

NO.

FRANKLIN CIRCUIT COURT

DIVISION I

LOUISVILLE SOCCER ALLIANCE, INC.
1503 Sylvan Wynde
Louisville, Kentucky 40205

PETITIONERS

and

MICHAEL E. HAYES
President, Louisville Soccer Alliance, Inc.
1503 Sylvan Wynde
Louisville, Kentucky 40205

and

LOUISVILLE SOCCER CLUB, INC.
c/o Oliver H. Barber, Jr.
100 N. Sixth Street, 5th Floor
Louisville, Kentucky 40202

and

DOUGLAS LANHAM
President, Louisville Soccer Club, Inc.
105 Algiers Court, Apt. 1
Louisville, Kentucky 40218

and

KENTUCKY SOCCER ASSOCIATION, INC.
1089 Oreland Mill Road
Louisville, Kentucky 40229

and

REBECCA NALLEY
Registrar, Kentucky Soccer Association, Inc.
3312 Eagle Pass Road
Louisville, Kentucky 40213

and

CATHOLIC CONFERENCE OF KENTUCKY
1042 Burlington Lane
Frankfort, Kentucky 40601

and

EDWARD C. MONAHAN
Executive Director, CATHOLIC CONFERENCE OF KENTUCKY
1042 Burlington Lane
Frankfort, Kentucky 40601

and

HOLY NAME OF JESUS PARISH
511 Second Street
Henderson KY 42420

and

REV. J. EDWARD BRADLEY
Pastor, Holy Name of Jesus Parish
511 Second Street
Henderson KY 42420

vs.

PETITION FOR DECLARATION OF RIGHTS

STEVEN L. BESHEAR, IN HIS OFFICIAL
CAPACITY AS GOVERNOR
COMMONWEALTH OF KENTUCKY
700 Capital Avenue, Suite 100
Frankfort, Kentucky 40601

RESPONDENTS

and

TODD HOLLENBACH, IN HIS OFFICIAL
CAPACITY AS STATE TREASURER
Kentucky State Treasury
1050 U.S. Highway 127 South, Suite 100
Frankfort, Kentucky 40601

and

**JONATHAN MILLER, IN HIS OFFICIAL
CAPACITY AS SECRETARY
Finance and Administration Cabinet
Room 383, Capitol Annex
Frankfort, Kentucky 40601**

and

**MARY LASSITER, IN HER OFFICIAL
CAPACITY AS STATE BUDGET DIRECTOR
702 Capital Avenue
Capitol Annex, Room 284
Frankfort, Kentucky 40601**

and

**ROBERT VANCE, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF THE
PUBLIC PROTECTION CABINET
Capital Plaza Tower, 5th Floor
500 Mero Street
Frankfort, Kentucky 40601
SERVE: Hon. Jack Conway
Attorney General
Capitol Bldg., Suite 116
Frankfort, Kentucky 40601**

*** * * * ***

Come the Petitioners, Louisville Soccer Alliance, Inc., et al., by counsel, pursuant to KRS 418.040, et seq. and Civil Rule 57, and do hereby file their Petition for Declaration of Rights. In support of this Petition, Petitioners state as follows:

PARTIES AND THEIR CAPACITIES

1. The Louisville Soccer Alliance, Inc. ("LSA"), Louisville Soccer Club, Inc. ("LSC") and Kentucky Soccer Association, Inc. ("KSA") are all private, not-for-profit corporations, authorized to operate in Kentucky, and each of which support and promote soccer in the Metropolitan Louisville community, as well as the Commonwealth of Kentucky. These

corporate entities engage in charitable gaming, pursuant to KRS Chapter 238, to sustain and promote soccer activities.

2. Michael E. Hayes is the President and Chief Executive Officer of the Louisville Soccer Alliance, Inc. Petitioner Hayes is responsible for overseeing the charitable gaming operations of LSA, and its compliance with the requirements of the Charitable Gaming Act, and the Department of Charitable Gaming.

3. Douglas Lanham is the President of Louisville Soccer Club, Inc. Petitioner Lanham is responsible for overseeing the charitable gaming operations of LSC, and its compliance with the requirements of the Charitable Gaming Act, and the Department of Charitable Gaming.

4. Rebecca Nalley is the Registrar of Kentucky Soccer Association, Inc. Petitioner Nalley is responsible for overseeing the charitable gaming operations of KSA, and its compliance with the requirements of the Charitable Gaming Act, and the Department of Charitable Gaming.

5. The Catholic Conference of Kentucky represents the public policy interests of the four Catholic bishops of Kentucky charged with the pastoral care of those who reside in their respective dioceses. Parishes and other Catholic organizations under their care have private not-for-profit corporate status and engage in various fundraising activities to support educational and charitable activities of the church. These fundraising activities include charitable gaming pursuant to the provisions of KRS Chapter 238.

6. Edward C. Monahan is the Chief Executive Officer of the Catholic Conference, and in said capacity, is responsible for ensuring through the four chief financial officers of the four dioceses that the charitable gaming activities in these four Catholic dioceses comply with the

requirements of the Charitable Gaming Act, KRS Chapter 238, and the requirements of the Department of the Charitable Gaming.

7. Holy Name of Jesus Parish is a Catholic Church with a catholic school that conducts charitable gaming as a charitable gaming licensee using its proceeds to support its ministries.

8. The Rev. J. Edward Bradley is the Pastor of Holy Name of Jesus Parish and the chief executive officer of the Holy Name of Jesus Parish license who is responsible for the management and supervision of charitable gaming as designated in the organization's charitable gaming license application.

9. Governor Steven L. Beshear is the Chief Executive Officer of the Commonwealth of Kentucky, and in that capacity, has the overall responsibility for implementing the budget enacted by the Kentucky Legislature.

10. Todd Hollenbach is the State Treasurer of the Commonwealth of Kentucky, and acts as the State's Chief Elected Fiscal Officer.

11. Jonathan Miller is the Secretary of the Kentucky Finance and Administration Cabinet. In that capacity, Secretary Miller serves as the Chief Financial Officer and Manager of the financial resources of the Commonwealth, providing executive policy and management oversight to the departments and divisions of the Finance and Administration Cabinet.

12. Respondent Mary Lassiter is the duly appointed State Budget Director, who administers and evaluates the Executive Budget pursuant to KRS 11.068.

13. Respondent Robert Vance is the secretary of the Public Protection Cabinet. In that capacity, Secretary Vance oversees regulated businesses and entities, including the Department of Charitable Gaming. ("DCG")

14. Jack Conway, Kentucky Attorney General, shall be served with a copy of the Petition, pursuant to KRS 418.075(1) and CR 4.04(6), where a pleading or other paper raises the constitutionality of an Act of the General Assembly, or involves the validity of a statute.

CLASS ACTION

15. Petitioners are certified licensees or permit holders who have paid and will pay fees to DCG (formerly Office of Charitable Gaming (“OCG”)) for the regulation and enforcement of the State Charitable Gaming Act. Petitioners bring this action both individually and on behalf of licensees and permit holders similarly situated. This action involves questions of statutory construction affecting public safety and public protection, and should be docketed for an early hearing pursuant to KRS 418.050.

16. The class defined above, consisting of DCG licensees, license and permit holders, and individuals responsible for complying with the permit and licensing requirements within those organizations, is so numerous that the joinder of all members is impractical.

17. The questions of law or fact are common to the class.

18. The claims of the representative individual Petitioners are typical of the claims of the class.

19. The representative parties will fairly and adequately protect the interests of the class.

20. Prosecuting separate actions by individual members of the class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the parties opposing the class.

21. The Respondents have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to the class as a whole.

22. Questions of law and fact, common to the members of the class, predominate over any questions affecting only individual members, and class action is superior to other available methods for the fair and efficient adjudication of the controversy.

JURISDICTION AND VENUE

23. An actual and justiciable controversy exists between the parties, and this court has jurisdiction pursuant to the provisions of KRS 418.045, et seq., and CR 57.

24. Venue is proper in the Franklin Circuit Court, pursuant to KRS 452.405(2) and 452.505(2).

STATUTORY PROVISIONS

25. The Office of Charitable Gaming (“OCG”) now Department of Charitable Gaming (“DCG”) was created by action of the 1994 Kentucky General Assembly, creating a new section of KRS Chapter 238, namely KRS 238.500, et seq., establishing general powers to regulate charitable gaming in the Office of Charitable Gaming within the Environmental and Public Protection Cabinet (now the Public Protection Cabinet). Reference herein shall generally be to the Office of Charitable Gaming (OCG) since that is the statutory, regulatory or budgetary reference until the placement of Charitable Gaming within the reorganized Public Protection Cabinet.

26. The Office of Charitable Gaming provides indispensable oversight. The KY Office of Charitable Gaming (OCG) within the Public Protection Cabinet of state government provides an important system of oversight.

27. Charitable Gaming is defined to include bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of the Charitable Gaming Act. KRS 238.505(2).

28. The activities of the Petitioner organizations, related to charitable gaming, are regulated pursuant to the provisions of KRS 238.500, et seq.

29. In 2007, the General Assembly passed HB 156, codified at KRS 238.570(2), an attempt to limit the Office of Charitable Gaming fee to an amount that does not exceed the level needed to fund OCG.

30. KRS 238.570(2) provides for the creation of a charitable gaming regulatory account.

31. KRS 238.570(1) imposes upon charitable gaming organizations a fee in the amount of 53/100 of 1% (0.53%) of gross receipts derived from charitable gaming activities. The law requires a biennial recalculation of the charitable gaming fee to collect only what is needed to operate the OCG. Currently, under KRS 238.570, a fee is imposed on charitable gaming in the amount of 0.53% of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth. It is required to be adjusted every odd numbered year.

32. Effective July 1, 2008, the Department of Charitable Gaming has raised the fee from 0.53% of gross receipts to 0.60% of gross receipts.

33. KRS 238.570(2) provides that all revenues generated from the 0.53% fee, as well as any monies derived from administrative fines, imposed by the Office of Charitable Gaming, are to be deposited into the charitable gaming regulatory account. Monies in that account are to be expended by the office solely in the administration and enforcement of the provisions of the Charitable Gaming Act.

34. Pursuant to KRS 238.570(2), funds attributable to the above-referenced fees and fines which are not expended at the end of the fiscal year, shall not lapse, but shall be carried forward to the next fiscal year.

35. KRS 238.570(3) provides, inter alia, that the 0.53% fee may only be raised, or otherwise adjusted, in an odd-numbered year.

36. The Department of Charitable Gaming's increase in the fee from 0.53% of gross receipts to 0.60% of gross receipts in an even numbered year, not an odd numbered year, violates KRS 238.570.

2008 EXECUTIVE ORDER OF GENERAL FUND BUDGET REDUCTION

37. Executive Order 2008-011, approved on January 4, 2008 by Gov. Steven L. Beshear, eliminated a projected general fund budget short-fall of \$265 million in fiscal year 2008, and ordered reductions in general fund appropriations totaling \$65,262,416.00 from executive branch units of state government. General fund appropriations authorized by the 2006 General Assembly for FY 2008 were \$9,361,824,916.00. The Executive Order also directed reductions in restricted funds appropriations totaling \$8,873,600.00.

38. The Executive Order, in conjunction with General Fund Budget Reduction Order 08-01, directed that the State Budget Director transfer to the general fund certain monies held in agency accounts totaling \$51,198,200.00. The transfers to the general fund included agency accounts of license fees collected by OCG from entities engaged in charitable gaming for license fees in the total amount of \$700,000.00, as follows:

<u>Appropriation Unit</u>	<u>Account No.</u>	<u>Amount</u>
Charitable gaming	13BK-695	\$700,000.00

A copy of Executive Order 2008-011 and General Fund Reduction Order 08-01 are attached hereto as Petitioners' Exhibit 1.

39. The general fund budget reduction plan enacted by the 2006 General Assembly directs that any projected deficit in estimated general fund revenues include "a specific plan to

address a proportionate share of the general fund revenue shortfall applicable to the respective branch. No budget revision action shall be taken by a branch head in excess of the actual or projected deficit.” The general fund budget reduction plan also directs “transfers of excess unappropriated restricted funds other than fiduciary funds.” 2006 Ky. Acts, c. 252, p. 993.

40. The fund transfers enacted by the 2006 General Assembly directed the transfer of \$1,100,000.00 from the OCG account for fiscal year 2005-06. 2006 Ky. Acts, c. 252, p. 991.

41. The 2008 General Assembly ratified and adopted the Governor’s budget reduction plan as a part of the budget bill for the biennium beginning July 1, 2008. HB 406, p. 195, 2008 General Assembly.

42. Since 1998, \$5,991,200 has been transferred from the OCG Agency Revenue Fund to General Fund.

43. The history of transfers since 1998 is as follows:

**Table 1: Office of Charitable Gaming Revenue Transfer Summary, FY 1998-
FY2010 (est.)**

Fiscal Year	Gross Receipts	Fee Imposed	Current Receipts	Balance Forward	Total Expenditures	Transfers to General Fund
FY 2010 (est.)	470,000,000	0.530%	2,811,800	451,180	3,092,900	-
FY 2009 (est.)	470,000,000	0.530%	2,825,800	682,980	3,057,600	-
FY 2008 (est.)	470,000,000	0.530%	2,995,900	2,031,180	3,343,200	700,000
FY 2007	481,818,300	0.530%	3,210,260	1,993,637	2,898,567	-
FY 2006	528,900,000	0.530%	3,439,248	2,767,445	2,919,156	1,100,000
FY 2005	545,700,000	0.530%	3,475,072	2,279,451	2,678,878	191,200
FY 2004	570,100,000	0.530%	3,584,672	1,486,724	2,791,945	-
FY 2003	588,400,000	0.530%	2,839,244	1,326,411	2,678,930	-

FY						
2002	608,000,000	0.400%	2,923,739	2,077,483	3,009,811	-
FY						
2001	607,000,000	0.400%	2,832,258	2,874,399	2,929,174	-
FY						
2000	584,600,000	0.400%	2,819,121	5,143,200	3,089,260	2,000,000
FY						
1999	564,400,000	0.500%	2,720,129	6,674,806	2,251,736	2,000,000
FY						
1998	540,300,000	0.500%	3,228,304	4,903,821	1,455,788	-

44. If the nearly \$6 million were not transferred, the OCG fee would be substantially less than is currently imposed, as indicated by the following table:

Table 2: Office of Charitable Gaming Adjusted Fees, FY 1998-FY 2010 (est.)

Fiscal Year	Adjusted Rate with Transfers	Adjusted Rate without Transfers	Adjusted Rate without Transfers from FY 2005
FY 2010 (est.)	0.676%	0.093%	0.498%
FY 2009 (est.)	0.643%	0.026%	0.431%
FY 2008 (est.)	0.552%	0.023%	0.418%
FY 2007	0.498%	0.016%	0.376%
FY 2006	0.446%	0.080%	0.428%
FY 2005	0.471%	0.120%	0.471%
FY 2004	0.547%	0.208%	0.547%
FY 2003	0.517%	0.188%	0.517%
FY 2002	0.428%	0.099%	0.428%
FY 2001	0.362%	0.020%	0.362%
FY 2000	0.167%	0.000%	0.167%
FY 1999	0.000%	0.000%	0.000%

PROVISIONS OF THE KENTUCKY CONSTITUTION

45. Ky. Const. § 28 erects a high wall separating the powers of the three branches of government.

46. Ky. Const. § 51 provides no law enacted by the General Assembly shall be revised, amended, extended or conferred unless reenacted and published at length.

47. Ky. Const. § 59 forbids special legislation.

48. Ky. Const. § 81 requires that the laws enacted by the General Assembly be faithfully executed by the Governor.

49. Ky. Const. § 171 requires uniformity in the classification of property subject to taxation.

50. Ky. Const. § 180 provides that every act of the General Assembly levying a tax shall specify distinctly the purpose for which the tax is levied, and:

“No tax levied and collected for one purpose shall ever be devoted to another purpose.”

51. Ky. Const. § 242 prohibits the taking of private property for public use without just compensation for the property taken.

52. The Bill of Rights in the Ky. Const. at § 2 prohibits any exercise of arbitrary power and further and provides in § 15 that no law shall be suspended by any authority except the General Assembly.

CLAIMS AND CAUSES OF ACTION

I. OCG Fees Are Not General Fund Tax Revenues

53. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 52 of this Petition.

54. All license fees and administrative fines, and other monies, collected by OCG from entities conducting charitable gaming of fees are authorized solely for use in carrying out the regulatory and enforcement authority established in KRS Chapter 238, KRS 238.500, et seq.

55. The General Assembly delegated to OCG the responsibility to impose and collect fees and, as appropriate, fines, to carry out the duties and responsibilities of OCG. Only the General Assembly may enact taxes, and such authority may not be delegated to an agency of

state government. Fees assessed and collected by OCG are non-tax payments, prohibited from transfer to the State general fund.

56. Fees assessed and collected by the OCG are to be used exclusively to enforce the provisions of the Charitable Gaming Act.

57. The transfer of non-tax payments, assessed and collected by OCG, violates the statutory scheme enacted and implemented to license and regulate the conduct of charitable gaming.

58. The state cannot transfer excess funds into the general fund and then raise the fee. KRS 238.570.

59. Any other assessed fees transferred from OCG to the general fund constitute an unlawful conversion of monies that the nonprofit entities herein are obligated to return to their various charitable causes. The taking of this money constitutes an unlawful tax on private, not-for-profit charitable organizations.

II. Transfers By Executive Order

60. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 59 of this Petition.

61. Transfers of OCG funds to the State general fund by Executive Order 2008-011 constitute a budget reduction plan violating KRS 48.130, are contrary to the 2006-08 biennial budget bill, and violate Ky. Const. § 15, which prohibits the suspension of a law by executive authority.

62. Transfer to the State general fund by Executive Order of funds assessed and collected by OCG and its agencies violates Ky. Const. § 81 requiring that the laws be faithfully executed by the Governor.

63. Under the separation of powers doctrine, the Governor has no constitutional authority to exercise legislative powers by ordering the transfer of OCG funds contrary to statutory authority. Ky. Const. § 28.

III. Ratification of Executive Order

64. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 63 of this Petition.

65. The General Assembly has no constitutional authority to ratify an unconstitutional act by the executive authority of the state.

IV. Taking Private Property For Public Use

66. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 65 of this Petition.

67. All license fees, permit fees, and other monies paid by persons or entities engaged in charitable gaming for the regulation and enforcement of the Charitable Gaming Act by OCG constitute non-tax payments to be held and used separate and apart from the state general fund.

68. The taking of these non-tax payments violates Ky. Const. § 242 which prohibits taking private property for public use without just compensation.

V. Arbitrary Transfers

69. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 68 of this Petition.

70. All license fees, permit fees, and other monies paid by persons or entities engaged in charitable gaming for the regulation and enforcement of the Charitable Gaming Act by OCG constitute non-tax payments to be held and used separate and apart from the state general fund.

71. Transfer of these funds by Executive Order of the Governor and by the 2008 biennial budget bill is arbitrary and void under Ky. Const. § 2.

VI. Equal Protection

72. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 71 of this Petition.

73. Transfer to the State general fund of non-tax payments to OCG made by persons and entities engaged in the charitable gaming industry deny those persons and entities equal protection under the Kentucky Constitution.

VII. Injunctive Relief

74. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 73 of this Petition.

75. As a matter of law, based upon the public record, all license fees, permits, fees and other monies paid to OCG by persons and entities engaged in charitable gaming are dedicated to enforcing the Charitable Gaming Act in the Commonwealth of Kentucky. All such payments are non-tax revenues dedicated to a specific purpose.

76. The factual allegations set forth herein demonstrate the Petitioners are likely to prevail on the merits on the basis of statutory provisions or constitutional protections. A substantial question of law for the Court's determination is presented in the factual allegations.

77. License fees assessed and collected by OCG are an integral part of enforcing the Charitable Gaming Act under KRS 238.500, et seq. Transfers will cause irreparable harm by diminishing the ability of OCG to perform its statutory obligations and duties to enforce the Charitable Gaming Act with respect to charitable gaming licensees in the Commonwealth.

78. Petitioners and all similarly situated licensees have a substantial claim to a personal right for enforcement of the Charitable Gaming Act, which was enacted into law for the purpose of regulating and enforcing the Charitable Gaming Act. Injunctive relief is absolutely necessary to preserve the Petitioners' rights, duties and obligations pending a trial on the merits.

79. OCG has assessed and collected license fees and other funds authorized by statute to enforce the Charitable Gaming Act. Removal of \$700,000.00 from the OCG account will cause immediate and irreparable damage to the State's ability to public health and safety. Timely license enforcement is essential to maintaining the integrity of charitable gaming in the Commonwealth.

80. The public interest demands maintaining the entire charitable gaming structure, including all OCG funds paid by applicants and licensees for policing and enforcing the Charitable Gaming Act. Issuance of injunctive relief will benefit the public interest by maintaining the status quo until the Court can consider the merits of issues raised in this case.

81. Removing \$700,000.00 from the regulatory and enforcement account of OCG will impose a hardship and an unnecessary risk to public health and safety. Equities favor issuance of an injunction.

82. Pursuant to CR 65.01 and 65.02, the Court should enter a temporary injunction preventing the budget director from enforcing Executive Order 2008-011 and preventing transfers contained in the 2008-10 biennial budget with respect to OCG regulatory and enforcement funds.

83. The Court should enter a temporary injunction preventing an increase in the licensee fee from 0.53% to 0.60%.

84. Increasing the licensing fee from 0.53% to 0.60% will cause immediate and irreparable damage to the Petitioners' Organizations and similarly situated charitable gaming organizations.

VIII. Attorney's Fees

85. Petitioners incorporate by reference as if set forth, at length, the allegations contained in numerical paragraphs 1 through 84 of this Petition.

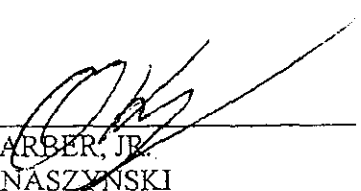
86. All costs, attorney's fees, and other expenses should be assessed against the Commonwealth pursuant to KRS 412.070, KRS 453.260(1)(b), 453.260(4)(0), 42 U.S.C. § 1988 and all other applicable law.

RELIEF SOUGHT

WHEREFORE, Petitioners respectfully demand the following relief:

1. A declaration of rights that all payments made to OCG for applications, licenses, permits, and other related activities by persons and entities engaged in charitable gaming are fees statutorily dedicated to regulatory and enforcement purposes under the State Charitable Gaming Act, and that none of such payments constitutes a tax for expenditure in the general fund.
2. A declaration of rights that the taking of payments assessed and collected by OCG for transfer to the general fund violates Sections 2, 15, 28, 51, 59, 81, 171 and 180 of the Kentucky Constitution.
3. A temporary injunction prohibiting transfer under Executive Order 2008-011 to the general fund of \$700,000.00 from the OCG account.
4. Assessment of all costs, attorneys' fees and other fees against the Commonwealth.
5. Any other relief the Court may deem proper.

Respectfully submitted,



OLIVER H. BARBER, JR.
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100 North Sixth Street, 5th Floor
Louisville, Kentucky 40202
(502) 585-2100
COUNSEL FOR PETITIONERS

BANASZYNSKI\LSA\Petition.doc -



Commonwealth of Kentucky
Office of Governor Steven L. Beshear

FOR IMMEDIATE RELEASE

Contact: Vicki Glass
502-564-2611
Cell 502-382-6973

**Governor Steve Beshear Addresses Budget Reduction Plan
for This Fiscal Year**

FRANKFORT, KY (January 4, 2008) – Gov. Steve Beshear today announced a budget reduction plan for the Commonwealth by signing a General Fund Budget Reduction Order and an Executive Order directing cost-saving measures for the Executive Branch of Government.

“Today my purpose is to discuss ways in balancing the current budget and how getting over this mountain doesn’t solve our long-range predicament,” Beshear said.

“There won’t be enough income during the next biennium to cover expenses in the current budget, much less any additional monies requested by a multitude of organizations both inside and outside state government.”

Last week the Gov. announced that the Commonwealth’s financial condition, as discovered upon his taking office December 11th, was much worse than anticipated.

“In round figures, the Commonwealth’s budget shortfall for Fiscal Year ’08 that I am addressing today is \$265 million,” said the Governor. “This does not include the \$166 million in additional spending needs previously cited by various state agencies that I will address in my budget recommendations at the end of the month.”

The General Fund Budget Reduction Order signed today includes cuts or reductions in state activities and services. For FY ’08 this amounts to only \$78 million of the \$265 million previously mentioned.

The balance of the \$265 million will come from:

- FY '07 budget surplus of \$145 million
- Unbudgeted/excess funds of \$42 million

“Unfortunately, the FY '07 surplus does not begin to cover the overall budget deficit,” said Beshear.

The projected shortfall for the remaining FY '08 Budget will be managed through the following measures executed by all government agencies:

- Reduction in the state workforce through attrition. Any hiring actions must be justified as crucial in governmental performance. Funds must also be available to sustain the position within reduced budget amounts and be approved by the Secretary of the Executive Cabinet prior to submission to the Personnel Cabinet for processing.
- Contracts will be reviewed for cost savings.
- Travel expenses will be reduced.
- Printing costs must be lowered in every agency.
- A moratorium is being placed on all purchases of furniture and equipment by state agencies.
- Acceleration of the sale of surplus property.
- Discretionary spending must be reduced. No area of spending is immune.
- Energy savings will be maximized.

“Finally, let there be no question that our resolving the FY '08 budget does not mean we are out of the woods,” said Governor Beshear.

“A much greater obstruction awaits all of us. Daunting revenue projections over the next two years will translate into unnerving and unpleasant decisions. To meet this challenge we will have to look at all areas of state government for reductions. Nothing is off the table.”

Gov. Beshear will present his proposed 2008-2010 budget to the Kentucky General Assembly on January 29, 2008.

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STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

2008-011
January 4, 2008

Secretary of State
Frankfort
Kentucky

AN ORDER FROM THE GOVERNOR
TO ALL STATE AGENCIES TO IMMEDIATELY
REDUCE COSTS

WHEREAS, it is currently projected that, as a result of reduced revenues, increased expenditures, and the current downturn in the economy, the Commonwealth's projected General Fund budget shortfall will be over \$400 million in the current Fiscal Year, Fiscal Year 2008; and

WHEREAS, it is currently projected that General Fund revenues for Fiscal Years 2009 and 2010 will be less than enacted appropriations for Fiscal Year 2008:

NOW, THEREFORE, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Kentucky Constitution and in particular Sections 69 and 81, and Chapters 12 and 47 and as further invested in me by the laws of the Commonwealth, do hereby FIND, DECLARE, ORDER and DIRECT the following:

1. This Executive Order applies to all program cabinets and agencies of the Commonwealth of Kentucky and administrative bodies under the authority of the Executive Branch of the government by the Commonwealth of Kentucky as provided in KRS Chapter 12 *et. seq.*
2. This Executive Order shall serve as a directive to all Executive Branch Cabinets and agencies to implement cost saving measures immediately to assist in closing the deficit faced by the Commonwealth in the current fiscal year. All cabinets and agencies, including those which do not receive General Funds, are directed to



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2008-011
January 4, 2008

comply with these measures to result in consistent management of state resources in these difficult fiscal times.

REDUCE THE STATE WORKFORCE THROUGH ATTRITION

3. The size of the workforce will be reduced through attrition. All hiring actions must be justified as essential to the delivery of services and that funds are available to sustain the position within reduced budgeted amounts. All personnel actions must be justified and approved by the Secretary of the Governor's Executive Cabinet prior to submission to the Personnel Cabinet for processing. This includes approval of actions that increase costs for existing personnel.

REVIEW ALL CONTRACTS FOR COST SAVINGS

4. All new contracts, including personal service contracts and leases, must be justified as essential to the delivery of services and must demonstrate that the service cannot be provided with existing personnel. All existing contracts shall be reviewed for cost savings and potential elimination. The Secretary of the Finance and Administration Cabinet must approve all new and amended contracts.

REDUCE TRAVEL EXPENSES

5. All state agencies are directed to reduce travel expenses. All out-of-state travel must be approved by the Secretary of the Finance and Administration Cabinet, and all in-state travel must be approved by the Secretaries of the respective Executive Branch agencies. Efforts to reduce the travel expenses incurred by state agencies shall include the following:
 - o The Finance and Administration Cabinet shall make all efforts to make the state fleet more cost efficient.



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

2008-011
January 4, 2008

Secretary of State
Frankfort
Kentucky

- o Given the increasing cost of gasoline, all opportunities for work-related carpooling shall be maximized.
- o The number of employees approved to attend the same conference shall be scrutinized and reduced where possible.
- o State agencies are directed to use video conferencing available at state facilities, in lieu of travel whenever feasible.
- o State agencies are directed to require that state employees approved for in-state overnight travel shall use state park facilities when such accommodations are within 25 miles of their business destination.

REDUCE PRINTING COSTS

6. State agencies are directed to maximize use of electronic methods of communication to minimize printing costs. For printing deemed essential, state agencies are directed to submit all printing requests to the state's Division of Printing Services for review to ensure printing is accomplished in the most cost efficient manner possible.

CURTAIN EQUIPMENT AND FURNITURE PURCHASES

7. A moratorium is placed on all purchases of furniture and equipment by state agencies. Agencies with critical needs in this regard must justify those needs to the Secretary of the Finance and Administration Cabinet, who may approve exceptions if conditions warrant.

SELL SURPLUS PROPERTY

8. State agencies are directed to immediately review their inventories of state owned assets such as real property, equipment, furniture and vehicles, and to work with the Finance and Administration Cabinet Division of Surplus Property as to use their delegated authority to dispose of surplus property, thereby generating cash for operations of state government.



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

2008-011
January 4, 2008

Secretary of State
Frankfort
Kentucky

REDUCE DISCRETIONARY EXPENDITURES

9. State agencies are directed to review and implement feasible cost saving actions in all areas of spending. This review specifically includes telecommunications, office supplies, commodities, dues, and subscriptions.

MAXIMIZE OPPORTUNITIES FOR ENERGY SAVINGS

10. The Secretary of the Finance and Administration Cabinet is directed to work with all state agencies to identify strategies to reduce or mitigate increasing utility costs.

COMPLIANCE

11. Kentucky's constitutional officers and management employees of the Commonwealth's elementary, secondary and post-secondary educational systems, and other agencies governed by boards, commissions, and other statutorily created administrative bodies are strongly encouraged to carefully review the provisions of this Order and implement similar cost cutting measures set forth herein as a part of the effort of the government of the Commonwealth of Kentucky to immediately achieve greater efficiencies in the provision of state services and reductions and expenditures in light of the current condition of the budget of the Commonwealth.
12. The provisions of this Order shall remain in full force and effect until sooner rescinded or superseded by subsequent Executive Order or by legislative enactment.



STEVEN L. BESHEAR
GOVERNOR

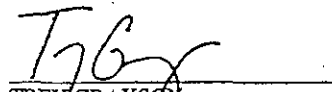
EXECUTIVE ORDER

2008-011
January 4, 2008

Secretary of State
Frankfort
Kentucky

13. This Order shall become effective immediately upon filing with the Secretary of State.


STEVEN L. BESHEAR, Governor
Commonwealth of Kentucky


TREY GRAYSON
Secretary of State

RECEIVED AND FILED
DATE 1/4/08

General Fund Budget Reduction Order 08-01

COMMONWEALTH OF KENTUCKY
OFFICE OF STATE BUDGET DIRECTOR

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Allen

**AN ORDER DIRECTING THE REDUCTION OF CERTAIN APPROPRIATIONS
TO APPROPRIATION UNITS OF THE GOVERNMENT OF THE
COMMONWEALTH AND DIRECTING CERTAIN FUND TRANSFER
ACTIONS TO PREVENT A DEFICIT IN THE FINANCES OF THE
COMMONWEALTH OF KENTUCKY**

WHEREAS, funds were budgeted and appropriated for the operation, maintenance, support, and functioning of the Government of the Commonwealth of Kentucky during fiscal year 2007-2008, by the 2006 Regular Session of the General Assembly, and the 2007 Regular and Extraordinary Sessions of the General Assembly, based on a General Fund revenue receipt estimate of \$8,879,172,400 as specified in 2006 Kentucky Acts Chapter 252, Part VI; and

WHEREAS, on December 18, 2007, the Consensus Forecasting Group at the request of the State Budget Director, per KRS 48.115(2), revised downward the General Fund receipt estimate for fiscal year 2007-2008 to \$8,761,506,000 for the General Fund or \$117,666,400 less than the estimated General Fund revenue receipts contemplated by Kentucky Acts Chapter 252, Part VI; and

WHEREAS, this reduction in General Fund revenues, if realized as anticipated, will result in the incurrence of a deficit in the finances of the Government of the Commonwealth if funds are fully expended in accordance with the levels appropriated; and

WHEREAS, 2006 Kentucky Acts Chapter 252, Part V, directed that \$84,589,200 in transfers from Restricted Funds be transferred to the General Fund, and of that amount an estimated \$9,000,000 will not be realized; and

WHEREAS, the General Fund surplus amount at the end of fiscal year 2006-2007, as certified by the Secretary of the Finance and Administration Cabinet, was \$145,093,784 and is insufficient to meet this deficit; and

WHEREAS, pursuant to Chapter 2006 Kentucky Acts Chapter 252, the costs associated with certain defined unbudgeted expenses including, but not limited to, the costs of disaster and emergency assistance, forest fire suppression, legal judgments, and other identified expenses authorized by the General Assembly must be identified and paid from General Fund resources not expressly earmarked in the enacted budget for the Executive Branch, and are estimated to be at least \$50,200,000; and

WHEREAS, funds were budgeted and appropriated for specific expenses by the 2007 Regular and Extraordinary Sessions of the General Assembly from General Fund resources not expressly earmarked in the enacted budget for the Executive Branch, and are estimated to be at least \$36,666,800; and

WHEREAS, the \$39,500,000 in General Fund appropriations that were budgeted to remain unexpended and lapse to the General Fund from unspecified sources in the Executive Branch must be accounted for in a balanced budget; and

WHEREAS, an estimated \$10,521,200 increase in the statutorily required appropriation amounts for the severance tax-based Special Funds due to an upward revision in the severance tax forecast must be accommodated; and

WHEREAS, pursuant to 2006 Kentucky Acts Chapter 252, Part VI and KRS 48.130, the Governor, the Chief Justice, and the Legislative Research Commission are authorized, empowered, and directed by the General Assembly to implement budget reductions and the transfer of funds by such amounts as may be necessary and required to prevent a deficit in the finances of the Commonwealth during fiscal year 2007-2008 so long as such reductions will not actually impair the direct services and obligations essential to the minimum level of constitutional functions; and

WHEREAS, pursuant to 2006 Kentucky Acts Chapter 252, Part VI, the actions taken to prevent a deficit shall take care to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth; and whereas, the impact of a budget reduction on certain appropriation units of State Government required to perform functions authorized and directed by the General Assembly would be adverse, certain agencies and functions are determined to be exempt from the reduction requirements of this Order; and

WHEREFORE, after examining the revenue estimates of the Consensus Forecasting Group as revised for fiscal year 2007-2008 and the financial resources otherwise available to the Commonwealth, it is the opinion of the State Budget Director that the total financial resources of the General Fund of the Commonwealth for fiscal year 2007-2008 will be inadequate to meet the obligations authorized to be incurred by the appropriations made for such year, and that in order to prevent a deficit in the finances of the Commonwealth during fiscal year 2007-2008, it is necessary to effect a reduction in General Fund and Restricted Funds appropriations and allotments to the appropriation units of the Commonwealth, and to effect the transfer of certain Restricted Fund dollars to the credit of the General Fund by sums sufficient to prevent such deficit;

NOW, THEREFORE, it is hereby found by the State Budget Director, with the approval of the Governor of the Commonwealth, and pursuant to the authority vested in the Office of State Budget Director and the Secretary of the Finance and Administration Cabinet by 2006 Kentucky Acts Chapter 252, Part VI and Chapter 48 of the Kentucky Revised Statutes, that it will be necessary, to prevent a deficit in the finances of the Commonwealth, to reduce the appropriations for fiscal year 2007-2008 to the

appropriation units of the Government of the Commonwealth from the amounts authorized and appropriated, to the amounts hereinafter set forth; provided, however, that in the event that the actual General Fund revenue receipts for fiscal year 2007-2008 exceed the revised estimates provided by the Consensus Forecasting Group, increases may be authorized to be made in these amounts within the maximum limits authorized by the appropriations made by the General Assembly for such fiscal year, and, having so found, it is hereby ordered and directed by the Office of State Budget Director that the appropriations to the appropriation units of the Government of the Commonwealth be reduced to, and allotments adjusted on the basis of the amounts hereinafter listed, to wit:

GENERAL FUND

<u>Appropriation Unit</u>	<u>FY 2007-2008 General Fund Current Appropriations</u>	<u>FY 2007-2008 General Fund Revised Appropriations</u>	<u>FY 2007-2008 General Fund Appropriation Reductions</u>
General Government			
Office of the Governor	9,848,900	9,622,300	(226,600)
Office of State Budget Director	4,442,300	4,309,000	(133,300)
State Planning Fund	250,000	250,000	
Energy Policy	7,344,400	7,124,100	(220,300)
Homeland Security	360,100	349,300	(10,800)
Veterans' Affairs	17,513,800	17,513,800	
Governor's Office of Agricultural Policy	4,540,703	4,540,703	
Kentucky Infrastructure Authority	25,744,100	25,681,500	(62,600)
Military Affairs	17,148,000	16,926,200	(221,800)
Commission on Human Rights	1,890,900	1,890,900	
Commission on Women	269,200	261,200	(8,000)
Governor's Office for Local Development	41,116,536	40,736,736	(379,800)
Local Government Economic Assistance Fund	51,443,100	51,443,100	
Local Government Economic Development Fund	50,453,700	50,453,700	
Area Development Fund	809,700	785,400	(24,300)
Executive Branch Ethics Commission	448,500	448,500	
Secretary of State	2,329,500	2,329,500	
Board of Elections	4,883,700	4,770,900	(112,800)
Registry of Election Finance	1,578,500	1,531,100	(47,400)
Attorney General	14,272,800	14,272,800	
Commonwealth's Attorneys	33,147,800	33,147,800	
County Attorneys	28,453,200	28,153,200	(300,000)
Treasury	2,235,100	2,190,400	(44,700)
Agriculture	22,533,430	22,183,430	(350,000)
Auditor of Public Accounts	5,919,900	5,844,900	(75,000)
Kentucky River Authority	1,981,700	1,972,700	(9,000)
School Facilities Construction Commission	117,974,500	117,974,500	
Teachers' Retirement System	183,323,100	183,323,100	
Judgments	735,082	735,082	
Appropriations Not Otherwise Classified	11,667,500	11,667,500	
Total-General Government	664,659,751	662,433,351	(2,226,400)
Commerce Cabinet			
Secretary	3,132,800	3,063,800	(69,000)
Artisans Center	191,100	191,100	
Tourism	7,247,600	5,077,700	(2,169,900)
Parks	32,310,100	32,310,100	
Horse Park Commission	5,094,700	5,044,700	(50,000)
State Fair Board	553,800	403,800	(150,000)
Arts Council	4,194,600	4,128,600	(66,000)
Historical Society	8,106,700	7,915,700	(191,000)
Kentucky Center for the Arts	1,264,400	1,264,400	
Heritage Council	908,100	908,100	
Total-Commerce Cabinet	63,003,900	60,308,000	(2,695,900)

GENERAL FUND

<u>Appropriation Unit</u>	<u>FY 2007-2008 General Fund Current Appropriations</u>	<u>FY 2007-2008 General Fund Revised Appropriations</u>	<u>FY 2007-2008 General Fund Appropriation Reductions</u>
Economic Development Cabinet			
Secretary	21,568,400	20,247,100	(1,321,300)
New Business Development	1,383,900	1,383,900	
Financial Incentives	29,725,156	29,725,156	
Existing Business Development	3,521,600	3,471,600	(50,000)
Total-Economic Development Cabinet	56,199,056	54,827,756	(1,371,300)
Department of Education			
Support Education Excellence in Kentucky (SEEK)	2,930,323,610	2,930,323,610	
Executive Policy and Management	679,800	679,800	
Operations and Support Services	55,421,800	55,421,800	
Learning and Results Services	810,929,320	799,374,620	(11,554,700)
Total-Department of Education	3,797,354,530	3,785,799,830	(11,554,700)
Education Cabinet			
General Administration and Program Support	2,467,900	2,443,900	(24,000)
Deaf and Hard of Hearing	938,000	930,000	(8,000)
Kentucky Educational Television	16,914,000	16,608,300	(305,700)
Libraries and Archives	7,471,500	7,351,500	(120,000)
Libraries and Archives-Direct Local Aid	7,306,400	7,256,400	(50,000)
Office for the Blind	1,369,200	1,328,100	(41,100)
Career and Technical Education	30,342,450	30,342,450	
Vocational Rehabilitation	13,190,400	12,794,700	(395,700)
Education Professional Standards Board	10,350,500	10,350,500	
Total-Education Cabinet	90,350,350	89,405,850	(944,500)
Environmental and Public Protection Cabinet			
General Administration and Program Support	8,628,100	8,583,000	(45,100)
Environmental Protection	26,471,100	26,255,800	(215,300)
Natural Resources	16,727,800	16,601,400	(126,400)
Mine Reclamation and Enforcement	10,933,000	10,506,100	(426,900)
Environmental Quality Commission	11,400	0	(11,400)
Kentucky Nature Preserves Commission	1,181,100	1,181,100	
Petroleum Storage Tank Environmental Assurance Fund	3,479,000	3,479,000	
Board of Claims/Crime Victims' Compensation Board	867,000	841,000	(26,000)
Horse Racing Authority	519,800	504,200	(15,600)
Housing, Buildings and Construction	2,719,000	2,637,400	(81,600)
Insurance	13,500,000	13,095,000	(405,000)
Mine Safety Review Commission	202,400	184,200	(18,200)
Mine Safety and Licensing	10,335,100	10,335,100	
Public Service Commission	14,161,172	11,506,172	(2,655,000)
Tax Appeals	469,800	439,800	(30,000)
Alcoholic Beverage Control	1,130,600	1,096,700	(33,900)
Labor	2,484,500	2,410,000	(74,500)
Total-Environmental & Public Protection Cabinet	113,820,872	109,655,972	(4,164,900)

GENERAL FUND

<u>Appropriation Unit</u>	<u>FY 2007-2008 General Fund Current Appropriations</u>	<u>FY 2007-2008 General Fund Revised Appropriations</u>	<u>FY 2007-2008 General Fund Appropriation Reductions</u>
Finance and Administration Cabinet			
General Administration	10,572,800	10,572,800	
Controller	10,997,000	10,245,000	(752,000)
Debt Service	327,397,800	327,397,800	
Facilities and Support Services	7,610,600	7,461,600	(149,000)
County Costs	20,481,500	20,481,500	
Revenue	73,943,200	73,943,200	
Property Valuation Administrators	34,330,400	33,170,900	(1,159,500)
Total-Finance and Administration Cabinet	485,333,300	483,272,800	(2,060,500)
Health and Family Services Cabinet			
General Administration and Program Support	36,792,479	35,708,079	(1,084,400)
Commission for Children with Special Health Care Needs	6,001,100	5,864,300	(136,800)
Medicaid Administration	36,488,600	36,488,600	
Medicaid Benefits	1,041,097,000	1,041,097,000	
Mental Health and Mental Retardation Services	195,271,700	195,271,700	
Public Health	72,701,500	71,190,400	(1,511,100)
Health Policy	637,100	618,000	(19,100)
Human Support Services	64,412,300	64,412,300	
Aging and Independent Living Services	32,965,900	32,965,900	
Ombudsman	3,577,800	3,577,800	
Community Based Services	344,243,200	344,243,200	
Total-Health and Family Services Cabinet	1,834,188,679	1,831,437,279	(2,751,400)
Justice and Public Safety Cabinet			
Justice Administration	14,043,000	13,902,500	(140,500)
Juvenile Justice	86,941,200	86,941,200	
State Police	81,001,900	81,001,900	
Corrections Management	7,205,700	7,205,700	
Adult Correctional Institutions	243,202,600	243,202,600	
Corrections-Community Services and Local Facilities	130,883,400	130,883,400	
Local Jail Support	16,441,700	15,954,600	(487,100)
Vehicle Enforcement	48,000	46,600	(1,400)
Public Advocacy	32,166,200	32,166,200	
Total-Justice and Public Safety Cabinet	611,933,700	611,304,700	(629,000)
Personnel Cabinet			
General Operations	1,080,400	424,400	(656,000)
State Group Health Insurance Fund	2,476,000	2,476,000	
State Salary and Compensation Fund	6,782,400	5,109,584	(1,672,816)
Total-Personnel Cabinet	10,338,800	8,009,984	(2,328,816)

GENERAL FUND	FY 2007-2008 General Fund Current Appropriations	FY 2007-2008 General Fund Revised Appropriations	FY 2007-2008 General Fund Appropriation Reductions
Appropriation Unit			
Postsecondary Education			
Council on Postsecondary Education	95,434,324	93,446,124	(1,988,200)
Eastern Kentucky University	80,230,200	77,837,400	(2,392,800)
Kentucky State University	28,349,000	27,525,700	(823,300)
Morehead State University	48,697,600	47,251,500	(1,446,100)
Murray State University	56,068,700	54,386,600	(1,682,100)
Northern Kentucky University	55,330,000	53,677,000	(1,653,000)
University of Kentucky	337,016,500	326,964,400	(10,052,100)
University of Louisville	191,346,100	186,288,900	(5,057,200)
Western Kentucky University	86,396,200	83,842,700	(2,553,500)
Kentucky Community and Technical College System	228,704,900	221,843,800	(6,861,100)
Kentucky Higher Education Assistance Authority	175,050,443	175,050,443	
Total-Postsecondary Education	1,382,623,967	1,348,114,567	(34,509,400)
Transportation Cabinet			
Aviation	865,700	840,100	(25,600)
Public Transportation	8,559,575	8,559,575	
Total-Transportation Cabinet	9,425,275	9,399,675	(25,600)
Statewide			
Capital Projects	11,103,000	11,103,000	
Budget Reserve Trust Fund	231,489,736	231,489,736	
Total-Statewide	242,592,736	242,592,736	0
GRAND TOTAL-EXECUTIVE BRANCH	9,361,824,916	9,296,562,500	(65,262,416)
Legislative Branch	57,287,141		
Judicial Branch	283,359,627		
GRAND TOTAL	9,702,471,684		

RESTRICTED FUNDS			
<u>Appropriation Unit</u>	<u>FY 2007-2008 Restricted Funds Current Appropriations</u>	<u>FY 2007-2008 Restricted Funds Revised Appropriations</u>	<u>FY 2007-2008 Restricted Funds Appropriation Reductions</u>
General Government			
Office of the Governor	388,200	376,600	(11,600)
Kentucky Infrastructure Authority	1,752,600	1,700,000	(52,600)
Secretary of State	900,000	803,000	(97,000)
Attorney General	9,809,100	9,609,100	(200,000)
Treasury	753,100	738,000	(15,100)
Commerce Cabinet			
Secretary	1,062,900	1,052,900	(10,000)
Tourism	9,611,000	9,006,400	(604,600)
Historical Society	952,700	928,100	(24,600)
Economic Development Cabinet			
Secretary	1,340,000	1,211,300	(128,700)
Department of Education			
Operations and Support Services	7,210,100	7,055,200	(154,900)
Learning and Results Services	2,621,200	2,481,200	(140,000)
Education Cabinet			
General Administration and Program Support	7,723,500	7,441,800	(281,700)
Deaf and Hard of Hearing	590,000	552,200	(37,800)
Kentucky Educational Television	1,850,900	1,650,900	(200,000)
Libraries and Archives	1,460,900	1,444,900	(16,000)
Libraries and Archives-Direct Local Aid	1,009,000	677,800	(331,200)
Employment and Training	5,200,000	5,044,000	(156,000)
Environmental and Public Protection Cabinet			
General Administration and Program Support	7,132,900	6,923,600	(209,300)
Environmental Protection	40,780,200	40,195,500	(584,700)
Natural Resources	6,442,800	6,314,700	(128,100)
Mine Reclamation and Enforcement	3,606,000	3,492,600	(113,400)
Environmental Quality Commission	263,800	255,900	(7,900)
Boxing and Wrestling Authority	100,000	87,900	(12,100)
Petroleum Storage Tank Environmental Assurance Fund	29,277,700	27,935,400	(1,342,300)
Board of Claims/Crime Victims' Compensation Board	1,997,400	1,946,600	(50,800)
Health and Family Services Cabinet			
General Administration and Program Support	11,417,500	11,093,000	(324,500)
Commission for Children with Special Health Care Needs	6,773,400	6,595,800	(177,600)
Public Health	84,799,000	81,599,000	(3,200,000)
Health Policy	1,457,400	1,413,700	(43,700)
Justice and Public Safety Cabinet			
Justice Administration	5,996,700	5,816,800	(179,900)
Vehicle Enforcement	1,250,000	1,212,500	(37,500)
GRAND TOTAL-EXECUTIVE BRANCH			<u>(8,873,600)</u>

NOW, THEREFORE, in addition to the actions heretofore enumerated there are other transfer actions that must be taken by the State Budget Director with the approval of the Governor of the Commonwealth for fiscal year 2007-2008, to wit:

Transfers to the General Fund

<u>Appropriation Unit</u>	<u>Account Number</u>	<u>FY 2007-2008</u>
General Government		
Office of the Governor	1320-070	11,600
Governor's Office of Agricultural Policy	130F-089	500,000
Kentucky Infrastructure Authority	1385-082	1,052,600
Governor's Office for Local Development	138A-112	586,800
Executive Branch Ethics Commission	130P-354	10,000
Secretary of State	130E-120	861,000
	130D-120	<u>36,000</u>
		897,000
Board of Elections	130K-185	150,000
Registry of Election Finance	130C-066	15,000
Attorney General	140B-040	600,000
	2402-040	<u>200,000</u>
		800,000
County Attorneys	136E-030	17,500
Treasury	130J-125	15,100
Agriculture	1303-035	380,200
Personnel Board	130N-268	65,000
Total-General Government		<u>4,500,800</u>
Commerce Cabinet		
Secretary	137C-850	10,000
Tourism	1395-860	40,600
	1396-860	808,000
	13GA-860	<u>206,000</u>
		1,054,600
Horse Park Commission	2900-665	40,000
Historical Society	134U-550	87,900
	134V-550	16,400
	134W-550	108,200
	134X-550	<u>62,100</u>
		274,600
Total-Commerce Cabinet		<u>1,379,200</u>

Transfers to the General Fund

<u>Appropriation Unit</u>	<u>Account Number</u>	<u>FY 2007-2008</u>
Economic Development Cabinet		
Secretary	1373-635	65,200
	1377-635	<u>2,663,500</u>
		2,728,700
New Business Development	136Y-637	700,000
Total-Economic Development Cabinet		<u>3,428,700</u>
Department of Education		
Executive Policy and Management	14BJ-540	1,000,000
Operations and Support Services	13EK-540	44,900
	13ET-540	<u>110,000</u>
		154,900
Learning and Results Services	13EZ-540	140,000
Total-Department of Education		<u>1,294,900</u>
Education Cabinet		
General Administration and Program Support	13CJ-530	281,700
Deaf and Hard of Hearing	13CM-340	37,800
Kentucky Educational Television	13D7-545	350,000
Environmental Education Council	13CK-407	84,000
Libraries and Archives-General Operations	1353-555	14,500
	1352-555	<u>1,500</u>
		16,000
Libraries and Archives-Direct Local Aid	13GN-555	330,000
	1355-555	<u>1,200</u>
		331,200
Employment and Training	14B5-531	756,000
Total-Education Cabinet		<u>1,856,700</u>
Environmental and Public Protection Cabinet		
General Administration and Program Support	139N-569	534,300
	139P-569	40,000
	139R-569	<u>15,000</u>
		589,300

Transfers to the General Fund

<u>Appropriation Unit</u>	<u>Account Number</u>	<u>FY 2007-2008</u>
Environmental Protection	139U-590	176,000
	13AA-590	100,000
	13AD-590	18,300
	13AF-590	21,100
	13AG-590	18,000
	13AH-590	37,600
	13A9-590	500,000
	13A7-590	313,700
	13A1-590	800,000
	<u>1,984,700</u>	
Natural Resources	13AL-595	218,400
	13AF-595	10,400
	13AU-595	579,300
	13AP-595	20,000
	<u>828,100</u>	
Mine Reclamation and Enforcement	13B2-595	623,400
	13B1-595	303,600
	13B4-595	56,400
	<u>983,400</u>	
Environmental Quality Commission	1398-350	7,900
Public Protection Commissioner	13C2-695	210,500
Boxing and Wrestling Authority	13B8-695	12,100
Petroleum Storage Tank Environmental Assurance Fund	2406-695	1,342,300
Charitable Gaming	13BK-695	700,000
Board of Claims/Crime Victims' Compensation	13C9-695	50,800
Financial Institutions	13C1-695	1,894,400
	13C0-695	98,300
	13BY-695	55,100
	13BZ-695	1,232,500
	<u>3,280,300</u>	

Transfers to the General Fund

<u>Appropriation Unit</u>	<u>Account Number</u>	<u>FY 2007-2008</u>		
Housing, Buildings & Construction	13C5-695	900,000		
	13C6-695	700,000		
	13C7-695	850,000		
	13C8-695	390,000		
	13GX-695	100,000		
	13H1-695	55,000		
	13FL-695	400,000		
	13FM-695	300,000		
	13FR-695	2,600,100		
	13FS-695	150,000		
	13FT-695	100		
13FP-695	50,000			
	<hr/>	6,495,200		
Insurance	13BL-695	256,000		
	13BN-695	19,800		
	13BP-695	393,800		
	13BQ-695	6,852,000		
	13BR-695	2,400		
	13BS-695	200		
	13BT-695	4,600		
	13BU-695	2,800		
	13BM-695	6,850,000		
	<hr/>	14,381,600		
Public Service Commission	13BV-695	25,500		
Alcoholic Beverage Control	13BJ-695	123,900		
Total-Environmental & Public Protection Cabinet		<hr/>	31,015,600	
Finance and Administration Cabinet				
General Administration	6365-750	200,000		
	132Q-750	26,700		
		<hr/>	226,700	
Controller	132P-758	76,400		
Total-Finance and Administration Cabinet			<hr/>	303,100
Health and Family Services Cabinet				
General Administration and Program Support	138C-721	324,500		
	14CG-721	100,000		
		<hr/>	424,500	
Commission for Children with Special Health Care Needs	1394-767	177,600		

Transfers to the General Fund

<u>Appropriation Unit</u>	<u>Account Number</u>	<u>FY 2007-2008</u>
Public Health	138G-728	1,200,000
	13GP-728	<u>2,000,000</u>
		3,200,000
Health Policy	138E-724	43,700
Human Support Services	14CN-730	50,000
Community Based Services	635U-736	750,000
Total-Health and Family Services Cabinet		<u>4,645,800</u>
Justice and Public Safety Cabinet		
Justice Administration	13CT-500	149,800
	13CX-500	20,800
	13CY-500	50,000
	13CV-500	<u>109,300</u>
		329,900
Vehicle Enforcement	13DH-502	37,500
Total-Justice and Public Safety Cabinet		<u>367,400</u>
Personnel Cabinet		
General Operations	13CF-793	956,000
Total-Personnel Cabinet		<u>956,000</u>
Postsecondary Education		
Council on Postsecondary Education	634Q-415	982,000
	633W-415	218,000
	136H-415	181,300
	136G-415	40,000
	136S-415	<u>28,700</u>
Total-Postsecondary Education		<u>1,450,000</u>
GRAND TOTAL-EXECUTIVE BRANCH		<u>51,198,200</u>

FY 2007-2008 General Fund Budget Shortfall

Budget Shortfall:

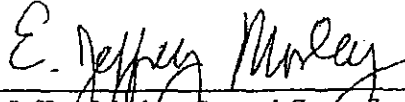
	<u>Amount</u>
Revenue Shortfall	117,666,400
Unrealized Budgeted Fund Transfers	<u>9,000,000</u>
Less Resources than Budgeted	126,666,400
Authorized but Unbudgeted Expenses	50,200,000
FY 2008 Unspecified Budgeted Lapse	39,500,000
2007 Regular Session Appropriations	25,547,300
2007 Special Session Appropriations	12,619,500
Dedicated Severance Tax Appropriations	<u>10,521,200</u>
Higher Authorized Spending	138,388,000
Total Budget Shortfall	<u>265,054,400</u>

The Solution:

FY 2007 Budget Surplus	145,093,784
Estimated Reduction in Contingent Appropriations	1,500,000
Unbudgeted/Excess Funds	42,324,600
Reduced General Fund Appropriations	67,262,416
Reduced Restricted Fund Appropriations	<u>8,873,600</u>
Total Identified solutions	265,054,400

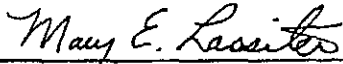
General Fund Budget Reduction Order 08-01

APPROVED AS TO FORM AND LEGALITY:

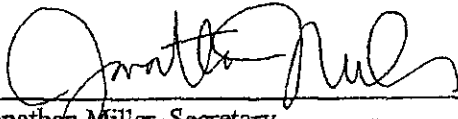


E. Jeffrey Mosley, General Counsel
Finance and Administration Cabinet

DONE AT FRANKFORT, KENTUCKY THIS 4th DAY OF JANUARY, 2008

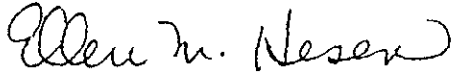


Mary E. Lassiter, State Budget Director
Office of State Budget Director



Jonathan Miller, Secretary
Finance and Administration Cabinet

EXAMINED:



Ellen M. Heslen, General Counsel
Office of the Governor

APPROVED:

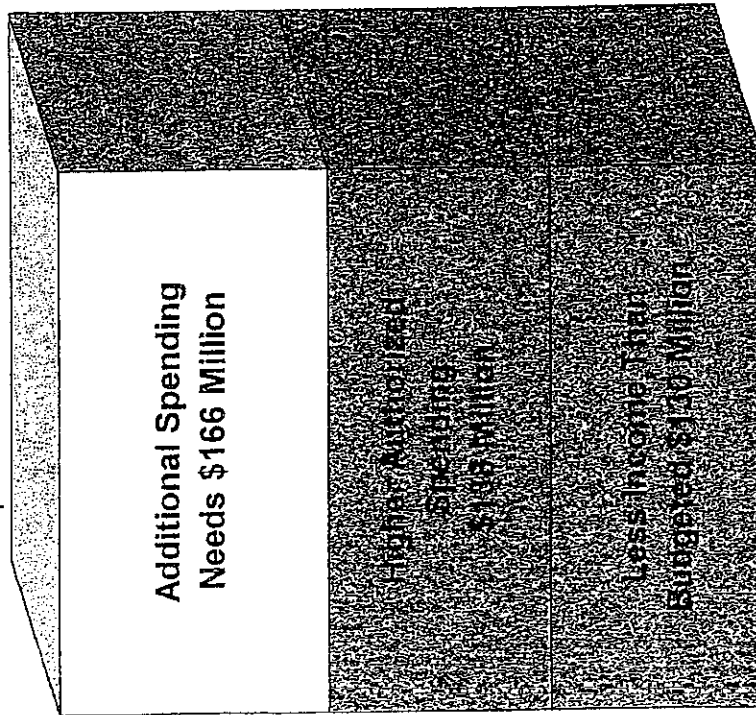


Steven L. Beshear
Governor

FY 08 Budget Shortfall

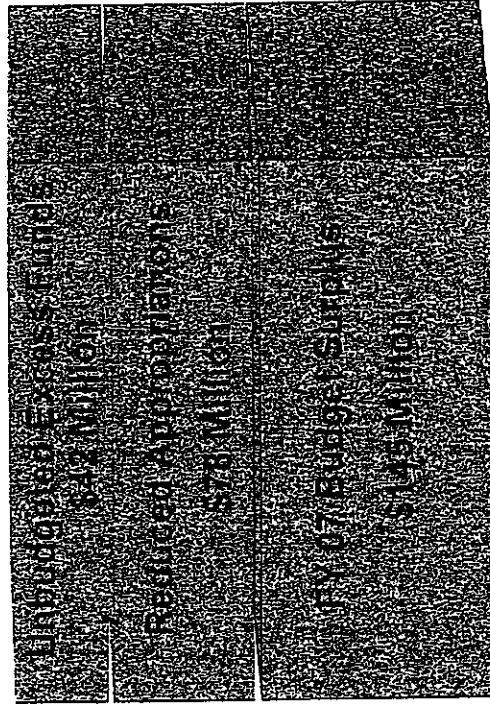
“The Problem”

Total Budget Shortfall
\$434 Million



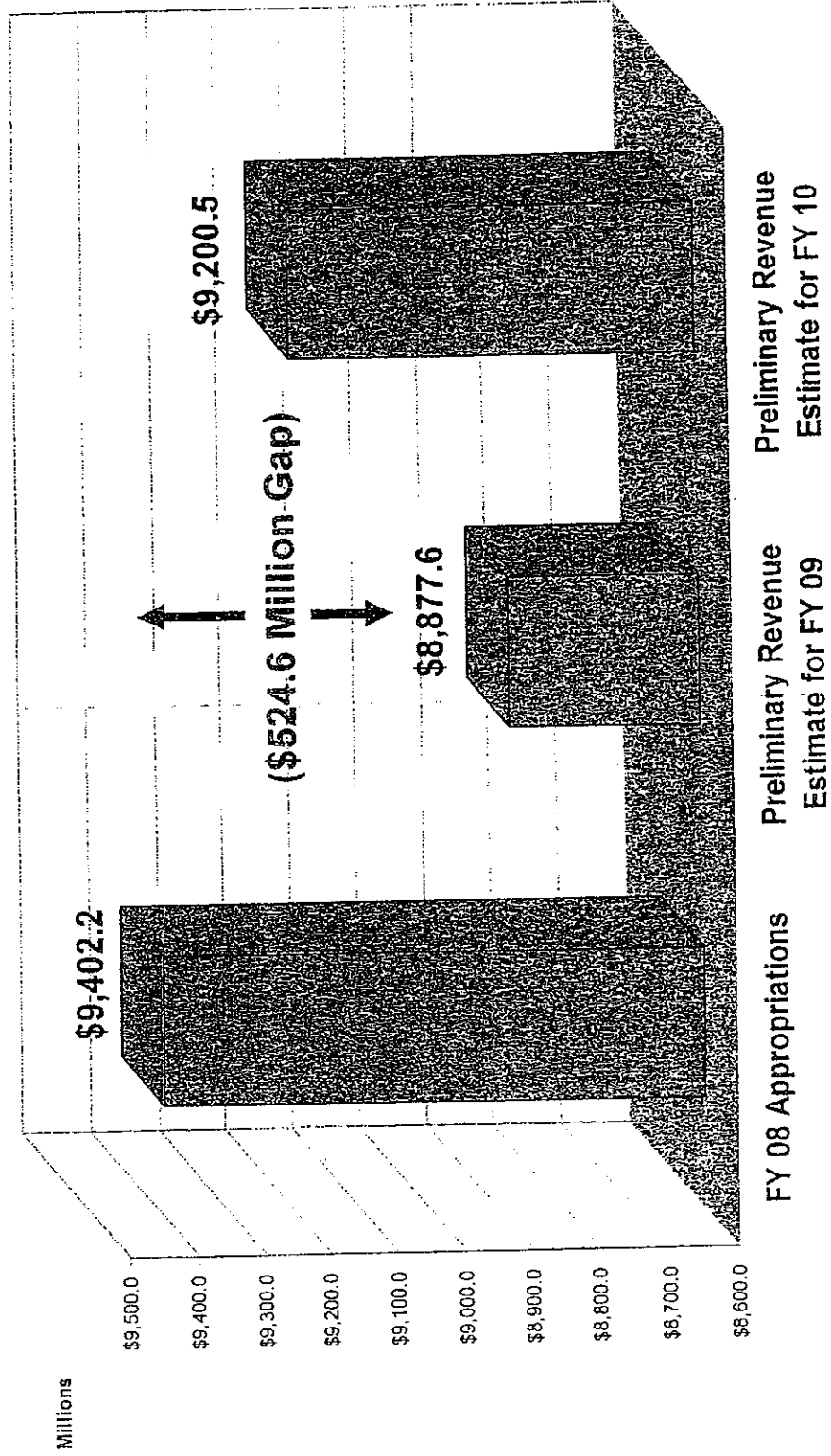
“The Solution”

Balance to be Addressed in Budget Recommendation



FY 07 Budget Surplus
\$125 Million

Existing Spending Levels Are not Sustainable





ENTERED

FEB 01 2011

FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION 1
Civil Action No. 08-CI-1208

LOUISVILLE SOCCER ALLIANCE, INC., et al

PLAINTIFFS

v.

OPINION AND ORDER

STEVEN L. BESHEAR, GOVERNOR, et al

DEFENDANTS

This action is before the Court on cross-motions for summary judgment. The plaintiffs in this action are the Louisville Soccer Alliance, Inc., the Catholic Conference of Kentucky, and various other individuals and groups who are affiliated with these organizations, all of whom are affiliated with charitable gaming programs that are licensed and regulated under KRS Chapter 238 by the Department of Charitable Gaming of the Commonwealth of Kentucky. They seek judicial relief from the provisions of the state budget enacted by the 2008 legislature, and implemented by the Governor. The plaintiffs complain that the Department has unlawfully increased the license fees for charitable gaming operations as a direct result of the legislature's unwarranted suspension of KRS 238.570, which creates a restricted fund dedicated to the regulation of charitable gaming. The legislature transferred funds that were statutorily dedicated to the regulation of charitable gaming, creating a need to increase the assessment on licensees.

The Plaintiffs have named the Governor, the State Budget Director, the State Treasurer, the Secretary of Finance and Administration, and the Secretary of the Public Protection Cabinet as defendants. They seek declaratory and injunctive relief, requesting the Court to declare that the fund transfers violate the Kentucky Constitution. The Plaintiffs further seek refunds to licensees who were allegedly required to pay increased

fees by virtue of the allegedly unconstitutional fund transfers. For the reasons stated below, the summary judgment motion of the Plaintiffs is GRANTED and the cross-motion of the Defendants is DENIED.

Factual and Legal Background

The parties here have entered into an Agreed Order with a stipulation as to the underlying fee increase on charitable gaming licensees that gave rise to this action. *See Agreed Order, 9/9/08.* This stipulation notes agreement of the parties that the Department of Charitable Gaming “effective July 1, 2008, has increased the fee authorized pursuant to KRS 238.570 from 0.53% of gross receipts to 0.60% of gross receipts.” The parties further agreed that payment of the increased fee will not operate as a waiver of the Plaintiffs’ claims, that the Defendants will refund the increased fees if the increase is held to be illegal, “after the exhaustion of all appeals.”

After the passage of the constitutional amendment to Ky. Const. Sec. 226 allowing charitable gaming to be licensed and regulated,¹ the legislature enacted the Charitable Gaming Act in 1994, providing a comprehensive regulatory program for charitable gaming in the Commonwealth.² The legislation provided for state licensing and regulation of all charitable gaming. Most significantly for purposes of this case, the law established a fee to be levied on all licensed charitable gaming operations that would fully fund the state oversight and regulation of charitable gaming, so as to avoid any burden on the taxpayers or drain on general fund dollars. The statutory rate was set at 0.53% of gross receipts under KRS 238.570(1), and all funds generated were required to be deposited in a restricted account into which all fees and fines imposed on licensees

¹ The charitable gaming amendment was proposed by 1992 Ky. Acts., c. 113, sec. 1, and was ratified by vote of the people on November 3, 1992.

² 1994 Ky. Acts, ch. 66.

“shall be deposited.” The legislation further provides that “[f]und amounts attributable to the fee levied in subsection (1) of this section that are not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.” KRS 238.570(2). Finally, the legislation provided that the fee can be adjusted “no later than July 31 of each odd-numbered year.”

The funding of the Department through this fee on licensees was challenged shortly after the enactment of the legislation, on the grounds that such a fee constituted an illegal tax on public charities in violation of Sec. 170 of the Kentucky Constitution. The Kentucky Court of Appeals upheld the constitutionality of the license fee, in part, based on its finding that “[t]he fee is a regulatory fee and not a tax.” Commonwealth v. Louisville Atlantis Community/Adapt, Inc., 971 S.W.2d 810, 815 (Ky. App. 1997). The Court of Appeals was extremely explicit about the legal basis for its holding that this license fee is not a tax subject to Ky. Const. Sec. 170, noting that “[a] tax is universally defined as an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular service. Long Run Baptist Ass’n v. Sewer District, 775 S.W.2d 520, 522 (Ky. App. 1989).” The Court further explained:

The funds generated from the fee imposed pursuant to KRS 238.570(1) are kept in a separate account and are expended by the Charitable Gaming Division only in the administration and enforcement of the provisions of the Charitable Gaming Act.

971 S.W.2d at 815.

Here, the Plaintiffs’ allege that the license fees have been converted to a tax by virtue of the General Assembly’s unlawful fund transfer of the restricted account into the general fund of revenue used to support the general obligations of all state government. To the extent the fee generates more money than necessary to fund the Department’s

licensing and regulation of charitable gaming, it is no longer “a charge for a particular service” but rather “an enforced contribution to provide for the support of government.”³

Conclusions of Law:

This dispute is part of an on-going debate about the constitutional requirements that the General Assembly must follow in enacting a state budget. The Kentucky Supreme Court, in Commonwealth, ex rel. Armstrong v. Collins, 709 S.W.2d 437 (Ky. 1986) upheld the power of the General Assembly to suspend statutes in the state budget. The challenge to the state budget in that case was limited to issues arising under Section 51 of the Kentucky Constitution, which provides that “[n]o law enacted by the General Assembly shall relate to more than one subject.” Section 51 also provides that amendments to statutes must be “reenacted and published at length.”³ The Court in Armstrong upheld a number of fund transfers that are similar to the one challenged here, but the Court also invalidated fund transfers that involved funds, such as funds of the Kentucky Retirement System, in which private funds are co-mingled with state dollars. The Court also noted that such fund transfers were specifically authorized by statute in KRS 48.315. *Id.* at 446.

Although the Court in Armstrong was very explicit that its ruling applied only to “temporary, determinable suspensions of the statutes relating to the appropriations of public funds”,⁴ such statutory suspensions have now become a way of life. The 2008 budget bill at issue in this case,⁵ contains literally hundreds of suspensions of statutes. Many of these suspensions of statutes, especially those involving the transfer of funds

³ The requirement for re-publication at length is “to prevent deceitful practices” by which substantive statutory law is subverted or undermined without disclosure to the legislators who are voting on the bill. See Armstrong, 709 S.W.2d at 444; Haydon Bridge v. Beshear, 404 S.W.3d 682, 694 (Ky. 2010).

⁴ 709 S.W.2d at 446.

⁵ 2008 Ky. Acts, c. 127

from restricted accounts, are now re-enacted in each biennial budget, to the point that many of the statutes codified in the Kentucky Revised Statutes could fairly be characterized as having been effectively repealed by virtue of their consistent and repeated suspension in each state budget over the last decade.⁶

The Court in Armstrong placed great reliance on Senate Bill 294, the General Assembly's own enactment, which was being challenged, which provided that the power to suspend the operation of a statute was limited to cases of financial emergency. As the Court held, "[n]o matter how one slices it, the General Assembly is permitted through the reduction or elimination of an appropriation, to effectively eliminate the efficacy of existing statutes, subject only to the finding of a financial emergency and further subject to the time limitation of the budgetary period." 709 S.W.2d at 441.

Senate Bill 294, the statutory authority for suspending statutes that was at issue in Armstrong, contained a self-imposed requirement that the legislature exercise this power only when "the general assembly finds that the financial condition of state government requires such suspension or modification." *Id.* at 440. Although the wholesale suspension of statutes has continued unabated, and indeed has become routine in each new budget, the General Assembly has long since repealed the requirement of Armstrong that such suspensions be predicated upon a specific finding of "financial emergency" by the General Assembly.⁷

⁶ See, e.g., KRS 224.60-145, enacting a "fee" of \$0.014 per gallon of gasoline sold, which is by law required to be deposited into the environmental clean-up fund established to correct environmental damages caused by leaking underground gasoline storage tanks. This fee generates over \$60 million each biennium, but over the last decade, it has been routinely transferred to meet general obligations of government, leaving only enough funding to pay the debt service on a \$25,000,000 bond issue, the proceeds of which are used to fund these environmental obligations.

⁷ See 1990 Ky. Acts, c. 507, Sec. 14 repealing the "financial emergency" requirement for suspension of statutes in the budget.

While there is no doubt that the General Assembly may suspend a statute under Section 15 of the Kentucky Constitution, there is considerable doubt about the constitutional validity of the legislative practice of routinely and repeatedly suspending statutes in the budget, to the point that many statutes remain law in name only.⁸ Moreover, the General Assembly's use of the power to suspend statutes to effect fund transfers from restricted funds to the general fund, has become a virtual necessity to balance the state budget.⁹ Accordingly, any "restricted" fund under state control has become, for all practical purposes, a tax which is deposited into the state's general fund at the sole and unlimited discretion of the General Assembly, notwithstanding the constitutional restrictions of Section 180 of the Kentucky Constitution which provide that "no tax levied and collected for one purpose shall ever be devoted to another purpose."

Section 51 of the Kentucky Constitution provides as follows:

No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title, and no law shall be revised, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended or conferred, shall be reenacted and published at length.

⁸ See, e.g., KRS 224.43-320, which requires "a full-time inspector" to be assigned to "each municipal solid waste landfill operating in Kentucky." This requirement was enacted into law, effective July 1, 1992. (1991 1st Extraordinary Session, Ky. Acts., c. 12, Sec. 41). It has been "suspended" for each and every budget cycle since its enactment, most recently in 2010 Ky. Acts (Ex. Sess.), c. 1 (E)(2)(1), p. 29, and for the budget at issue in this case, see 2008 Ky. Acts., c. 188 at 1413, 2008 Ky. Acts, c. 127, Pt. 1, F, 2, (1) at 511. It is difficult to discern any meaningful way in which this statute remains law.

⁹ It is apparent that there is now what is commonly referred to as a "structural imbalance" in the state budget that runs into hundreds of millions of dollars. One major cause of this "structural imbalance", or difference between state revenues and on-going obligations of state government, may be found in the Capital Projects section of each budget enacted over the last decade, which includes a long list of projects funded by state tax dollars for purely local projects in violation of the principles set forth in City of Shelbyville v. Commonwealth, Natural Resources and Environmental Protection Cabinet, 709 S.W.2d 426 (Ky. App. 1986), which held that when such a state expenditure is "primarily for the benefit of the residents" of a local community, then "the appropriation violates Sec. 181." *Id.* at 430. See e.g., 2010 Ky. Acts (Ex. Sess.), c. 1, Capital Projects, pp. 105-136, listing projects such as Little League football equipment, the purchase of a city hall, city beautification, rescue equipment, public works trucks, volunteer fire departments, swimming pools, and HVAC equipment for local governments, as capital projects funded with state dollars.

The Kentucky Supreme Court has said this provision is to be liberally construed, resolving doubt in favor of validity. Yeoman v. Commonwealth, 983 S.W.2d 459, 476 (Ky. 1998).

This construction requires that a statute be upheld if it provides a “clue” about the contents. Id. However, the Court has also stated the title must be read as a whole to provide limits on what can be included in a single bill. McGuffey v. Hall, 557 S.W.2d 401 (Ky. 1977).

The Kentucky Supreme Court addressed this issue in Grayson County Bd. of Educ. v. Casey, 157 S.W.3d 201 (Ky. 2005), regarding a portion of the budget bill that authorized each local board of education to allocate funds for indemnity insurance covering the negligence of school bus drivers. The Court found this provision was not sufficiently related to the budget bill’s title: “AN ACT relating to appropriations providing financing for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state supported activities.” The Court found the provision did not appropriate any state funds or require the state to pay any judgment; thus, the provision was in violation of Section 51 of the Kentucky Constitution.

It has been long established that the General Assembly may modify or suspend an existing statute as long as the subject of the modification is related to appropriations. See Commonwealth, ex rel. v. Meredith v. Johnson, 166 S.W.2d 409, 411 (Ky. 1942). This rule was reaffirmed in Commonwealth, ex rel. Armstrong v. Collins, 709 S.W.2d 437, 444-45 (Ky. 1986), but as noted above, the Supreme Court based its ruling in Armstrong on a finding that the General Assembly had limited its power to suspend

statutes in the budget bill to financial emergencies. It now appears that the legislature has extended its authority under Commonwealth ex rel. Armstrong v. Collins, *supra* beyond any meaningful limits, ignoring the plain constitutional restrictions of Section 51, by enacting budgets that now routinely suspend up to 150 statutes. See Fletcher v. Commonwealth, 163 S.W.3d 852, 858 (Ky. 2005). Many of these statutory suspensions have no direct relationship to any appropriations.

Since 2005, the Kentucky Supreme Court has cautioned that the power to suspend statutes in the budget is not unlimited. See Grayson v. Board of Education v. Casey, *supra* (2005); Fletcher v. Commonwealth, *supra*; and Haydon Bridge v. Beshear, 304 S.W.3d 682, 695 (Ky. 2010). Yet the enactment of recent budgets with hundreds of statutory suspensions, and a broad restructuring of the obligations of citizens to pay taxes and fees for a wide variety of obligations that were established by statute, has continued unabated, and it is difficult to see how any citizen would have a clue as to the subject matter of these suspensions of statute. If the reasoning of the defendants is accepted, the legislature could merely pass an omnibus bill with the title "an act related to state government" and completely circumvent the requirements of Section 51, which is effectively how the budget bill has been enacted in recent sessions of the General Assembly.

Here, the General Assembly's suspension of the statutory restriction on charitable gaming license fees has resulted in a tax on non-profit entities that are licensed by the state to conduct charitable gaming under Chapter 238 of the Kentucky Revised Statutes, although the statute limiting the fee to the amount necessary to regulate the licensees has never been repealed. The Kentucky Court of Appeals has held that the legislature is free

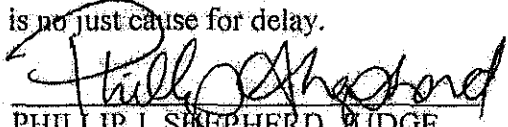
to impose a regulatory fee that reflects the actual costs incurred in state regulation of the entities. Commonwealth v. Louisville Atlantis Community/Adapt, Inc. *supra*. The record in this case is clear that the fee required by the 2008 budget exceeds the actual costs of state regulation. In these circumstances, the legislature, through its suspension of the statute in the budget bill has converted the fee to a tax. To that extent, the challenged portion of the 2008 budget bill violates Sections 51 and 180 of the Kentucky Constitution, which provides that “no tax levied and collected for one purpose shall ever be devoted to another purpose.”

Finally, the Court notes that the General Assembly has enacted KRS 48.315, which identifies a long list of statutes that “the General Assembly may provide in a budget bill for the transfer to the general fund for the purpose of the general fund all or part of the agency funds, special funds or other fund established” by the specific statutes listed. The fees established in the charitable gaming statute, KRS 238.570, are not listed among the many statutes for which the legislature has asserted the power to make fund transfers. The defendants argue that it is unnecessary for the statute to be specifically listed, because the legislature used the term “etc.” at the end of the long list of specific statutes for which the power to make such fund transfers is asserted. The Court finds that KRS 48.315 provides no independent basis for the fund transfers in this case, and the failure of the legislature to list KRS 238.570 among the statutes for which fund transfers is authorized under KRS 48.315 means that the legislature excluded the charitable gaming fee account from the fund transfer statute. “A general rule of statutory construction is that the enumeration of particular things excludes other items which are not specifically mentioned.” Louisville Water Company v. Wells, 664 S.W.2d 525, 527

(Ky. App. 1984). If the defendants' construction of the statute is accepted, there would be no need to list the many specific statutes that are listed in KRS 48.315.

CONCLUSION

For the reasons stated above, the motion for summary judgment of the plaintiffs is GRANTED and the motion for summary judgment of the defendants is DENIED. This is a final and appealable judgment and there is no just cause for delay.


PHILLIP J. SHEPHERD, JUDGE
FRANKLIN CIRCUIT COURT, DIV. 1

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