation of new, more rigorous academic standards into the state's classrooms – learning guidelines designed to ensure students are college and career ready when they graduate. State tests on the new standards were given for the first time in the spring of 2012, following the initial year of classroom instruction based on the standards.

The Kentucky Chamber supports the Kentucky Department of Education, the Council on Postsecondary Education and educators across the state as they continue working to raise student achievement under the more challenging standards and urges legislators and communities to do so as well. The temptation to revert to less challenging standards may arise, but the future of our students and our economy depends on the successful implementation of the more relevant standards.

## Elementary & Secondary

### Invest in early childhood education

State and national research makes it clear that investments in quality early childhood programs return strong dividends – in higher education attainment leading to higher-paying jobs; reduced costs for health care, criminal justice, social services and welfare; and other personal and societal benefits. Kentucky must invest in early childhood education and make greater investments in enhanced child-care programs for Kentucky's developing youth. Ensuring a successful beginning for Kentucky's students will require an innovative and collaborative approach to provide quality preschool to all 3- and 4-year-olds. Additionally, the Chamber supports efforts to fully fund all-day kindergarten equitably statewide.

### Reduce the dropout rate

Higher education attainment cannot be achieved if students don't stay in school. Nearly 25% of adults in Kentucky have less than a high school education, and the dropout rate continues as a significant challenge for schools statewide. The Chamber supports raising Kentucky's compulsory school attendance age to 18 and the development of alternative learning tracks and safe learning environments to help struggling students complete a high school degree and matriculate toward certificate and post-secondary degree programs.

## Promote and reward quality teaching

Quality teaching is the single most important factor in students' academic success. To ensure every Kentucky student has a high-quality teacher every year, the Chamber supports the formal statewide review of the effectiveness of teacher preparation programs and requiring providers to redesign professional development programs to better meet the needs of classroom teachers. Policymakers must professionalize the teacher compensation system to reward excellence and provide incentives to attract educators to underserved areas (both geographic and subject matter).

## Require education accountability

Individuals and institutions should be held accountable for student achievement through a series of performance measures that will help gauge teacher, student and administrator performance. Specifically, differentiated compensation for teachers and administrators, based on responsibilities and performance and dictated by a strengthened evaluation system, should be used to recruit and retain the best and brightest professionals. In addition, tenure should not be automatically awarded to teachers on the sole basis of time on the job but should be earned, based on an appropriate evaluation, and subject to periodic reviews for renewal.

The Chamber further believes that efforts to build stronger schools, and thereby enhance the state's economic prosperity, require accurate and comprehensive data collection. In support of this effort, the Chamber encourages the continued development of the P-20 data collaborative, a joint effort by the Kentucky Department of Education, Council on Postsecondary Education, Education Professional Standards Board and the Education and Workforce Development Cabinet. The collaborative seeks to collect student and teacher performance data from pre-school through adulthood and use it to improve Kentucky's education system.

## Remove low-performing teachers

In addition to strong accountability for student achievement, education professionals must be held accountable, in a timely manner, for poor performance and inappropriate behavior. The current tribunal system in place to review appealed cases of misconduct and inadequate job performance of school employees is both complicated and inconsistent. Superintendents are reluctant to fire or suspend an in-subordinate employee due to the cost, complexity of the process and likelihood that their decision will be overturned by a tribunal. The Kentucky Chamber advocates for a clearer, more consistent process to ensure all students have a safe and productive classroom environment. Educators who do not meet the high standards required to serve all students should be removed from the education system.

## Offer a 21st Century education

Students at all levels should be challenged and provided the environment and instruction they need to succeed in the technology



driven and increasingly global 21st century. Incorporating rigorous and relevant courses and experiences into students' learning environment can help accelerate their academic achievement.

Critical to Kentucky's ability to compete in the global economy is a commitment to increasing the focus on science, technology, engineering and mathematics in our schools. AdvanceKentucky, the groundbreaking initiative focused on improving participation in math, science and English courses as measured by Advanced Placement (AP) exams, is a proven method to achieve this goal. Secondary career and technical education programs, comprised of project-based learning, should also be utilized fully to further this goal. The Chamber supports legislative and local district efforts to increase the number of graduates in these disciplines to meet the ever-growing needs of employers.

International awareness is essential to a first class, globally competitive workforce. The Chamber believes students should gain this awareness through an international educational experience during their junior or senior year in high school.

## Allow public charter schools

To make sure all students receive a quality education, the Chamber supports the formation of public charter schools in areas where certain schools consistently underperform or to serve the needs of children with significant learning differences.

## Limit KEES Scholarships to students who are ready

At the high school level, financial rewards – in particular the Kentucky Educational Excellence Scholarship – should be weighted to provide students with greater incentives to take more rigorous courses. Under current law, a student can score 15 on the ACT and still receive KEES Scholarship funds. The Chamber supports raising this score to more accurately reflect the minimum score needed for admission to Kentucky’s postsecondary institutions.

### Postsecondary

## Make higher education affordable

Making sure postsecondary education is affordable for Kentucky students should be a priority for the Commonwealth. The Chamber advocates simplification of the state’s financial assistance process and a shared responsibility approach to distribute costs among students, families, postsecondary institutions and the government. Further, on-time degree completion is a key strategy in managing limited state and student resources. Students should be given every opportunity and encouragement to complete their degrees on time.

## Base funding on performance

Timely degree completion is one example of an area where Kentucky’s postsecondary institutions should improve their performance. To provide meaningful incentives that encourage and reward excellence, a significant portion of state funding for the institutions should be based on their ability, as objectively measured, to improve productivity: degree production in a more cost-effective manner.

## Close the skills gap

A student’s progress through the education system depends on how well he or she prepares at each level to succeed in the next. Too often, a lack of communication, collaboration and coordination among the levels of education creates obstacles for students. The Chamber commends the Kentucky Department of Education, Council on Postsecondary Education and Education Professionals Standards Board for their efforts to improve the communication and coordination along the education pipeline. Despite these developments, a skills gap still exists between employer needs and labor availability. Education at all levels must be more strategic at providing the training and education – from individuals with industry-specific certificates to Ph.D. graduates – that business needs.

## Reinvest in “Bucks for Brains”

The Commonwealth’s landmark Research Challenge Trust Fund, also known as “Bucks for Brains,” has been used to attract world-class researchers and professors to Kentucky universities. The Chamber encourages lawmakers to continue the trust fund or devise a similar program that would provide matching dollars to give universities flexibility, with accountability, to ensure they can attract research faculty and provide up-to-date facilities, technology or other tools to meet the goals of the 1997 postsecondary education reforms.

## Set universities free to excel

Public universities in the Commonwealth need greater operational flexibility to compete in an increasingly global marketplace. Flexibility that allows for entrepreneurial endeavors while requiring overall accountability would improve quality and better serve the institution, Commonwealth, employers and students. As an example, most states allow public universities to issue their own revenue bonds to finance building projects that generate income sufficient to cover the debt service. To the extent that such an approach would not negatively impact the Commonwealth’s state bond rating, the Chamber believes a similar approach should be implemented in Kentucky with structural safeguards and oversight that ensure projects are consistent with the state’s vision for postsecondary education.

### Workforce Development

## Aggressively train the workforce

The Chamber supports the widespread use of industry-based credentials, like the National Career Readiness Certificate, to establish uniform standards in workforce preparation. Students who pursue technical training instead of a college education should be eligible for financial awards of all types. The Chamber supports redesigning postsecondary financial aid programs to help working adults who need assistance for additional technical training and postsecondary education. The Chamber supports streamlining workforce development programs to aid employers and employees in these endeavors.

## Improve the adult education system

The majority of Kentucky adults who receive a GED instead of a high school diploma are not prepared for postsecondary education or training, and most do not enroll in postsecondary programs. The GED Testing Service (GEDTS) is crafting its GED 21st Century Initiative, aligned to the K-12 Common Core Standards, which will reflect the expanded rigor and relevance needed to prepare learners for postsecondary education or employment. It is critical that Kentucky’s adult education programs collaborate with employers, local community colleges, technical schools and other educational institutions to help ensure quality learning experiences for those working toward a GED.

## Encourage degree completion

The Chamber supports the expansion of a college-going culture that encourages high school dropouts to complete a GED and move on to college or career/technical education and adults who have some college credits to return to school and earn a degree and/or academic certificate. Degree and academic certificate completion should be emphasized as a workforce-development goal of postsecondary institutions.

# Improving the Health & Wellness of Kentuckians

A growing sense of crisis continues in the business community about the unsustainable increases in health care costs, particularly for small businesses. Over the past decade, employers have been forced to consider such undesirable cost-containment strategies as reducing employee benefits, shifting more costs to employees, dropping coverage altogether or raising the price of their products to consumers to recoup their health insurance costs. The Kentucky Chamber encourages state and federal lawmakers to focus on policies that improve the health of our citizens through cost-effective, evidence-based care along with wellness programs and other prevention measures.

## Monitor implementation of the ACA

The Patient Protection and Affordable Care Act (ACA), enacted two years ago, represents a wholesale change to our nation's health care system. The Chamber is concerned that employers who have been providing voluntary health insurance will now be faced with mandated coverage, new structures on benefit design and increased taxes or penalties.

The effect on employers will not be fully realized until the full implementation of the law in 2014. Kentucky officials and policymakers are acting to develop and implement changes in our state's health care programs and systems to comply with the law. The Chamber is monitoring these regulations and has provided input to federal and state agencies as well as the National Association of Insurance Commissioners. The Chamber will continue to look for opportunities to ensure that employers in Kentucky can provide affordable, accessible health care to their employees and not be burdened by overreaching regulations and penalties under the federal law.

## Implement Kentucky-based health insurance exchange

Beginning in 2014, the ACA establishes "American Health Benefit Exchanges" for individuals and "Small Business Health Options Programs" (or SHOP) Exchanges for small employer groups, both aimed at creating a robust health insurance marketplace. Similar to shopping for a flight or hotel on a travel website, individuals and small businesses will be able to shop for qualified health plans online, allowing them to compare coverage, provider networks and cost. Each state must show the federal government it has the legal authority to operate an exchange, which may be established by passing legislation or issuing an executive order. If a state fails to act, it must participate in an exchange operated by the federal government.

States are on a tight timeline to get an exchange up and running. Exchanges are scheduled to become operational on January 1, 2014, but states must demonstrate to the U.S. Department of Health and Human Services they are capable of operating an exchange by January 1, 2013. The approaching deadlines necessitate action by state policymakers to develop an exchange in 2012. Although the governor has established an exchange by executive order, questions remain among lawmakers. Despite the Chamber's serious concerns about the ACA's impact on business, we do not believe the Commonwealth should cede power to Washington, but chart its own course in health care reform through implementation of a Kentucky-based health exchange. State policymakers must understand that passing a state-based exchange is not an endorsement of the law itself.

## Promote wellness for all Kentucky citizens

Collectively, Kentucky has one of the nation's unhealthiest populations. The Commonwealth consistently ranks at or near the top of the list in smoking rates, obesity levels and a host of other poor health indicators. In addition to being a quality-of-life issue, the state's health status has a significant impact on the business community, increasing employers' health care costs and hindering their ability to hire a healthy and productive workforce. Poor health is also a drain on the state's resources through increased use of health services by Medicaid recipients and state employees.

To improve the health of Kentuckians and to promote an under-used cost control measure, the Chamber supports legislation to provide tax and other incentives for the creation of wellness programs enabling businesses to educate and encourage their employees to engage in healthy lifestyles and obtain preventive care. The Chamber is encouraged that the ACA broad-

# Kentucky Chamber Exchange Principles

As the largest private-sector consumer of health insurance, employers must be afforded a central role in the development and operation of an exchange.

**Market-based principles.** The exchange should operate as an open marketplace that supplements, rather than supplants, the existing insurance market. To maximize coverage options for employers and drive down costs, all qualified health plans should be eligible to compete both inside and outside the exchange.

**Level playing field.** The same market rules, mandated benefits and tax incentives should exist for health plans sold inside and outside the exchange. Otherwise, the risk for adverse selection is great, as Kentucky experienced with health care reform in the mid-1990s. Further, the state should not impose any additional requirements on health plans beyond what is mandated by the U.S. Department for Health and Human Services.

**Easy to understand.** The exchange must be intuitive, transparent and easy to navigate for small employers and consumers. Independent

licensed insurance agents should continue to have an important role in helping employers understand their coverage options.

**Separate risk pools.** Pending a thorough analysis of Kentucky's insurance market, the state should exercise extreme caution before merging individual and small group markets. Such a merger could prove disruptive to the small group market, which typically enjoys less volatility than the individual market.

**Defined contribution/plan portability.** The exchange should permit employers to contribute a set amount to each employee's policy, giving employees full control over decisions relating to their coverage and allowing plan portability for employees changing jobs.

**Independent governance.** Rather than creating a new government agency or regulatory entity, the exchange should be operated by an independent,

non-profit organization governed by qualified board members with broad representation and expertise. The governing board should not maintain a separate regulatory function. Rather, regulation of the exchange should remain with the Kentucky Department of Insurance, which is already responsible for regulating Kentucky's insurance market.

**Effective administration.** In light of the problems Kentucky experienced in the mid-1990s, it is critical that the exchange be administered by individuals who have the proper expertise in managing and analyzing health care data, records and financial information.

**Equitable funding.** If funding sources are needed, it is important that all stakeholders who benefit from the exchange contribute. The burden should not be placed solely or disproportionately through a tax on small employers.

ens wellness initiatives by providing grants to certain small employers and increasing incentive limits.

The Chamber supports government programs and policies that help provide education and assistance for companies, organizations and individuals to promote health and wellness throughout Kentucky. These efforts should focus on encouraging a level of personal responsibility for one's health, as well as organizational health promotion policies and environments. A balanced approach that educates children in schools and parents in workplaces about practicing healthy lifestyles to avoid the long-term consequences of childhood obesity is necessary. Being overweight as a child can often lead to health problems that were once confined to adults, such as high blood pressure and high cholesterol.

## Intensify efforts to control drug abuse

The Chamber is concerned about the state's rising prescription drug abuse problem and its negative effect on Kentucky's workforce and health care costs. The Chamber commends the Kentucky General Assembly for taking important steps to close pill mills and end illegal prescribing practices that have exacerbated the illegal drug problems in Kentucky. As lawmakers consider options to implement these important changes, we encourage a thoughtful approach that will not back away from efforts to punish bad actors, but will prevent added costs and ensure appropriate access to medical care.

Continuing policies to develop workable statewide and interstate compacts as well as the adoption of nationally recognized pain management guidelines will help limit drug abuse that has a negative impact on employers and employees.

While recognizing the severity of methamphetamine abuse in Kentucky, the Chamber opposes the scheduling of pseudoephedrine, an ingredient often found in common cold medications and a main ingredient in the illegal production of meth. The Chamber commends the General Assembly for thoughtfully addressing this issue in 2012 and encourages the further development of Kentucky's "Meth Check" system to prohibit those who have been convicted of meth-related crimes from purchasing any products that contain ephedrine and/or pseudoephedrine. By establishing guidelines to increase information sharing among Kentucky law enforcement officials and prosecutors, Kentucky can continue to address this important issue without unintentionally adding costs to employers and citizens.

## Enact statewide smoke-free law

According to the U.S. Centers for Disease Control and Prevention, Kentucky is second in the nation in the number of adult smokers, with 24.8% of the population. The situation is not improving with our youth – Kentucky is first in the nation in smoking prevalence among both middle and high school students. Smoking-



attributable health expenditures are estimated at more than \$1.7 billion annually in Kentucky, and smoking-attributable economic productivity loss is estimated at more than \$2.6 billion each year in the state.

The business community believes Kentucky should build on recent legislative advances, such as the funding of a smoking cessation program under Medicaid, to improve the state's public policies with regard to smoking.

The Chamber supports enacting a comprehensive statewide smoking law that prohibits smoking in indoor workplaces and public places, including restaurants, bars and hotels. While the Chamber is not typically supportive of policies that focus on a particular business or industry disproportionately, the body of evidence on smoking and its negative impact on public health and the economy is too significant to ignore. Already, at least 34 Kentucky communities and 23 states have passed comprehensive smoking laws, which have proven to curb smoking rates and lower health care costs without negatively impacting business.

### Increase the number of health care professionals

Many areas of Kentucky are underserved by health care professionals, contributing to poor access and higher medical costs for Kentucky's citizens. More than two-thirds of Kentucky's 120 counties have been officially designated as health professional shortage areas for primary care by the Health Resources and Services Administration. In addition, Kentucky lacks sufficient numbers of physician specialists, nurses, pharmacists, dentists, mental health professionals and allied health personnel. This lack of skilled professionals contributes to fewer regular check-ups, poorer health and higher costs to the medical system over the long term. Kentucky's aging population makes this a particularly critical issue.

To help reverse this disturbing trend, the Chamber supports a comprehensive state strategy to increase the number of health care professionals trained in Kentucky as well as innovative approaches to encourage them to practice here. This strategy should ensure that postsecondary education institutions, which provide medical training, are adequately funded and held accountable for increasing enrollment. These institutions should be encouraged to explore the development of economic incentives as well as expanded tuition assistance and loan repayment programs that include a requirement to practice in Kentucky for a set period of time. Additional incentives should be available for underserved counties and regions based on the particular need of each area. As is the case for higher education, lack of affordable training should not deter talented students from entering the health care field.

With the ACA expanding the number of insured Kentuckians and those covered by Medicaid, the need for health care professionals will be even greater. The Chamber encourages state officials to use provisions contained in the law aimed at increasing workforce supply and training programs.



### Improve Kentucky's medical liability climate

The rising costs associated with medical malpractice liability are taking a significant financial toll on the health care industry, resulting in increased costs for consumers and a continued inability to attract and retain sufficient numbers of physicians in all regions of the Commonwealth. The high price of liability insurance and the lack of reasonable tort limitations in Kentucky have contributed to the shortage of medical professionals.

To curb this trend, the Chamber supports allowing voters to consider a constitutional amendment that would permit the legislature to consider comprehensive tort reform. State and federal lawmakers should pass reasonable limits on damages and require alternative dispute resolution to help reduce escalating malpractice insurance premiums and the resulting burden passed on to consumers in the form of higher prices, fewer health care providers and fewer choices. Since 2000, numerous states have passed ballot initiatives to amend their constitutions, and 16 states have passed a cap on non-economic damages.

### Promote informed health care consumerism

Consumers need access to information about the cost of health care and the quality of services provided to make informed and cost-conscious choices when selecting a health care provider. The General Assembly made great strides in 2008 by passing the Chamber-led transparency initiative, which required the Cabinet for Health and Family Services to make permanent the reporting to consumers of health care costs, quality indicators and results.

Without this effort, such information is almost entirely absent from today's health care marketplace, preventing Kentuckians from making informed choices when they purchase health care services. The Chamber encourages the Cabinet to make this comprehensive information easily available to consumers, which may serve to contain increases in health care spending by government, businesses and individuals. Only when consumers know the price and value of

health care services will they be empowered to make the best possible choices for themselves and their families.

### **Expand mandate-free health insurance**

Because health care mandates and unnecessary regulations can add to the already high cost that consumers and employers pay for health insurance, the Chamber supports legislation that repeals coverage requirements – beyond those the federal government has implemented – for employers of all sizes. With the cost of health insurance already creating a competitive disadvantage for many businesses, extending these mandate-free policies will allow more employers to provide health benefits to their employees.

### **Promote competition in the health insurance market**

Attracting more insurers to Kentucky is a practical and realistic means of controlling escalating costs and providing greater access to health insurance. The Chamber calls on state government to enhance competition in the health insurance market through further deregulation of the insurance industry or any other reasonable means.

### **Oppose Any Willing Provider**

The Kentucky Chamber opposes Any Willing Provider provisions and supports the right of health insurance companies to negotiate exclusive contracts with health care service and product providers that offer discounted costs to consumers.

### **Promote eHealth policies in the Commonwealth**

A number of preventable medical errors and duplication of services could be reduced significantly with the implementation of policies that encourage the use of secure electronic medical records that can be accessed by all of an individual's health care providers. This, along with electronic prescribing, can reduce duplication, improve delivery of services and save lives.



### **Improve long term care**

With the significant aging of the population, it is increasingly important for policymakers to adopt strategies to meet the medical needs of these individuals. The Chamber supports initiatives that provide greater incentives for individuals and/or employers to purchase long-term care insurance policies. Additionally, the Chamber encourages policymakers to concentrate elder care resources on case management to ensure people's needs are matched with the most appropriate care. The Chamber also believes artificial barriers to home and community-based services should be eliminated to prevent premature institutional care.

# Creating a Competitive Business Environment for Kentucky

The Kentucky Chamber believes promoting long-term economic development and job growth should be a top consideration when state revenue policies are adopted. It is critical that Kentucky is successful in promoting business recruitment, business creation and business expansion. To that end, the Chamber advocates public policy innovations that remove the Commonwealth's most glaring competitive disadvantages. We call on state leaders to eliminate unnecessary, government-imposed costs of doing business and to enact legislation that fosters business growth and innovation.

## Ensure a competitive tax climate

Tax policies must be guided by a well-researched, balanced approach that provides for necessary public investments and expenditures while avoiding policies that could serve as disincentives to private-sector employment and investment. During these tough economic times, Kentucky's lawmakers are to be commended for holding the line on new or increased taxes, which heightened the state's national profile and better positioned Kentucky and its employers for recovery. In response to these actions, the Tax Foundation ranked Kentucky 22nd best in its 2012 State Business Tax Climate Index. Despite this progress, legislators have a number of opportunities to change our tax code in ways that will have an immediate impact on Kentucky's ability to attract and retain jobs.

## Repeal or phase out the inventory tax

Property taxes on business inventory, abandoned by most states, serve as a disincentive to business growth because they tax the investment itself rather than the outcome or profit from that investment. Furthermore, some types of inventory are exempt by law or enjoy exemption because of location, while other, similar inventory does not receive the same treatment.

## Adopt a single sales factor apportionment formula

Although changes in 2005 and 2006 improved the competitiveness of Kentucky's business taxes, our combined state and local corporate income tax is still among the highest in the country. To become more competitive, Kentucky should join five of its neighboring states in adopting a single sales apportionment formula. Under Kentucky's current double-weighted sales factor apportionment formula, companies are penalized for creating jobs and making additional investments in the Commonwealth. By moving to a single sales factor formula, Kentucky will be viewed as a more attractive option for companies making significant capital investments and creating new jobs.

## Revise the limited liability entity tax

To increase fairness, employers should have the ability to offset pass-through credits against taxes on income from other businesses and other years.

## Entice business development and entrepreneurship

While not a substitute for comprehensive tax reform, the Chamber supports strategic investment in incentive programs designed to encourage the growth of high-wage jobs, long-term investment in strategically defined industry sectors and promotion of small businesses. Further, the Chamber supports the enhancement of entrepreneurial development incentives to encourage innovation and competition in a global marketplace. To strengthen Kentucky's incentive programs, lawmakers should act on initiatives to expand the Kentucky Investment Fund Act angel investor tax credit to individuals and the Kentucky Reinvestment Act to include technology and headquarters reinvestment projects. To ensure maximum effectiveness, accountability and continuity, the Chamber supports maintaining the public/private partnership board governance structure under which the Cabinet for Economic Development operates.

## Grow Kentucky's exports

As 95% of today's market opportunities are located outside the United States, Kentucky must recognize and capitalize on its export advantage in international trade. Its geographic location in the United States, its status as the operational headquarters for an international logistics provider (UPS) and its trained and growing transportation workforce positions Kentucky to be a leader in the export of Made-in-America products. In fact, Kentucky exported more than \$19.3 billion of goods in 2010, ranking 19th among the 50 states in total exports. The Chamber has partnered with the Kentucky World Trade Center and encourages and supports all efforts by state leaders to provide export training and promote the benefits of global trade to our business community. The Chamber supports free trade agree-

# Comprehensive Tax Reform

In addition to these immediate changes, the Chamber urges the General Assembly to address the long-term need for comprehensive tax reform. As the Governor's Blue Ribbon Commission on Taxation considered options to improve the business tax climate in Kentucky, we urged consideration of tax changes that specifically put Kentucky on a more competitive footing with competitor states. To that end, the Kentucky Chamber produced a series of professional tax papers for the commission and legislators to consider. These detailed recommendations can be found at [kychamber.com/tax](http://kychamber.com/tax). Overall, our members tell us the tax system is too complex and compliance is too costly, while numerous economic development experts say our code continues to create a competitive disadvantage because it punishes economic productivity. A shift from income-based taxes to consumption taxes can improve our competitive situation so long as these taxes are not levied on business-to-business services that would add an additional layer of costs to job creation. Since taxes significantly impact business decisions that lead to job creation and retention, the Chamber supports comprehensive tax reform in accordance with the following principles:

## Support growth and competitiveness.

Kentucky's state and local tax system should support growth-oriented tax policies that improve the competitiveness of Kentucky businesses in the national and global marketplace.

**Reduce the cost of capital.** The tax code should encourage investment as it is the key to increased growth and productivity as well as higher wages for Kentuckians.

**Simplify the tax code.** The tax code should be simplified with the goal of reducing compliance costs for

the private sector. Complex taxes impose costs on businesses that either reduce the return on investment or are passed on to consumers and workers.

**Promote fairness.** Kentucky's tax system should promote fairness by creating a level playing field on which Kentucky businesses can compete. Double taxation, or pyramiding, should be prohibited, and tax expenditures should be carefully studied to determine effectiveness.

**Revenue neutral changes.** Changes in the state tax code should be revenue neutral and undertaken

only to increase fairness and competitiveness and not to simply generate additional state revenue.

While tax changes cannot guarantee tax neutrality for every Kentucky business, the goal should be not to raise net taxes on the business community.

**Continue to focus on spending.** To keep taxes competitive, it is critical to examine expenditures and align them with economic realities. Reforming the tax code must be coupled with a continued commitment by the legislature to reform and prioritize government spending.

ments that open markets to Kentucky companies and the development of state policies that encourage worldwide exports of Kentucky products to the world. Exporting products from Kentucky will retain and create jobs, grow our businesses and strengthen our state's bottom line.

## Protect intellectual property

When manufacturers use stolen intellectual property (IP) to cut their business costs, they gain an unfair competitive advantage that results in reduced revenues and job growth for responsible Kentucky and U.S. manufacturers. IP theft is a particularly serious problem in emerging export markets with a weak rule of law that encourages illegal and unethical business practices. The Chamber encourages federal and state policymakers to enact policies that will improve business competitiveness by promoting and defending robust IP rules globally while strengthening enforcement efforts in the United States and abroad.

## Grow and Protect Signature Industries

### Develop pro-business energy strategies

Kentucky is well known for its abundant coal resources, and the state's low energy costs are among our most compelling competitive advantages. Low utility rates attract jobs and investment to the Commonwealth and help offset our less competitive business elements. In 2007, Kentucky took a bold step by providing incentives to develop new energy sources that utilize our resources in a clean

and efficient manner. To sustain, stabilize and improve our favorable energy climate, the Chamber encourages policymakers to continue to maximize opportunities for long-term growth and development while preserving Kentucky's low energy costs.

### Expand gaming to support Kentucky's equine industry

Kentucky's equine industry is world renowned, with an impact of more than \$4 billion to Kentucky's economy and responsibility for more than 80,000-100,000 full-time equivalent jobs. Kentucky is struggling, however, to retain its status as the "Horse Capital of the World" due to its inability to compete with other racing states that use alternative gaming revenues to increase purses and breeding incentives. Because of their pro-gaming, equine-friendly policies, states like Pennsylvania, Louisiana, Indiana and West Virginia have been successful in attracting Kentucky horse owners and breeders and industry-related jobs. The Chamber strongly encourages the General Assembly to authorize alternative gaming options to provide a much-needed boost to the state's equine industry as well as to recoup the hundreds of millions of tax dollars being lost annually to casino gaming in neighboring states.

### Protect Kentucky's distilling industry

Kentucky's distilling industry has a significant impact on the state's economy, producing 95% of the world's bourbon and contributing \$2 billion in gross state product while generating \$126 million a year in tax revenue. Despite the economic recession and drop in

manufacturing jobs, distilling employment rose 4% over the past decade, and, on average, the industry creates 9,000 jobs each year with an annual payroll of \$415 million. The Chamber strongly supports initiatives to protect and grow this iconic industry and is concerned that Kentucky now has the third highest distilled spirit taxes of any open-market state in the country, behind only Alaska and Illinois. For Kentucky to maintain its dominance in the distilling industry, the General Assembly must revise burdensome tax policies that threaten to force distilling operations to move out of state.

## Enhance workforce flexibility for employers

State policymakers must support employers as they invest in the Commonwealth's workforce. To enhance workforce flexibility, the Kentucky Chamber opposes state and local wage mandates, safety regulations and additional standards that exceed federal requirements. When state or local governments enact regulations and mandates beyond what are necessary to provide proven, uniform protections, the added cost of doing business decreases Kentucky's overall competitiveness, particularly with our border and peer states. State government should closely scrutinize regulations already on the books to ensure effectiveness and provide consistent enforcement so businesses can operate in a predictable climate.

## Monitor unemployment insurance legislation

A positive development for the Kentucky business community was the General Assembly's 2010 passage of landmark unemployment insurance reform and 2012 legislation to ensure the system does not default on the federal loans. The legislation updates the unemployment insurance system in Kentucky, revives the depleted unemployment insurance trust fund, prevents further borrowing from the federal government and keeps Kentucky competitive with other states. The Chamber supports continued efforts to monitor the implementation of the legislation and future revisions to ensure the integrity of the system.

## Enact right-to-work legislation

The Chamber strongly supports legislation to prohibit requiring any worker to join a union as a condition of employment. We believe that union membership should be a matter of personal choice, and the freedom not to affiliate with a labor union is no less deserving of protection than the freedom to affiliate. States with right-to-work laws report faster per capita income growth, faster growth in manufacturing and nonagricultural jobs, greater capital expenditures, lower unemployment and fewer work stoppages. As Kentucky struggles to recruit new business and to retain existing and expanding businesses, Kentucky's failure to enact right-to-work legislation has allowed the Commonwealth to cede competitive ground to other states. In fact, Kentucky is the only southern state not to have enacted right-to-work legislation, and with Indiana's new right-to-work law, stands as a conspicuous outlier in this much needed area of reform.

## Oppose the Employee Free Choice Act (Card Check)

Over the past three years, the Chamber has successfully opposed the Employee Free Choice Act (EFCA) in Congress. EFCA would radically restructure 60 years of carefully crafted labor law balances that have served both unions and employers well for many decades. EFCA consists of three main provisions, each of which is unacceptable to business: elimination of the secret ballot and a move toward the card check process, government-imposed arbitration and unreasonable, one-sided penalty expansion directed at employers. As public and congressional support for EFCA has diminished, the National Labor Relations Board and U.S. Department of Labor have been attempting to impose EFCA through regulation. Over the past year, these agencies have issued proposed rules that will make it easier for unions to organize, including mandated labor postings, reducing the length of union election campaigns and expanding reporting and disclosure requirements for employers. The Chamber will continue to voice its strong opposition to EFCA, any efforts to impose EFCA through administrative actions and other proposals that upend decades of settled labor law at the expense of both employees and employers.

## Support paycheck protection

Although requiring employers to deduct taxes from an employee's pay is a common and accepted practice, forcing businesses to administer payroll deductions to support the political activities of unions without compensation is a significant and unjustified intrusion into the administrative affairs of a company. The Chamber supports legislation that repeals the employer mandate to withhold union dues from an employee's salary.

## Revise Kentucky's prevailing wage laws

While total repeal of the state prevailing wage law has long been and remains a goal advocated by the Chamber, we support a series of steps that would make Kentucky's economic and infrastructure development more competitive in the near term:

- Kentucky's prevailing wage laws must be made more representative of local wages by utilizing more effective methods of data collection than through the current hearings process.
- The definition of localities should be replaced with those that would reduce the number of unrelated counties grouped together.
- If no changes are made to make the wage determination process more representative of local wages, then federal prevailing wages should be adopted wherever they exist.
- Kentucky should reinstate a prevailing wage exemption on education projects. By once again allowing an exemption for education projects, higher investments can be made in technology, improved facilities and in the classroom.

## Improve workers' compensation

The Chamber believes an equitable workers' compensation program must clearly define injury and disability, require independent medical examinations and objective medical findings, protect the integrity of exclusive remedy and minimize litigation. The Chamber supports legislation that overturns case law that runs counter to these core principles, as well as legislative and regulatory efforts to control rising medical and prescription drug costs. Enacting legislation that controls runaway medical costs generates substantial cost savings for employers and can be done while ensuring high levels of service to injured workers.

To protect employers from the wrongful acts of third parties and bring Kentucky in line with nearly every other state, Kentucky should enact legislation that ensures workers' compensation subrogation claims are treated in the same manner as any other subrogation claim, such as automotive or health insurance.

## Revise Kentucky's statute of limitations laws

Kentucky's five-year time period on employee wrongful termination or discrimination lawsuits places an inordinate requirement on employers. The Chamber supports statutory changes that would make all employment discharge and discrimination-type actions more uniform. The statute of limitations on wrongful termination or discrimination cases arising out of the employment relationship should be no more than two years after cessation of employment. Kentucky should review and revise the statute of limitations laws to ensure they are in line with the majority of surrounding states and do not place an inordinate burden on employers or create an uneven playing field to encourage frivolous litigation.

## Stop expansion of employee collective bargaining

The Chamber is firmly opposed to any local or statewide expansion of public employee collective bargaining. The expansion of public employee collective bargaining can lead to inefficient administration of public duties, increased costs to taxpayers and an increased likelihood of interruptions of essential government services to the detriment of all Kentuckians.

## Develop and maintain infrastructure

Kentucky must realize that our global competitors are building infrastructure at an impressive rate. To take full advantage of Kentucky's favorable geographic location and improve the ability of Kentucky companies to compete, we must place a great emphasis on building and maintaining our state's infrastructure. Our focus must include energy, water, sewer, broadband and transportation systems.

## Expand wireless and broadband infrastructure

Further development of the telecommunications infrastructure is essential in the new economy, particularly to support widespread access to wireless and broadband services. Kentucky should update

its laws and regulations to reflect the demands of a 21st century communications-based economy. Just as a number of surrounding states have done, Kentucky should modernize its telecommunications laws and eliminate unnecessary and outdated regulatory burdens that serve only to stifle investment.

## Construct and maintain transportation investments

A dependable transportation network is necessary for the safe and efficient movement of individuals and freight statewide. It is a key factor in business location because good transportation infrastructure provides companies a means to move goods and provide services in a cost-effective manner. The Chamber supports the efforts of the Kentucky General Assembly to work toward developing and maintaining a statewide transportation system adequate for the current and future needs of the Commonwealth. To achieve this goal, we believe that policymakers must protect the integrity of the dedicated Road Fund by refusing to divert road funds to pay for what should be General Fund obligations.

## Promote an equitable civil justice system

The increasing cost of civil litigation, whether through legal fees, higher liability insurance premiums, defensive business practices or simply reduced investment opportunities, is a significant burden for Kentucky's employers. These costs are not only hurting businesses and their employees, but also consumers as they are passed on in the form of higher prices and fewer choices. Kentucky must turn back the clock on expansion of employer civil liability. The number of suits filed in Kentucky's circuit courts jumped 60% from 2002 to 2009 and, according to the Institute for Legal Reform, the state's legal climate ranking fell from 29th in 2008 to 40th in 2010. To stem the costly tide of an increasingly and unnecessarily litigious environment, the Chamber supports reasonable limitations on civil liability and a constitutional change that would allow the General Assembly to enact caps on awards for non-economic damages. Additionally, Kentucky businesses should be permitted to challenge state statutes or appeal the actions of a state agency by filing suit in the circuit court in the county where the business is located. These needed reforms will have a stabilizing influence on our tort system, making the state far more attractive to employers and potential employers alike.

# Modernize Government At All Levels

Kentucky's poor financial footing continues to dominate the national headlines. Kentucky, like most states, has suffered from the downturn in the international economy due to lower tax receipts and increased demand for public services. *Barron's* magazine in its recent State of the States report ranked Kentucky 47th in overall financial health. The *Barron's* report serves as another sobering reminder that our unsustainable spending practices must be addressed. *Barron's* noted the Commonwealth's significantly high unfunded pension liability as well as its general debt to GDP ratio as the main causes of Kentucky's fiscal problems.

In 2011, the Kentucky Chamber issued its "Building a Stronger Bucket" report, a follow-up to its 2009 "Leaky Bucket" report highlighting the fact that Kentucky's budget priorities continue to shift away from investments in education and toward providing more money for jails, public employee health benefits and Medicaid. In 2012, the Chamber updated the information in its "Ready for Jobs Report" which examined Kentucky's business climate compared to the rest of the nation. These reports reached a number of key conclusions:

1. The size of state government relative to the state's economy has remained consistent over the years (between 5% and 6% of the gross state product).
2. Corrections spending is growing about 50% faster than the overall budget (65.5% vs. 49.8%) from 2000 to 2014.
3. From 2000 to 2014, Medicaid spending is growing three times faster than the overall budget (123% vs. 49.8%)
4. Public employee health insurance costs are growing 4½ times faster than the overall budget (202% vs. 49.8%) for the same period.

Spending growth in these three areas is unsustainable and is draining resources away from education, the Chamber's number one policy priority. The Chamber's efforts to raise awareness of these facts among Kentucky's lawmakers resulted in some significant changes in recent legislative sessions. These included cutting the annual growth in state employee health insurance in half, moving to Medicaid managed care statewide, suspending the cost-of-living increase (COLA) for state employees and a comprehensive study of the state's corrections system, that resulted in major legislative reforms. The Chamber supported the passage of HB 463, The Penal Code and Controlled Substances Act, during the 2011 session, which is estimated to bring in \$30 million in savings annually to the state's General Fund. Despite these important gains, the state must continue to act deliberately to institute management strategies that work.

The Kentucky Chamber offers the following suggestions to help Kentucky deal with these tough economic times – and to ensure our policymakers do what most Kentucky families and business leaders have done over the past few years – establish

spending priorities, make tough decisions and fix the leaks that take funds away from the priority of improving education. Actions to address this unsustainable spending must occur before the discussion of additional revenue opportunities should begin.

## Adhere to state spending principles

If Kentucky is to keep its financial house in order it must establish a set of disciplined guidelines that will set our state on a road to prosperity. We encourage Kentucky's lawmakers to adopt the following guidelines for state spending:

1. Limit spending to 6% of the state economy.
2. Limit borrowing costs to 6% of the state budget.
3. Eliminate the structural deficit by adopting a five-year plan to spend only recurring revenues for recurring obligations.
4. Prioritize spending on areas that invest in the future, such as education and economic development.
5. Eliminate the practice of appropriating all anticipated revenue and ensure the state's "rainy day fund" has adequate resources to cover the state's emergency needs.

## Prioritize government spending

Kentucky's General Fund is expected to increase almost 50% from FY 2000 to FY 2014 (\$6.5 billion to \$9.7 billion). More important, Kentucky's spending priorities have shifted. During the same period, spending growth in Medicaid, corrections and public employee benefit costs has dwarfed increases in education funding. While K-12 funding grew by 33% during the period, and postsecondary education by 6.7%, Medicaid spending grew by 123% – from \$659.8 million in FY 2000 to \$1.47 billion in FY 2014. A 202% increase took appropriations for public employee health insurance from \$477 million to \$1.44 billion. And corrections spending grew by 65.5%, up from \$273.9 million to \$453.3 million.<sup>1</sup>

Consideration of new or increased taxes or fees should occur only after exhausting all reasonable opportunities to reduce spending and increase efficiency. Streamlining services, consolidating departments, eliminating ineffective programs, initiating responsible personnel compensation and benefit policies and other efforts to maximize the performance of public funds are examples of such fiscally responsible public operations.

The Kentucky Chamber believes achieving a fiscally responsible state budget that promotes economic development will require a significant review of current spending trends and a shift in funding to our priorities of education and economic development. To this end, we support a research-based top-to-bottom review of government expenditures to improve efficiencies within state government, much like a private-sector company would pursue. If not, we will continue to bear the high costs through unsustainable increases to treat poverty, crime and poor health. Programs that contribute to unsustainable growth in General Fund obligations should not be permitted to unduly consume tax dollars that could otherwise be invested in the public priorities of education and economic development.

## Move to sustainable public employee benefits

Kentucky's public employee pension system has unfunded liabilities in excess of \$30 billion. The Pew Center on the States reported last year that Kentucky's pension system was funded at only 58%, compared to a national average of 78%, in 2009.<sup>ii</sup> New estimates released by Fitch Ratings in March 2012 rank the states based on unfunded pension obligations as a percentage of personal income. Kentucky had the 9th highest percentage with an estimated 15.3%, compared to a median rate of 3.7%.<sup>iii</sup>

In FY 2010, state government paid an estimated \$1.2 billion a year for health insurance for public employees, and these costs have been growing at a higher rate than inflation. Additional money appropriated for K-12 education is largely being consumed by the increased costs of health insurance and retirement.

As the General Assembly works to meet the obligations made to public employees, it will become clear that additional changes to health and retirement benefits will be needed. The Chamber recommends the General Assembly continue to focus on reducing health care costs, suspend the annual 1.5% cost-of-living increase for retirees until the system is more stable, adopt a defined contribution plan for new state employee hires and emphasize total compensation to employees so they better understand their full benefit package.

## Monitor state debt levels

The future of Kentucky's finances depends in large measure on its ability to manage debt in a way that is disciplined and effective. Borrowing for long-term capital projects of broadly recognized economic and social value is an appropriate use of public debt. However, debt must be limited to a level that is sustainable and does not adversely impact the overall credit rating of the Commonwealth.

Moody's Investors Service reports that Kentucky was in the top 10 states (8th) in 2010 with state debt measured as a share of personal income. Kentucky also ranked 6th in the country in net tax-supported debt as a percent of the gross state product and 15th in the total amount of net tax-supported debt.<sup>iv</sup> In 2011, both Moody's Investor Service and Fitch Ratings downgraded Kentucky's bond ratings, due in part to pension liabilities and use of nonrecurring revenue to balance the state budget.<sup>v</sup>

In recent years, Kentucky has turned increasingly to issuing bonds to sustain the growth in government spending. Total state and local debt in Kentucky measures more than \$7,770 for each of the state's 4.2 million people. This is more than \$400 above the national average and places Kentucky 14th in government debt per capita.<sup>vi</sup> The Chamber believes the level of state debt should be closely monitored. Projects that have a related revenue stream or can create budgetary savings should receive priority consideration, and every project considered for financing should have a defined, supportable plan for repaying the debt service.

## Modernizing Medicaid

Kentucky's Medicaid budget has been growing at a rate that is more than double that of total state government spending since 2000. Currently, there are more than 800,000 low-income and disabled Kentuckians on Medicaid. This rapid growth in Medicaid is pulling funds away from education, further compounding the problem because, as research shows, better education is linked to better health.

The key challenge is finding a way to slow unsustainable Medicaid spending increases without inflicting harm on Medicaid recipients and health care providers. The Kentucky Chamber supported the statewide expansion of a statewide Medicaid managed care. Studies suggest that Medicaid managed care contracts can save anywhere from 1% to 20% over the traditional fee-for-service model. In addition to monitoring the implementation of the managed care approach, we recommend some additional concepts to make the Medicaid program more closely resemble a private insurance model.

- **Wellness Activities:** A best practice identified by the National Governor's Association Center for Best Practices is for states to incorporate more wellness activities into Medicaid programs. The Kentucky Chamber supports offering financial incentives to Medicaid recipients who maintain healthy behaviors.
- **Program Review:** The Chamber encourages a top-to-bottom, data-driven review of the Medicaid program conducted by a nationally recognized consulting firm with expertise on Medicaid. The review should focus on an evaluation of the scope of services covered by Medicaid compared with other states as well as outcomes for Medicaid patients.
- **Program Administration:** The Chamber believes additional areas that should be explored for possible savings include:
  1. Improving the "error rate" – reducing overpayments to providers and ensuring the correct determination of recipient eligibility.
  2. Ensuring that child support orders require non-custodial parents with access to health insurance to provide coverage for their children (as permitted by Kentucky law).
  3. Increasing the use of generic drugs by Medicaid recipients.
  4. Revisiting the use of significant co-pays for recipients at higher income levels.



# Expand Kentucky's Role As An Energy Leader

The Kentucky Chamber of Commerce believes economic growth, energy independence and environmental protection are compatible and complementary goals. We recognize that legitimate uses of the environment should be protected and that business activities may affect environmental quality. To achieve rational regulatory objectives, the Chamber encourages legislative and administrative actions that satisfy the following criteria: scientific validity, technical feasibility and economic rationality.

The need for government action should be established on the basis of objective information on which meaningful consensus can be achieved. Such information should demonstrate that any proposed action would cost effectively result in the avoidance of environmental harms or the creation of environmental benefits.

To achieve the true objective of environmental regulation, government must consider technical feasibility in setting standards. In addition, government should be a conduit for information on available control technologies for businesses but not control the supply/demand of the marketplace.

Government action and requirements for compliance should reflect a proper balance of the benefits provided by a standard and the cost to society of achieving it. In setting standards, an agency should consider their impact on jobs and low income groups and the ability of business to operate profitably within the confines of any legal framework. Also, state government, utilities and businesses should work hand-in-hand to maintain a process to balance the ratepayers' desires for competitive rates with incentives for energy production innovations, clean coal technologies and energy efficiency.

## Strive for energy independence and a pro-energy economic policy

The Kentucky Chamber is encouraged by the General Assembly's recent efforts to foster Kentucky's energy independence. The Chamber recognizes energy conservation and efficiency as high-priority energy strategies. The Chamber also strongly supports incentives for businesses that go above and beyond existing environmental standards and for those who are pro-active in promoting conservation and efficiency. State government should join with business to find creative solutions to help reduce the up-front costs associated with implementing conservation and efficiency measures.

While the Kentucky Chamber supports the utilization of Kentucky's abundant coal resources to provide much needed electric power, we also support the development of alternative energy sources and capital investment in Kentucky's energy infrastructure. Kentucky should create economic incentives to encourage private sector investments in research and development of alternative energy resources and in support of redevelopment

and strengthening of Kentucky's energy infrastructure. The Chamber supports the development of an incentive package to encourage the manufacture of renewable energy products in the state. In addition, the Commonwealth of Kentucky currently has a moratorium on the development of nuclear power plants. Lifting this moratorium would help bring cost-effective and environmentally friendly energy solutions to Kentucky while having a positive economic impact. With new pollution control technologies and other innovations, more energy development is possible while protecting Kentucky's environment.

## Use sensible regulatory approach

The Kentucky Chamber supports efforts by the Kentucky Energy and Environment Cabinet to ensure existing environmental laws and regulations are applied and enforced in a consistent, non-discriminatory manner at both public and private facilities. In addition, the Chamber urges the Cabinet to aggressively assert its authority as primary administrator of delegated environmental programs in cases where the United States Environmental Protection Agency (U.S. EPA) attempts to overstep its oversight role or demand action that is inconsistent with past state regulatory actions or determinations.

Currently, U.S. EPA is issuing an unprecedented number of federal mandates that will have significant impact on the businesses and residents of Kentucky due, among other things, to the impact of those mandates on utility rates as a result of the cost of compliance. Those attempts at regulation by U.S. EPA with questionable legal authority include but are not limited to:

- Greenhouse gas regulations under the Clean Air Act, triggering first time monitoring, permitting requirements that will trigger Best Available Control Technology for greenhouse gases and proposed New Source Performance Standards for electric generating units that will prohibit the permitting of new coal-fired units.
- Revisions to National Ambient Air Quality Standards for sulfur dioxide, ozone, particulate matter and nitrogen oxides (regardless of whether the updates are currently required by the Clean Air Act), as well as revisions to the implementation of the standards that will drastically increase the number of

non-attainment areas and increase the difficulty of planning for attainment of the new standards.

- Regulation of Coal Combustion Residuals under a federal program as a hazardous waste.
- Even though U.S. EPA's attempt to further regulate emissions from electric generating units for sulfur dioxide and nitrogen oxides under the Cross State Air Pollution Rule has been vacated by the court, the Clean Air Interstate Rule will remain in effect pending U.S. EPA's continued work on a program to address emissions transport and impact on regional haze that will pass legal muster.
- First-time regulation of Hazardous Air Pollutants from coal fired power plants through imposition of Maximum Achievable Control Technology requirements under the Mercury and Air Toxics Standards program.
- Changes by U.S. EPA in water regulations and interpretations of existing rules without close examination of all costs and benefits. U.S. EPA should ensure any new water regulations (such as the proposed Cooling Water Intake Structures), or changed interpretations of water quality requirements, are flexible, efficient and recognize the role of the states in addressing their own water quality issues.
- Continued abuse of agency authority by U.S. EPA as the agency moves to implement new requirements by regulating through guidance without following the rulemaking process.

U.S. EPA's actions are resulting in overly stringent requirements that will significantly impact the businesses, the economy and the regulatory agencies in the Commonwealth. It is imperative that the General Assembly and administrative offices of Kentucky weigh in on the federal rulemaking processes and use their influence to impact the outcome of these regulatory programs.

### Invest in energy production innovations

The Kentucky Chamber supports the development of cost-effective renewable and alternative energy sources and the promotion of energy efficiency to foster energy independence and economic growth. The Chamber does not oppose the concept of federal climate change legislation in principle, but points out the importance of properly addressing regional differences in current energy supplies. The Chamber will continue to evaluate the merits of any carbon-management legislation on a case-by-case basis. However, we continue to recognize the vital importance of Kentucky's coal resources and the impact those resources have on the economy of the Commonwealth and the U.S. as a whole.

The Kentucky Chamber believes a comprehensive national energy policy should focus on investing in energy production innovations including biomass, natural gas and coal technologies and avoid arbitrary mandates and punitive policies that would serve to drive up costs and stifle innovation and place citizens and businesses of Kentucky at a



distinct economic disadvantage with neighboring states. The Chamber strongly believes cleaner air should be accomplished through the use of efficiencies at power plants and grid system as opposed to mandated equipment which makes power plants less efficient. Climate change policies that allow technology to spur energy innovation would continue to protect the economy of the Commonwealth while securing our nation's economic and energy future.

### Promote sensible state and local regulation

In considering standards for the protection for human health and the environment, federal agencies undertake an exhaustive process of reviewing available data to set standards at an appropriate level. The Chamber opposes the adoption of more stringent state and local programs that would adversely affect Kentucky's ability to remain competitive in the global economy. When state and local governments engage in significant revisions of their environmental regulations, we strongly encourage the use of a stakeholder process for development of these programs. Any resulting regulatory framework must be based on sound science and be both economically rational and technically feasible to achieve the laudable objective of a cleaner environment. Uniformity among federal, state and local programs helps save businesses valuable resources in compliance procedures. The Chamber opposes local government authority to enforce federal and state environmental requirements. To the extent that regulatory programs already exist at the local level, it is incumbent upon the local agency to administer a meaningful appeals process to provide adequate consideration of disputed issues prior to civil court action.

The Chamber supports stability in the make-up of Kentucky's Public Service Commission. This non-partisan group, appointed by the Governor and confirmed by the Senate, has helped establish Kentucky's low-cost utility rates for many years. The Chamber opposes any effort to politicize the membership of this commission, which would create instability and potentially increase rates.

## Reform notice of violation procedures

Current administrative enforcement procedures allow little flexibility or discretion on the part of inspectors. Generally, any and all violations of existing regulations and requirements result in the immediate issuance of a “notice of violation.” With the exception of immediate threats to health, safety or the environment, inspectors should have an alternative to issuing an NOV for non-compliance and the authority to waive fines for first-time offenders. There is currently no end date for punitive administrative action stemming from an NOV. The Kentucky Chamber urges the General Assembly to place reasonable time limits on punitive action following the issuance of NOVs by state agencies.

## Fund air permitting efficiencies

The Kentucky Chamber applauds the Division for Air Quality for essentially eliminating the problems of permitting backlogs. The Chamber recently supported the Cabinet’s position on the need for an increase in the Title V Permit Emission Fee so the needs of the Title V permit holders can continue to be met in a prompt and efficient manner by the Division.

As the program moves forward, it is important the Division of Air Quality maintain the level of service to the business community as air permit approvals are often a key component in implementing expansions of existing businesses and in obtaining new industrial development. However, just as our members have to do, the Division and the Cabinet should continue to look at cost control measures and efficiencies that can be used to reduce the anticipated shortfall and create efficiencies throughout the program. Considering emission trends, the Chamber believes the Cabinet should explore with stakeholders additional funding mechanisms for the Title V Program in such areas as permit and permit renewal application fees.

# References

<sup>i</sup> Ready for Jobs? How Kentucky Stacks Up as a Place to Do Business, Kentucky Chamber of Commerce, July 2012

<sup>ii</sup> The Widening Gap: The Great Recession’s Impact on State Pension and Retiree Health Care Costs, Pew Center on the States, 2011

<sup>iii</sup> Estimates of States’ Net Tax-Supported Debt and Unfunded Pension Obligations as a Percentage of Personal Income, Fitch Ratings, March 28, 2012

<sup>iv</sup> 2011 State Debt Medians Report, Moody’s Investor Service

<sup>v</sup> Downgrades in Kentucky’s bond rating ignites partisan debate, *Lexington Herald-Leader*, April, 8, 2011

<sup>vi</sup> State and Local Debt Per Capita—2006, *Governing State and Local Sourcebook*



**Kentucky Chamber**

*Uniting Business. Advancing Kentucky.*

464 Chenault Road  
Frankfort, KY 40601  
502-695-4700  
[kcc@kychamber.com](mailto:kcc@kychamber.com)

[kychamber.com](http://kychamber.com)  
[twitter.com/kychamber](https://twitter.com/kychamber)