

Interim Highlights

Agriculture & Agri-business

The Committee discussed a burgeoning program out of the Eastern Panhandle seeking to preserve and protect farmland in that area. The Berkeley County Farmland Protection Board, with support from the Berkeley County Commission and its many private partner land conservation organizations, is working to assist landowners in that area with the land use options available to citizens.

In March 2000, the West Virginia Legislature passed into law the Voluntary Farmland Protection Act. Through this Act, the Legislature declared that agriculture is a unique "life support" industry and that a need exists to assist those agriculture areas which are experiencing the irreversible loss of agricultural land. The Act authorized the creation of county farmland protection boards and county farmland protection programs, and allowed each county to enact an additional tax on the privilege of transferring real estate to be solely used to fund the county's farmland protection program.

The Berkeley County Commission was the first county government in West Virginia to act by creating the Berkeley County Farmland Protection Board (FPB). The FPB consists of a delegation of local farmers, open space advocates and economic development interests. The FPB has created a program whereby landowners can voluntarily donate or be compensated for the placement of a conservation easement to best ensure that the land stays available for agricultural use.

The core of the program is the conservation easement, which is a legally binding restriction recorded in the deed of the property. All conservation easements are perpetual and must be held by at least one "holder."

A conservation easement is a legal agreement a property owner makes to restrict the type and amount of development that may take place on the property. Most landowners are familiar with easements granted for road access by others or to allow public utilities to cross property. Typically these easements are already included on deeds. Conservation easements, on the other hand, are voluntary restrictions enacted by the original landowner and tailored to that landowner's specific needs. Conservation easements typically involve development rights that are permanently "given up" by the landowner on designated portions of the property in order to protect the land.

Landowners have discovered that the use of conservation easements is a powerful and attractive way to protect their land from inappropriate development while retaining private ownership. The land continues to be owned by the original landowner and he/she may live on the land, sell it or leave it to heirs. The easement is recorded with the deed so that all future owners will be bound by the restrictions. Conservation easements that meet federal tax code requirements also may result in such tax advantages as a charitable deduction and estate tax benefits for the landowner. The landowner also benefits from preferential property tax treatment as agricultural use property.

By granting a conservation easement in perpetuity, the owner can be assured that the value of the land will be protected indefinitely, no matter who the future owners are. The Committee has requested to be updated regularly as to the success and progress of this program.

Education Subcommittee A - Public Education

Studying Senate Concurrent Resolution 6 passed during the 2006 Regular Session, members of Education Subcommittee A were presented with a history and recommendations regarding school uniform and dress code policies for public schools.

According to committee staff, student dress codes have been used in the public schools since the early 1990s, primarily to help combat violence and discipline problems in large urban schools. According to the United States Department of Education's Manual on School Uniforms, many large public school systems, including ones in Baltimore, Cincinnati, Dayton, Detroit, Los Angeles, Long Beach, Miami, Memphis, Milwaukee, Nashville, New Orleans, Phoenix, Seattle and St. Louis have schools with either voluntary or mandatory uniform policies, mostly in elementary and middle schools. In 2000, Philadelphia became the first large city to require school uniforms in all grades in the city's 259 public schools.

The staff member added that while no empirical study has been conducted to assess the effectiveness of school uniform policies or dress codes in improving scholastic achievements or educational production, proponents state the advantages of these policies relate to enhanced school safety, higher self-esteem for students and reduced stress on economically distressed families. In addition, proponents

and several newspaper reports claim the average costs of school uniforms to be significantly less than what families pay for retail clothing.

Opponents of school uniform and dress code policies claim that such actions deprive students of fundamental freedoms, including freedom of expression and speech; create shallow solutions to deeper problems regarding learning, economic disparity and school violence; prove no enhancement or increased production in student achievement; and, pose economic hardships for low income families, according to committee staff.

Committee staff provided members with a brief history of statutes and policies developed in West Virginia with regard to school uniforms and dress codes. Enacted in 2002, the Legislature adopted a law that requires the State Board of Education to promulgate a rule allowing county boards to implement a dress code requiring students to wear uniforms, for any certain school or county-wide policy. This rule, State Board Policy 4374, became effective in October of 2002. Kanawha County adopted a school uniform policy and two elementary schools in the county, J.E Robins and Glenwood, have had successful uniform policies in place for the past several years.

During the 2004 Interim Session, members of a Joint Education Subcommittee addressed the issue of school uniforms as requested by the adoption of Senate Concurrent Resolution 100. According to staff, among the recommendations of the subcommittee was for both the Senate and House Education committees to examine the existing statute and policy regarding school uniforms to ensure adequate guidance and implementation of the enacted legislation. During the 2005 Regular Session, House Bill 2977 was reported out for passage by the House Education Committee but failed to reach consensus while under review in the House Judiciary Committee.

Education Subcommittee B - No Child Left Behind

Members of this subcommittee met to discuss the direction the state must go in the future of education in the state.

From its onset, the federal No Child Left Behind Act focused on two main areas, accountability and assessment. But as it has progressed questions have been raised as to how much money Congress is willing to shower down to the states to keep the program going.

A representative for the deputy schools superintendent stated that students need to be taught differently. He stated

that it's about taking students where they need to be in 21st-century education. Otherwise, today's children simply won't be prepared for the ever-changing job markets of the new century, he believes.

A representative of the Department of Education said West Virginia has progressed well under the concept of No Child Left Behind and predicted only this state and Tennessee would see their programs approved without further recommendations.

She described the program as a bi-partisan effort of republicans and democrats alike, and told the Committee the concept is apt to be used for years to come.

Committee members were instructed by the chairmen to go back to their districts, speak with constituents, school teachers, administrators and other affected parties to see how West Virginia can better adapt the program to the school system.

Education Subcommittee C - School Aid Formula

Economists from West Virginia University and Marshall University discussed a School Aid Formula study, which raises various questions, reaches certain conclusions and addresses Senate Bill 570, which was passed by the Senate in the 2006 Regular Session.

They commented that the current Formula is needs based, while many other states have shifted toward performance-based systems. In addition, according to the study, money is allocated under the current Formula to reflect the cost of certain programs; however, there is no way to determine if this money is used for the appropriate purposes or if it achieves desired results. They said these issues raise the question of whether or not West Virginia's system needs a complete revision.

Some of the other questions raised in the study involve allowances for school service personnel, transportation, administrative costs and professional educators. The latter of these includes whether or not teachers' salaries should reflect regional differences in cost of living; if current salary steps and start-up salaries are adequate; and if the definition of "professional educators" should be expanded to include others, such as school nurses and social workers.

Among other determinations, the study concludes that the current School Aid Formula is outdated and unnecessarily complicated; there is little relationship between how funds are allocated and how they are actually spent; and, encourages

poor assessment practices. Senate Bill 570, which relates to fairness and equity in public school financing would, among other provisions, address the under-assessment of property in many counties. The study shows that this results in disproportionate allocations of state aid.

The speakers noted that future steps could include reconsidering Senate Bill 570, which they believe could be a step forward, but not a conclusive solution, and integrating any changes to the Formula with the tax modernization initiative that is to be considered later this year.

Finance Subcommittee A

This Subcommittee continued the discussion surrounding Senate Concurrent Resolution 77, which calls for lawmakers to examine a possible vehicle privilege tax exemption for new residents.

Supporters of this exemption stated that the tax is an unwelcome fee for newcomers who have likely paid a similar tax in other states, and is detrimental to increasing and attracting new citizens and businesses.

However, it has been suggested that adding this exemption could have an adverse effect on the Department of Transportation's revenue. It has been previously noted that the State Road Fund would lose approximately \$4.5 million with this exemption.

Also, assessors representing Berkeley and Wood Counties spoke briefly to discuss local issues that have been raised related to non-compliance with vehicle registration laws, such as a loss of tax base and revenue for counties and municipalities. The committee then was reminded that the charge of the committee is to make a decision on whether to eliminate the vehicle privilege tax and, if so, to come up with a plan for replacing the \$4.5 million generated from the vehicle privilege tax annually for the State Road Fund.

Finance Subcommittee B

A representative from the Tax Commission updated members of Finance Subcommittee B on the U.S. Supreme Court's decision regarding U.S. Steel Mining Company's appeal of the state's process of collecting severance taxes on coal. The court case, which is entitled U.S. Steel Mining Co., et al v. Helton, contests that the way in which West Virginia calculates its severance tax on coal, which occurs after the

coal has been cleaned and loaded into coal carts for transport, violates the United States Constitution's Import/Export Clause. The representative told members of the committee that, in short, West Virginia has won the case because the Supreme Court refused to hear the proceeding.

In addition, the representative briefly updated the committee on the Streamlined Sales and Use Tax Agreement. The representative mentioned that the technology is available to begin collecting the streamlined sales tax, which will be used to gather sales tax from internet and catalogue purchases, and that early estimates project the state could receive upwards of \$20-25 million a year in additional tax revenue.

Finance Subcommittee C

Recapping a 2004 report on the State Road Fund, an economist from West Virginia University told the Subcommittee that major changes have taken place regarding the state's roadways, causing an adverse impact on the Fund.

These include changes in miles driven and gas consumption; a steady decline in new car registration; and, a shift toward alternative fuels. Since the Fund is based on user fees, such as the gasoline tax and registration fees, these factors are resulting in fewer dollars for road maintenance, repair and construction. One of the conclusions in the report reads that if any increases to user fees are to occur, it may be beneficial for them to be phased-in, rather than through a single large increase.

The report notes that West Virginia leads the nation in the percentage of highway miles that are maintained by the state. In addition, the speaker said the state has the largest number of highway miles per 1,000 people in the country, meaning there is more responsibility for roads per person than in any other state.

Forest Management Review Commission

With the Governor's plan to overhaul West Virginia's tax system, the Forest Management Review Commission heard from the Director of West Virginia University's Division of Forestry who provided a forestry tax comparison of West Virginia's neighboring states.

According to the Forestry Director, timber-related taxes include real property or land tax, a yield tax or severance tax and the motor fuel tax. In a comparison of West Virginia to

Kentucky, Maryland and Virginia, the outcome of those taxes added an additional \$5.13 to West Virginia's high of \$21.29 per thousand board feet (MBF) as opposed to the second highest, Maryland at \$16.16. Virginia's MBF was \$10.37; and, of the four states, Kentucky's overall hardwood saw timber tax was the least, at \$8.93.

The WVU Forestry Director indicated there were a number of reasons for West Virginia's timber taxes, including the length of time it takes to grow a hardwood tree, 81 percent of timberland is under private ownership and the price of motor fuel to haul timber after it is harvested adds to the mix, among others.

Government Organization Subcommittee A

According to a representative from the Division of Motor Vehicles (DMV), the number of youths participating in the required All-Terrain Vehicle (ATV) safety training certification program decreased by more than 3,500 participants between August and April of last year. One of the major contributions to this reduction in participation, according to the representative, is the lack of available funding to track down and promote the requirements to eligible participants. In addition, the representative noted that currently there is no state money specifically earmarked for ATV safety.

Government Organization Subcommittee A has been charged with studying ATV safety regulations as requested through the adoption of Senate Concurrent Resolution 80, approved during the 2006 Regular Session. The study will look to expand upon legislation passed in 2004, which provided major safety requirements for ATV riders under the age of 18, including mandated helmet usage and restrictions on where ATVs could be driven.

The representative from the DMV stated that as of the weekend prior to this meeting, 23 riders have been killed in ATV related incidents, and projections estimate this year the state will eclipse last year's record of 40 deaths. Since 2000, West Virginia has seen more than 200 of its citizens die in ATV related accidents, which places West Virginia behind only California and Pennsylvania as having the highest per-capita death rate with regard to ATVs, according to the representative.

While praising the Legislature's vigilance in passing the major safety reforms in 2004 and focusing the effort on younger riders, the representative noted that fewer young riders have died in accidents since the inception of the more stringent requirements. However, the representative stated that the injury rate for children has increased and suggested the state look into the size, weight and power of ATVs for younger riders.

Most youths, according to the representative, are driving machines that weigh more than 500 pounds and may be built to drive at speeds of upwards of 90 miles per hour. He stated that lawmakers should address this issue to help reduce the number of injuries facing younger riders.

Government Organization Subcommittee B

Having been charged with reviewing and studying the need for background checks for professional licensees of various boards, members of Government Organization Subcommittee B were addressed by representatives of the State Police, who briefly discussed and explained the process of granting and conducting background checks.

According to one representative, the State Police recommends the Committee differentiate full background checks from criminal history background checks. The proposed study assigned to the Committee discusses background checks, which are detailed, lengthy and more costly than criminal history background checks, which allows an individual or employer to search arrest/criminal record files maintained by the State Police.

Currently, according to the representative, various groups are required under state law to conduct state criminal history background checks, including teachers, banking employees, child welfare licensees, lottery licensees, private investigators, bail bond enforcers, Alcohol Beverage Control Commission (ABCC) licensees, driver license examiners, industrial hemp licensees, Department of Health and Human Resource (DHHR) child care professionals, Office of Health Facility Licensure and Certification (OHFLAC) applicants and License Practical Nurse (LPN) Nursing Board licensees.

The representative noted that one major hurdle facing the State Police in mandating increasing requests for criminal history background checks is the limitations imposed by the current aging Automated Fingerprint Identification System (AFIS), which is the system that compares submitted fingerprints for identification for both criminal justice and non-criminal justice purposes. While some agencies are able to simply access the State Police system electronically, the host system used by the State Police must be redesigned or replaced before any other electronic contributor, including any law enforcement agency, can be electronically submitted. The representative added that while the West Virginia Division of Personnel is currently working to begin the function of criminal history checks for state employment, the State Police's current system is not designed to accept electronic submissions and is unable to assist the Division of Personnel with this project.

Additionally, the representative noted that the current AFIS system used by the State Police was installed in 1999 and became functional in 2000. Most AFIS systems, according to the representative, are designed to have a five-to-seven year life expectancy before replacement. The representative requested the Committee to possibly address the current state of technology and the State Police's ability to provide advancing technological capabilities for the electronic processing of criminal history requests.

Government Organization Subcommittee C

The committee continued its discussion regarding the grievance procedures for education and state employees.

In responding to a question raised during the May interim meeting, a representative of the Grievance Board presented the number of Level IV cases appealed to the Circuit Court by Fiscal Year (FY). The numbers are based upon the requests for certified records to the Circuit Court made to the Board.

In FY 2003, 91 cases were appealed; FY 2004, 83 cases were appealed; FY 2005, 57 cases were appealed; and, FY 2006 through May 27, 52 cases were appealed.

The representative stated that the Board is not a party to any appeal. The function of the Board is to provide the hearing process and to set procedures for the grievance process. The Board would only be involved in an appeal or even advised of an appeal if the parties requested a record of the Level IV proceeding. The Board does not, therefore, have any information as to the costs associated with the appeal of Level IV decisions. Only the agencies that incurred the costs could provide that information.

Also provided to the Committee was a breakdown of the costs associated with the Administrative Law Judges (ALJ) employed by the Board, to include number of ALJs by year, training, travel and salary.

In FY 2003, six ALJs were employed at a total cost of \$478,254. In FY 2004, five ALJs were employed at a total cost of \$410,739. In FY 2005, five ALJs were employed at a total cost of \$419,715.

The Committee also looked at a side-by-side analysis of the differences in State Code regarding the State Employee versus Education Employee grievance procedure. The Committee will continue to examine these procedures during the interim meetings.

Insurance Availability & Medical Malpractice Insurance Committee

Having recently implemented insurance and tort reform laws, the legislative Committee met to determine what further issues regarding insurance concerns should be addressed. Before making an assessment, the Committee membership requested a study of rates from the Insurance Commission be provided to them. Legislators are particularly interested in reviewing the impacts of changes in the law covering home and automobiles insurance.

They also are looking for competition that may arise as an effect of the implementation of the Physicians' Mutual and; in another vein, are seeking reports from the Insurance Commission covering commercial insurance rates.

Joint Commission on Economic Development

The Cabinet Secretary of the WV Department of Commerce appeared before the Committee to provide a status of the workings of the Department which consists of the following divisions: the Development Office; Division of Forestry; Division of Labor; Division of Natural Resources; Division of Tourism; Geological and Economic Survey; Office of Miners' Health, Safety and Training; and, WORKFORCE West Virginia. The mission of the collective agencies, according to Commerce's website, "is to preserve and enhance the well-being of the citizens of West Virginia by providing a cooperative interagency system that stimulates economic growth and diversity, promotes efficient use of our abundant natural resources, and provides increased employment opportunities for all West Virginians."

According to the Cabinet Secretary, the divisions are working "tightly" together in times when West Virginia has a 4.2 percent unemployment rate, the lowest in the nation.

Training for miners is an issue of immediate consideration. Presently, miners in training have to wait six months before working without supervision. With industry wishing to employ 2,000 to 3,000 in the next two-to-three years, training methods should be stepped up while continuing to emphasize safety as a priority, according to the Cabinet Secretary. While the mentoring program for "redhats" (those in training) is perceived to be a necessity, lawmakers want to look into Kentucky's 45-day program for comparative training programs.

The Commerce Department also is seeking to upgrade its state website by modules. The Secretary noted that the site

will accommodate business by ensuring Japanese, German and Italian languages are provided as well as English.

According to the Cabinet Secretary, energy projects are high on its list of job development. Presently, flat sites of 300-500 acres are being sought for a variety of energy producing industries.

The investments of private industry were touted by the Cabinet Secretary who also noted it was in the best interest of the state to find the ways and means of creating jobs. Listing an electric company's preference of WV over Ohio, geologic survey groups in Morgantown checking on gas and coal availability, the issue of surface rights versus mineral rights, the investment of \$150 million by an Eastern Panhandle company, 60 new manufacturing jobs in North Central West Virginia, the Cabinet Secretary noted the state was gaining widespread victories.

Inquiries by the legislative membership included what steps West Virginia was taking to lure business. Some asked if the state is offering financial incentives, land or fiscal packages to business for its consideration in locating in the Mountain State. The Cabinet Secretary noted the Department was presently seeking opportunities from the overall business community in all.

At the close of the meeting, lawmakers addressed the possibilities of vamping up the WV Workforce Program and providing greater technical training to job seekers; recruiting out-of-school youth and returning veterans; and, generally reviewing various educational programs offered through the schools and universities throughout the state.

Too, lawmakers were provided information on the \$200 million grant projects. With bonds sold in the amount of the projects approved previously, some developers have not implemented their plans. The Economic Development Authority has sent out confirmations to individuals whose projects have been certified by the State to reply by a July 1, 2006, deadline. The Commerce Cabinet Secretary believes that perhaps \$5 million to \$25 million has not been provided to the grantees for one delay or another.

Joint Standing Committee on Government Organization

This Committee heard a sunrise report on Plumbers and Sprinkler Fitters from an applicant for licensure.

According to the applicant representing the Affiliated Construction Trade Foundation, there are approximately 3,000

plumbers, pipefitters and steamfitters as well as an additional 300 "helpers" of plumbers, pipefitters and steamfitters. The applicant describes the work environment of plumbers and sprinkler fitters to be new construction projects, renovations and maintenance of existing buildings as well as factories, hospitals, offices, schools, restaurants, apartments and houses. The Applicant's primary argument is that the current practice of plumbing and sprinkler fitting poses a risk to the public's health and welfare because it allows incompetent practitioners to produce work that does not conform to acceptable standards.

According to a report, the Legislative Auditor found that although West Virginia does not regulate plumbers and sprinkler fitters at the practitioner level, West Virginia does regulate plumbers and sprinkler fitters at the job level. This means that although not every individual practicing plumbing and sprinkler fitting in West Virginia is required to demonstrate competency, each job being performed, which exceeds \$2,500 in cost, must have a licensed individual responsible for that job.

In conclusion, the applicant proposed that the current unregulated practice of plumbing and sprinkler fitting in West Virginia poses a clear risk to the public health and welfare. While the unregulated practice of these occupations do present a clear risk, the Legislative Auditor concludes that the occupational groups in question are currently regulated, and that the current regulatory environment is sufficient to mitigate any potential for harm.

Joint Standing Committee on Pensions & Retirement

In line with its charge to study municipal policemen's and firemen's pension funds, this Committee heard from a representative of the Huntington Police Department regarding a plan proposed by the police and fire departments to the city.

This proposal is essentially a plan for refinancing over 30 years. Through this, he said, they would be returning to a standard funding method and giving relief to the city, which is the largest contributor to the pension plans. Currently, the city is required to increase contributions by 107 percent annually.

The representative noted that there would be an initial cost to the city of \$400,000; however, there is estimated to be a \$24 million savings over the life of the plan. The Mayor of Huntington stated that the city supports the proposal and would like to implement it for the fiscal year beginning in July 2007. The Mayor said that legislation would be required to allow the city to switch back to the standard plan.

He echoed the previous speaker's remarks by stating that although there will be a significant cost in the beginning, the city will save money over time. Responding to questions about the source of the \$400,000, the Mayor said that since fee increases might be necessary, he believes the public realizes that there is a genuine need to solve this problem. He said that one-fifth of the city's budget currently goes toward pensions and the city would undoubtedly benefit if there were more funds available for other needs.

An actuary from the Consolidated Public Retirement Board told lawmakers that this proposal is similar to what is being attempted with the Teachers' Retirement System, as it is looking to provide a more level funding method.

During this committee's second meeting of the June Interims, the Acting Executive Director of the WV Consolidated Public Retirement Board addressed lawmakers over general questions regarding the state retirement plans and the actuarial data relative to the proposed merger of the teachers' retirement plans, the Teachers Defined Contribution Plan (TDC) and the Teachers Retirement System (TRS).

Presently, a lawsuit has been filed that has delayed the merger and according to the State Actuary for the Consolidated Public Retirement Board, the state will have to come up with \$19 million a year for each year the merger is delayed. Part of that cost is because TDC recipients would continue to pay 4.5 percent of their salaries into the retirement plan, rather than the 6 percent that TRS recipients pay. To date, some teachers remain in limbo regarding their retirement plans and will be so until the findings of the lawsuit are determined.

The lawsuit has been filed on behalf of 1,000 defined contribution members who stand to have sizable amounts of accrued benefits swept out of their accounts if the merger proceeds.

Judiciary Subcommittee A

To better grasp the concept of their charge, members were requested to provide input regarding the suggested appearances of a variety of experts who could provide data relative to the state's divorce and custody processes.

House Concurrent Resolution 55, which requires a study of the impact on fathers and children in the aftermath of a divorce, is on the committee's agenda. With a comprehensive change in custody and divorce laws in 2001, lawmakers are seeking to determine which changes have worked and which have not. According to some members on the Legislative

Committee, some fathers have notified them the law does not work equitably in their favor.

To fully grasp the impact of the 2001 revision, lawmakers have requested a full spectrum of data involved in family law. Also, legislative staff will be reviewing other states' laws to compare and contrast custody allowances. The Committee will be looking for the nuts and bolts that hinge divorce laws together. From another perspective, some lawmakers also are seeking input for any avenues other states may be using to assist people who are considering divorce or a family breakup as a preventative measure.

The Committee is expecting to hear from a variety of judicial officers, attorneys, methadone clinic operators and persons affiliated with family courts to appear before the committee.

Two other areas of discussion before Judiciary Subcommittee A include a review of retail sales of alcoholic beverages on Sunday (HCR 72) and methadone clinic regulation.

A rule was approved during the 2006 Session that calls for the Department of Health and Human Resources (DHHR) to oversee methadone clinics. Lawmakers will revisit the issue to hear follow-up from the state agency. The rule passed called for the DHHR to implement a variety of processes including licensure of the clinics, facility inspections, record keeping, complaints and other variables designed to keep a check on the programs.

Selling alcohol from retail stores on Sundays is another question before lawmakers. Surrounding states have complex statutes. Some have local options; others may choose to sell spirits in their voting precincts instead of throughout an entire county; still others may not sell liquor on Sunday but have numerous exemptions for special events; and, others just forbid the practice altogether. As a border state to states that do sell spirits on Sundays from retail establishments as well as giant supermarkets, legislators will investigate the ramifications established by state prohibitions on Sunday sales.

Judiciary Subcommittee B

Taking up House Concurrent Resolution 84, members of the Judiciary Subcommittee began their study of the process of granting and denying coal, oil and natural gas well permits.

These work permits are required by law to protect the health, welfare and safety of West Virginians. Additionally, the permits protect the rights of businesses participating in the state's

coal and gas mining industry. The permitting process has been praised and chastised by parties involved. Lawmakers plan to study the procedures to ensure equity and safety for all concerned.

The Director of the Department of Environmental Protection (DEP) also appeared to address lawmakers regarding the underground storage tank fund. With dwindling resources, clean up of old underground tanks is becoming increasingly difficult.

Judiciary Subcommittee C

During the June meeting of Judiciary Subcommittee C, staff counsel briefly reviewed the issues and topics that will be discussed and debated by members of the Committee during the 2006-07 Interim Session.

The topics that will be addressed include a review of Senate Concurrent Resolution 22, which requests the Legislature to study the feasibility and possible legal ramifications of restricting lawyer advertising. According to the resolution, the general public's current negative perception of the legal profession has been promoted through "unprofessional and gaudy" advertisements. The Committee will review the practice of lawyer advertising and look into possible constitutional violations for suppressing freedom of speech.

Other topics include: codification of consent decrees in the disposable contact lens antitrust litigation (SCR 73); creation of a consumer recovery fund by requiring contractors to post a bond; regulation of gift cards; and, gasoline price gouging.

LOCEA

Opening the June Interim meeting of the Legislative Oversight Commission on Education Accountability (LOCEA) was a representative of the West Virginia Experimental Program to Stimulate Competitive Research (EPSCOR). This program recently received a \$9 million grant - the largest amount awarded - from the National Science Foundation (NSF) to fund higher education research at West Virginia University, Marshall University and West Virginia State University. Of the nine states competing for grants, West Virginia was one of only two to receive this maximum amount.

The speaker noted that there are a total of 25 EPSCOR states that compete for research awards and that after winning this substantial grant, West Virginia hopes to generate more ro-

bust research programs. According to a press release from the Governor's office that was provided to lawmakers, this award is the largest science and technology research grant ever awarded to the state by the NSF.

The newly-appointed Chancellor of the Higher Education Policy Commission then spoke to members about the Educational Needs Index (ENI), which "is a county-level study of educational, economic, and population pressures that influence educational policy and planning at local, regional, and state levels," according to the ENI Web site, that he helped to create.

The Chancellor noted that 71 of 100 West Virginia ninth graders graduate from high school on time; 34 go on to college; and, 14 graduate from college. He commented that for West Virginia's economy to move forward, all levels of education, from K-12 through higher education, need to work together and that he looks forward to working with LOCEA to help accomplish this goal.

The Community and Technical College System (CTCS) Chancellor then reviewed an institutional compact report. This measures four major areas of West Virginia's community and technical colleges: access, which includes enrollment information; student success, which includes degree, graduation, retention, job placement and other success rates; workforce development, which includes career-technical degrees offered and other workforce information; and, collaboration, which includes information on the number of programs in collaboration with career centers and employers.

The Chancellor said that the compact process is set to change and that schools will be required to submit their strategies for meeting the compact requirements by June 1. These strategies include programs the schools hope to begin in the coming year.

With this in mind, he said the CTCS wants to begin working more with the West Virginia Development Office on identifying industries in need of skilled employees. From there, they hope to work with employers to determine necessary skill sets and then with Workforce West Virginia to eventually develop an appropriate curriculum. The Chancellor noted that there is currently a workforce planning council that meets monthly to coordinate ways to bring economic development, education and workforce together.

Interim Committee Information

For information on all Interim Committees, please visit West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Interim" link.

LOCHHRA

In another study area undertaken during the June Interim meetings, social workers appeared before the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA). Under HCR 70, lawmakers are required to conduct a study on the need for and the appropriate methodology for providing salary improvements for counselors employed by the Division of Rehabilitation Services.

Since the Division of Rehabilitation Services is subject to civil service salary classification, the pay grades for rehabilitation counselors are substantially less than those of counselors in the public. Because rehabilitation teachers are paid the same as public school teachers and public school counselors have salary levels established, already above those of rehabilitation counselors, the rehabilitation counselors would like to have their salaries adjusted in line with the Kanawha County School System since Rehabilitation Services is located in Kanawha County.

The rehabilitation counselors in the state have become concerned with existing pay equity because of infrequent vacancies, low morale, very few merit raises, a Masters Degree requirement and a growing awareness of higher salaries within the agency in positions that require less education. According to the spokesperson for the Division of Rehabilitation Services, tenured counselors are training new staff who are earning more.

Lawmakers noted the Kanawha County salary scale would skew the results of determining salaries for the 151 rehabilitation social workers located throughout the state since county supplements differ with different levies passed locally. In addition, federal dollars make up a portion of the services funding, which makes the issue complex financially, although the social workers noted it was central to have level funding from the state.

During its second meeting of the June Interims, LOCHHRA continued its review of Senate Concurrent Resolution 88, which directs a study of the feasibility of allowing administrative transfer of payments to eligible individuals to transition from institutional settings to community-based services. This concept of “money follows the person” is a national movement is designed to lessen the reliance of states on institutional facilities in preference to community support.

With the understanding that nursing homes may not be the most efficient way to provide care and support; and, with West Virginia’s history of deinstitutionalization of the Colin

Anderson Center in which residents were moved into their communities, lawmakers will be hearing from a variety of DHHR spokespersons, the Statewide Independent Living Council, the Olmstead Advisory Council as well as other advocates of community-based support. The plan is to hear from all interested parties to develop policies to illustrate how the program can be re-balanced to increase the use of home and community services.

An explanation of money follows the person (MFP) was provided to the membership of the legislative committee. The overall strategy of MFP is to re-balance long term support systems.

According to the material provided by the Ombudsman Coordinator of the Office of the Ombudsman for Behavioral Health, West Virginia could expect a potential cost savings and cost avoidance; an improvement of the quality of life of people who receive long term care support; an investment of cost savings in community-based services and/or infrastructure; and, to provide more services to more people. The concept is a significant step toward compliance with the Olmstead decision and the Title II of the American Disability Act.

The Ombudsman told lawmakers one of the major barriers has been the institutional bias of Medicaid, which has historically covered long term care services more readily if the person remains in an institutional setting.

On the federal level, the Deficit Reduction Act of 2005 (DRA) stipulates the development of Money Follows the Person demonstration grants. The grant opportunity will offer states an enhanced federal match rate in which West Virginia could potentially benefit from its current Federal Medical Assistance Percentages (FMAP). The West Virginia FMAP could be enhanced to 86.41 percent under a demonstration grant as opposed to the regular rate of 78.82 percent.

Eligible participants include those residing in nursing facilities, ICF/MR facilities, hospitals and institutions for mental disease. Also, Medicaid beneficiaries residing in an institution for six months to two years and qualified community-based residences in which no more than four unrelated individuals reside, too may be eligible.

According to the Ombudsman, West Virginia has a draft scope in play. The preliminary study of MFP includes state agencies involved and other stakeholders who were to meet on June 27 to further address concerns such as future investments and infrastructure needs. The group is to report its findings to the Legislature before or on Jan. 31, 2007 along with draft legislation necessary to effectuate its recommendations.

Legislative Oversight Committee on Regional Jail and Correctional Facility Authority

During the June meeting, representative for correctional officers pleaded for a pay raise to reverse an exodus that has strained West Virginia's prison staffs.

An officer at Mount Olive Correctional Complex called for an increase in the range of \$6,000 to \$8,000, saying one experienced officer making \$25,900 recently took a job in the federal system paying \$36,867. The Fayette County prison has had as many as 60 vacancies, and while 10 officers recently were hired, they won't be on board until the training process is completed.

A shift commander suggested an increase of \$4,000 to \$7,000 and also called for a retirement plan comparable to that of the State Police. On top of the raise lawmakers should provide longevity increases of 2 to 3 percent every other year, the speaker said.

Also during the meeting, Corrections Commissioner representatives stated that vacancies have always been an issue at West Virginia's penal institutions, and likely always will. Pay increases have been discussed in every interim meeting for the past few years, with representatives arguing that today's officers are a different breed, professionals schooled in handling inmates, unlike the bygone era of merely placing "guards" to watch them.

Also raised during the meeting was increased pay for the 38 non-uniformed employees who earn below \$18,000 a year. A representative for the employees at Mount Olive stated that training is the same for all, and each employee, uniformed or not, must work around the same convicts. She also stated that they do not receive regular pay raises and some of the employees have to depend on state aid to supplement their incomes, such as free lunches for their children, food stamps to feed their families and help with paying high utility bills.

Since June 1 of last year, Mount Olive has witnessed the loss of 112 employees.

Parks, Recreation & Natural Resources Subcommittee

As part of its charge under House Concurrent Resolution 99, this Subcommittee heard from the Executive Director of the Coal Heritage Highway Authority and the National Coal Heritage Area Authority regarding initiatives for the preservation of West Virginia's coal-mining history. She said efforts

for preserving the state's coal heritage began in 1992 with the completion of a coal heritage study.

Since then, the Coal Heritage Trail, which winds through Fayette, Raleigh, Wyoming, McDowell and Mercer Counties, was designated as one of 95 National Scenic Byways in 1996. In addition, 11 Southern counties were chosen as the National Coal Heritage Area (NCHA) in that same year. According to information provided to the committee, an estimated 54,000 tourists visited NCHA sites last year, contributing to West Virginia's local economies, cultural preservation and civic activity.

For purposes of this legislative study, she told the committee, future recommended actions include developing the town of Coalwood, which has been documented in literature and film, as a primary visitor experience zone. This includes preserving the physical, cultural and industrial structures native to this area; developing materials to represent Coalwood as a captive mine community; creating displays and exhibits that depict community life; and, supporting walking tours led by Coalwood residents.

As stated in the resolution that prompted this study, the Legislature recognizes the significance of events known and believed to have occurred in this region and the potential benefits that would come from an effective development plan. In the coming months, this Subcommittee will continue working to determine the possible economic benefits of enhancing this region as a prime tourist destination.

Select Committee A - Children, Juveniles, Other Issues

A representative from Prevent Child Abuse West Virginia addressed members of Select Committee A requesting a supplemental appropriation of \$2 million for Fiscal Year (FY) 2007 to assist in the advancement of in-home family education programs. According to the representative, these programs provide high-quality home visiting services to help prevent and desist child abuse throughout the state.

The requested appropriation would provide funds primarily to programs with funding shortfalls in Boone, Clay, Fayette, Kanawha, Marshall, Mercer and Putnam Counties, as well as serve additional families in Cabell, Greenbrier, Hancock, Mingo, Monongalia, Ohio, Summers, Wayne and Webster Counties. In addition, the funding would look to support the planning and development of new programs in unserved regions of the state, according to the representative.

The representative added that an interim study of in-home family education was completed in 2005 and concluded

that these programs were of great benefit to the state and in terms of long-term financial implications, would save the state significant money.

In-home family education programs provide parenting education and support to families with young children directly in the home. These services are voluntary and are available to families with children from before birth to age three. Services are provided by trained home visitors who are familiar with and trusted by the communities they serve, according to the representative. In addition, the representative stated that studies have shown that in-home family education programs reduce child abuse, improve children's health and increase parenting skills. Studies also show that a statewide system of in-home family education in West Virginia could save upwards of \$25 million a year in hospital costs by reducing the incidence of low birth weight, and \$226 million per year in the immediate and long-term costs associated with child abuse and neglect, according to the representative.

Select Committee B - Minority Issues

Convening for an organizational meeting, members of this Committee discussed the main areas of study that will be on their agenda in the coming months. Staff counsel briefly reviewed certain study resolutions from last year that have carried over for further consideration. These resolutions call for reviews of the disparities facing minority populations in regard to health, education and economic development.

Counsel told attending lawmakers that the two study resolutions addressing economic development initiatives were previously sent to the Joint Commission on Economic Development; however, since no action has been taken, this Committee will again be reviewing them. These resolutions request studies of creating a loan pool to encourage minority-owned small businesses and of the participation of these businesses in competing for and obtaining state contracts.

Select Committee C - Infrastructure

Dam safety was the call on Select Committee C's agenda. The Department of Environmental Protection (DEP) Director provided materials relative to deficient dams in West Virginia. A deficient dam "is a structure that exhibits one or more design or maintenance problems that may adversely affect the performance of the dam during a major storm, or over a period of time, resulting in a potential for loss of life or property," according to the Director.

The Division of Water and Waste Management (DWWM) maintains an inventory of dams in West Virginia based on the jurisdiction size of the Dam Control and Safety Act. This covers dams 25 feet or more in height and capable of impounding 15 or more acre-feet of water; or, six feet or more in height and capable of impounding 50 or more acre-feet of water.

Presently, the dam inventory includes approximately 359 dams of jurisdiction size, of which 38 dams are considered deficient. As with rivers, class ratings determine hazard potential. For instance, Class 1 = potential for loss of life and property damage; Class 2 = low loss of life but property damage; Class 3 = property damage; and, Class 4 = little damage.

The DWWM today consists of six people: one manager/geologist; four licensed civil engineers; and, one secretary. The group collectively is provided a more than \$500,000 from fees, federal monies and state dollars to operate. As such, according to the DEP Director, the dam team provides a basic inspection service. While owners must have their dams inspected based on their classifications, the DWWM cannot effectively inspect all 359 dams but it can stop construction for compliance and does do a final inspection on each dam built. It also responds to emergency calls although there is not a trend to the calls.

The biggest concerns of the DWWM are high hazard, deficient dams, which total 36. Of these, 22 are publicly owned by landowners or home associations who have no resources to repair the dam. The average cost to repair a dam varies with the type of deficiency. The Director suggested lawmakers might want to look into a revolving fund to be used for repairs, shutdowns or removal of the deficient structures. If all 36 dams were to be repaired today, the cost is estimated to be approximately \$25.5 million.

Testing a dam's mechanism also may call for some rule changes. However, for the purpose of providing public confidence in their local dam, be it for water supply, waste disposal or flood control, the Committee is seeking further data from the DEP so the Committee has solid numbers with which to work should it propose corrective legislation.

Bill Status

For bill history information and full bill text of all Legislation from the 2006 Regular Session, please go to the West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Bill Status" link.



April 9 - 11		2006 - 2007 Interim Committee Meeting Dates
May 21 - 23		
June 11-13		
July 23-25		
August 6 - 8 (Chief Logan State Park)		
September 11 - 13		
October 15 - 17		
November 13 - 15		
December 10 - 12		
January 7 - 9, 2007		

Note: All dates are subject to change.

Interim Committee Information

For information on all Interim Committees, please visit West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Interim" link.

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