

# Interim Highlights

## Agriculture & Agri-business

The committee heard a presentation from a representative of the West Virginia Department of Agriculture on the Honey Bee Industry. From 1995 to 2004, the number of honeybee colonies in the state has increased from 2,000 colonies to around 16,000 colonies. The number of beekeepers has also increased during this time period, from around 200 to an estimated 1,200. Over the nine-year period, the growth rate has increased approximately 800 percent.

The overall production of honey from these colonies has increased from 35 pounds of honey per colony to an excess of 72 pounds of honey per colony. This increase of production is partly due to extensive beekeeper education taught by the West Virginia Division of Agriculture (WVDA).

In 2001, a Honey Co-op for the beekeeping industry was established in Weston through a \$50,000 appropriation from the Legislature. The facility has given the beekeeper industry a place to buy supplies at reasonable prices saving beekeepers an estimated \$30,000 in shipping and handling charges by having this entity in the state. The Co-op also gives beekeepers the opportunity to purchase emergency bee feed that was not previously available to state beekeepers except in the Eastern and Northern Panhandles. The Co-op has sold 100,000 pounds of high fructose corn syrup and a total of \$118,500 worth of equipment since its establishment.

The sale of honey has a significant impact on the state's economy. For example, during 2004, a total of 1,200 registered colonies produced around 1,152,000 pounds of honey at a retail value of \$2,638,000. The majority of all honey produced is retailed locally. More than 100 tons of honey is sold to out-of-state packers at a value of \$225,000. In November, with the assistance of WVDA, a total of twenty tons of bulk honey was shipped from Charleston to a Virginia packer. The nine beekeepers that produced this honey received a total of \$44,000 for this shipment.

The second presentation made to the committee was by House Counsel who discussed two pieces of draft legislation: the Beef Industry Self-Improvement Program and the growth and sale of ginseng. The purpose of the beef industry draft legislation is to provide a procedure for financing a program to promote and stimulate the increased and efficient production, distribution, sale and use of cattle and beef products.

According to House Counsel, the federal bill referred to as the "Federal Beef Research and Information Program" could be canceled by federal courts in the upcoming year. West Virginia's draft legislation would then be put in place for the state if the federal program were discontinued.

The ginseng draft legislation would regulate the harvesting seasons of ginseng, and require permits and record keeping of the harvesting and sale of the crops. Under the draft legislation, the harvest season for ginseng is shortened by two weeks in this measure. The measure defines ginseng into different types depending on how it is grown. The draft also establishes the different types of permits individuals require for the growing, harvesting or dealing of ginseng. Growers and dealers would be required to keep accurate records for a period of no less than 10 years.

The two pieces of draft legislation will be taken up for consideration by the committee at the January interim meeting.

## Education Subcommittee A - Higher Education

The Chair of the Advisory Council of Faculty addressed the Subcommittee regarding the Council's concerns for accountability, access, retention, equity and assurance of quality of faculty in West Virginia's institutions of higher education. The Chair noted that the commitments of faculty to the state's higher education system include: serving student-clients through quality academic programs and quality academic instruction, serving institutions and the state through teaching, scholarships and service.

Through the commitment of teaching, the faculty had a 92,114 headcount enrollment for Fall of 2002. A total of 12,839 degrees and certificates were awarded in 30 academic areas of study for the 2002-2003 year. In addition to the faculty's teaching responsibilities, the faculty also conducts periodic annual evaluations to assess the quality of academic programs offered so that the faculty can continue the development of academic programs available in the state.

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Through the commitment of scholarships, the faculty was awarded \$158,261,564 for research grants and contracts to promote a variety of projects and programs in West Virginia for 2002-03. These scholarships helped to create visual and performing arts programs and presentations to promote the well being of the community and the state and provided funding to create and develop software and technology to facilitate West Virginia businesses, academics and cultural sectors.

Through the commitment of service, the faculty helps institutional development through committees, grants and projects envisioned, developed and managed by faculty.

There are eight main issues the faculty would like the Legislature to review in the upcoming legislative session. These issues, not listed in order of priority, include: (1) providing legislative funding for the West Virginia Higher Education budget at or above the national average thereby making higher education more accessible to all West Virginians; (2) provide legislative funding for annual experience incremental pay for faculty pursuant to W. Va. Code § 5-5-1; (3) provide higher education faculty parity with public school teachers' retirement contribution rates for Teachers Insurance and Annuity Association - College Retirement Equities Fund (TIAA-CREF); (4) reinstate W. Va. Code § 18B-8-3, section (c), which provided a minimum 10 percent salary increase upon faculty promotion in rank; (5) provide Legislative funding for new faculty lines in order to assure quality higher education programs; (6) allow tenure for 30 percent of Community and Technical Colleges faculties; (7) repeal W. Va. Code § 18B-7-4, section (b) by providing Legislation following American Association of University Professors (AAUP) guidelines for giving notice of non-retention of tenure-track faculty hired after March 2004; and, (8) provide faculty with their fundamental political right to serve in the Legislature.

A list of issues by rank will be presented to the Subcommittee at the next interim meeting.

### Education Subcommittee B - Public Education

Representatives from the West Virginia Library Association addressed committee members to discuss improving public school libraries throughout the state. Stating specific research that has been conducted regarding the impact of school libraries on student achievement, representatives from the WV Library Association noted that well-stocked, professionally staffed school libraries have a positive and lasting effect on improving academic development.

Studies conducted in Alaska, Colorado, Oregon and Pennsylvania show when professionally trained and credentialed school library media specialists collaborate with classroom teachers, reading scores increased by an average of eight to 21 percent, according to the representatives. In addition, schools with well-developed library media programs average 10 to 18 percent higher reading scores. Also, the representatives cited studies that have shown increases in reading scores for students who have access to expanded information technology, such as computer networks, that extend the library media program's research into classrooms and laboratories.

Based on the findings concluded in these studies, which were consistent across the four states and remained constant after controlling student and community characteristics, including per-student funding, teacher characteristics, poverty, race and ethnicity, the representatives recommended school libraries across West Virginia be funded sufficiently to employ both professional and support staff capable of providing quality library media services to all students.

In addition, the representatives recommended the establishment of a State Level Supervisor for School Library Programs which would re-establish representation for school library media programs within the State Department of Education. The ability to secure and coordinate funding, provide professional development programs, coordinate resources and implement programs related to curricular areas for improved collaboration with teachers were some of the benefits cited by the representatives. Also, representatives recommended schools recognize technology as an essential part of a successful library program.

Currently, according to the representatives, West Virginia is ranked 50th in the nation in school library spending. In 2003, only 35 percent of West Virginia's 4th grade students could read at a proficient or excelled level. During the same school year, only 397 library media specialists were serving in West Virginia's 786 public schools with a total student population of 281,591. The representatives stated that was average of 709 students per library media specialist. In addition, 46 percent of schools in West Virginia, or roughly 360 schools, employ a library media specialist, with less than 37 percent being elementary schools where reading and writing skills are a primary focus.

Representatives closed their presentation by stating that utilizing school library media specialists and school libraries are the most cost effective way to improve student achievement, especially in light of the unfunded mandates required under the federal No Child Left Behind Act.

### Equal Pay Commission

Maintaining their focus on the legislative session ahead, members of this committee met to prepare for continual efforts in equalizing the salaries of state workers. According to the Acting Director of the Division of Personnel, this endeavor is an ongoing one that will need examination and support for many years to come.

He provided the committee with current data on this year's pay adjustment and stated that they are further along than anticipated because of the attention placed on certain job classes by the Equal Pay Commission. He also addressed the concern about the high numbers of state employees who will be eligible to retire in coming years. According to him, 42 percent of public employees will be eligible to retire within the next 10 years.

Committee members then discussed recommending legislation that would require agencies to provide succession plans and gap analyses to the Senate President, Speaker of the House, Equal Pay Commission and Division of Personnel. They requested staff counsel to draft this legislation and include a requirement for these plans to be updated annually.

The Director of Human Resources from the Department of Health and Human Resources (DHHR) echoed the concerns over impending retirement waves. He said because of an aging workforce and high turnover rates, the DHHR has been focusing on succession and said the information they have gathered, including a gap analysis, could be helpful to this committee. A copy of the gap analysis will be sent to committee members prior to January's meeting.

### Finance Subcommittee A

The meeting opened with a report by committee staff regarding the Corporate License Tax, which was discussed at length during a previous meeting. During that time, committee members requested a representative from the Tax Department to gather various information, including fee scenarios and which non-profit organizations would be affected by repealing this tax and instead imposing a flat fee on all incorporated entities.

Staff told lawmakers the Tax Department spokesperson will soon be finished gathering the information and should be available to present a full report in January.

Shifting gears, the committee then picked up its discussion of underground storage tanks. Specifically, lawmakers heard from affected parties regarding where liability falls in the clean-up process and when contamination is a factor. A member of the Underground Storage Tank Advisory Committee addressed the cause of the current financial crisis.

According to the speaker, since the insurance was made available on the open market in 2001, the amount of claims has outnumbered the amount of money in the fund. He requested the Legislature to appropriate funds to offset this debt.

A property owner from Parkersburg then addressed the financial challenges he is facing. The speaker said he bought this insurance thinking he would be protected; however, the Department of Environmental Protection (DEP) estimates it could cost an additional \$175,000 to clean up his property. He too requested the Legislature's assistance in this matter.

Members of the committee concluded the meeting by discussing various options for this problem, including investigating former landowners and soliciting the involvement of the Attorney General's Office.

### Finance Subcommittee B

During the December interim meetings, this subcommittee conducted a discussion on property taxes, specifically focusing on how managed timber lands relate to the assessed value of land. A representative from the state Tax Commission passed out a memo detailing the Managed Timber numbers of Wirt County to cite as an example.

The memo reported that Wirt County has 150,464 total acres and of that 45,721.37 acres are managed timber lands. Those acres represent 30.4 percent of the county land. The current assessed value of managed timberland is \$2,985,606 and the owners are paying approximately \$1.64 per acre in property tax. Without managed timberland the appraised value of property comes to \$11,430,342 and the assessed value is \$6,858,205.

The total managed timberland revenue is \$75,046. Revenue without the managed timberland is \$172,388. Property owners outside of the managed timberlands are paying approximately \$3.77 per acre in taxes.

The tax representative told the committee that the revenue difference could be received if property taxes for managed timberlands were raised equal to that of other lands. Also,

based on the current purchase price of \$23,000,000.00 for 42,364,37 acres, it was the determination of the representative that the average appraised value of timberland should be \$543.00 per acre instead of the current \$109.00 per acre.

Also during the committee, the chairman opened the committee for suggestions regarding eliminating the food sales tax with the caveat of showing where and what programs would be cut to make up for the loss in revenue.

### Forest Management Review Commission

The commission heard a presentation from the Urban Forestry Coordinator of the West Virginia Division of Forestry on the care and maintenance of the state's Urban and Community Forests (UCF) around the state. The mission of the UCF program is to encourage municipal governments to begin providing long term care for the trees on public properties across the state. The UCF program started in 1991 as a result of the federal 1990 Farm Bill.

The 1990 Farm Bill is a tool which allows Congress to periodically examine and modify several United States Department of Agriculture (USDA) policies and programs affecting agriculture, rural America and food consumers. It focuses on many issues such as commodity programs, forestry, conservation, trade, research, crop insurance, rural development, and global climate.

The UCF program has been funded by federal dollars from the USDA Forest Service since its creation. The UCF program does not receive any funding from the state for urban forestry.

The UCF Council is comprised of people with an interest and stake in urban forestry from all over the state. The Council meets three times a year to provide guidance and oversight to the UCF program. The Council also evaluates and awards funding for grant programs.

The importance of UCF can be seen in many ways. Outbreaks of potentially devastating insects and other pests began in cities. Some examples of these pests are the Asian Longhorned Beetle and the Emerald Ash Borer. Urban forest is on the front line in the detection and control of exotic pests and if left unchecked can spread very easily to much of the native forests across the state.

Urban forests provide aesthetics such as color and beauty to the landscape, provide a sense of security and contribute to the character of cities. These forests improve the air qual-

ity by helping to absorb pollutants. The forests also reduce storm water runoff and erosion and temper local climates by lowering air temperature and increasing humidity.

Some economic benefits of urban forests include improving property values and providing a comfortable environment for shopping and recreation areas. These forests also provide shelter and food for wildlife in the area.

There are five components of a sustained Tree Care Program: a Tree Board; a Tree Ordinance; a budget; inventory/management plan; and, comprehensive tree care.

The Tree Board is a group of volunteers who determines policy for planting, maintenance, removal and protection of these trees.

The Tree Ordinance designates and empowers the Tree Board, and defines public trees and specifies required permits for working on public trees.

The budget needs to be in place for routine maintenance of newly planted and older established trees.

The inventory/management plan assesses the composition, condition, and needs for the public trees. It also allows limited manpower and financial resources to be used efficiently and aids in the planning for pruning, fertilization and removal of these trees.

Comprehensive tree care is composed of two components, tree planting and tree maintenance. Tree planting encompasses what kind of trees will thrive in which areas. Tree maintenance encompasses annual tree inspections, hazardous tree assessment/removal, annual mulching, fertilization and pruning cycles.

There are several programs and opportunities for cities around the state, including Demonstration City Grants, Inner City Grants, Cool Communities Grants, Technical Assistance, Mountaineer Treeways, the Municipal Tree Restoration Program and Tree City USA. These various programs have awarded \$62,333 dollars to cities around the state in 2003.

The commission also reviewed the forest fire liability statute. The proposed draft legislation adds definitions to the statute, adds sections addressing what volunteer and employee conduct is permissible during a forest fire, and what actions can be taken in the event an employee or volunteer engages in reckless, intentional or criminal acts causing a forest fire.

The commission will take the draft legislation up for consideration during the January interim meeting.

### Government Organization Subcommittee A - 2

A representative of the state Department of Tax and Revenue's criminal investigation division told a joint committee studying nonprofit groups conducting legal bingo and raffle games that there presently is great potential for abuse of a charitable gaming license.

The state allows certain non-profits organizations, mostly churches, fraternal organizations and volunteer fire departments, to conduct bingo and raffle games. Many groups have both gaming activities, which lure players. While they offer big bingo prizes, they also mix-in raffles to make additional money, the spokesman said.

The state issued 637 bingo and raffle licenses last year for games grossing \$170 million. The state Lottery's instant games, by contrast, reported \$109 million in gross revenue last year, while such online games as Powerball reported \$97 million.

The state permits such games solely to raise money for charitable purposes but does not require the groups to devote a minimum percentage of proceeds toward charity. As such, only \$15 million, less than 9 percent of gross receipts, went to charity last year.

By law, the groups can keep up to 25 percent of total revenue proceeds for administrative costs but some groups manage to stay within that threshold while leaving no money for charity.

Recently, he said, his office has seen a surge in the number of groups eligible for licenses and some of these organizations seem to exist solely for the purpose of gaining a charitable gaming license.

He suggested to the committee that the Legislature allow tax investigators to review personal income tax returns to help them ferret out fraud by some bingo and raffle groups.

### Government Organization Subcommittee C

In accordance with its duties under Senate Concurrent Resolution 68, this committee met to discuss the possible modification of the grievance procedure. The Director of the West Virginia Education and State Employees Grievance Board first addressed the committee and outlined various legislative initiatives and recommendations pertaining to this matter.

Among other suggestions, the Grievance Board recommended that grievances not be filed with the employee's immediate supervisor and instead be filed with the administrator of that office or to another appropriate subdivision. He said this change would eliminate time currently wasted at the first level of the grievance procedure and would serve to accelerate the process.

The Board also requested the Legislature to consider clarifying whether grievance evaluators can issue the final decision at the third level of this process; requiring grievances that challenge dismissals, suspensions without pay and disciplinary demotions to be filed directly with the Grievance Board; and, increasing the time within which state and higher education employees are required to file grievances from 10 to 15 days.

A representative from the School Board Association then briefly addressed lawmakers. He said there is a problem with timeliness in the grievance procedure. Additionally, he stated that administrative law judge decisions often violate school laws.

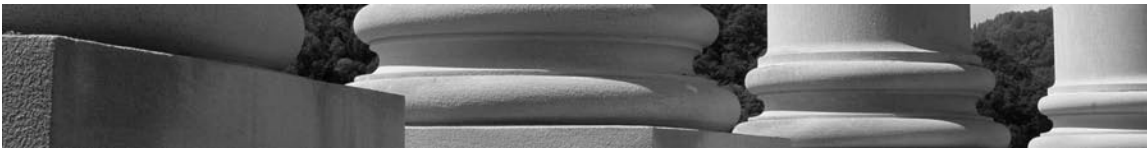
A spokeswoman from the Communication Workers of America was the final presenter to appear before the committee. She said in the private sector, mediation and arbitration are used in the grievance procedure and make the process move along quickly. In addition, she said not all cases are taken to the arbitration stage if certain cases do not have merit to move forward. She believes the state's current grievance procedure is not user-friendly and often is intimidating to employees.

### Joint Commission on Economic Development

As part of their charge to monitor the progress of in-place legislation, members of this committee heard from the Workers' Compensation Commission's Executive Director regarding progress that has been made to resolve its looming financial crisis.

Since the passage of Senate Bill 2013 - a sweeping piece of legislation that revamped the structure of this system - in 2003, the Workers' Compensation Commission has been diligently working to reduce its vast unfunded liability. The Executive Director said medical payments are down 16 percent (\$37 million), cash received is up 16 percent (\$88 million) and indemnity payments are down 12 percent (\$82 million).

In 2003, it was projected that the Commission would have no money by 2006. Now, it is expected to have \$757 million in



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the bank at the end of Fiscal Year (FY) 2006, rather than the zero balance that was predicted in April 2003. The anticipated shortfall for this Commission was \$245 million, whereas the actual shortfall ended up being \$38.6 million.

According to the speaker, claims management, which was one of the major problems within the Workers' Compensation system, also has been greatly improved. Through October of this year, 96 percent of the claims were ruled on within 30 days, which is an all-time high for the Commission. In addition, the backlog of pending claims has been reduced by 32 percent. The current average time from receipt of a claim to the ruling is 11 days, with the goal set at 10 days.

Overall throughout the past year, according to the Director, the Workers' Compensation Commission has improved financial trends, fewer claims are being filed, backlogs have been resolved and they have improved working relationships with stakeholders, the media and the public. Looking toward the future, he told lawmakers there still remains an unfunded liability of \$3 billion and requested legislative action to help offset this debt.

The second presenter was the Director of Fiscal Policy from the Tax Department, who provided a detailed explanation of the three major tax incentive programs offered in West Virginia. The first of these, the Economic Opportunity Tax Credit, is available for job creation in the areas of manufacturing, information processing, warehousing, goods distribution, destination tourism and research and development. This credit offsets up to 80 percent of tax attributable to new investment.

Also available are the Manufacturing Investment Tax Credit, which provides a credit that may compensate up to 50 percent of Business Franchise Tax and Corporation Net Income Tax liability; and, the Strategic Research and Development Tax Credit, which may offset 100 percent of Business Franchise Tax, Corporation Net Income Tax or Personal Income Tax liability on business profits.

## Joint Standing Committee on Government Organization

With the passage of House Bill 4259 during the 2004 Regular Legislative Session, the Legislature established the Governor's Citizens' Advisory Council (GCAC) which is required to help develop a cross-agency, multi-year state plan to address the needs of children and families in West Virginia. During the December Interim meeting of the Joint Standing Committee on Government Organization, representatives from the Council presented recommendations the Council believes must be included in the state plan.

The representatives discussed three core results areas to improve the well being of children and families. According to the representative, these areas were selected to focus a greater attention on prevention, early intervention and better management of chronic conditions that hinder the growth and development of children and families in the state. The three areas discussed, improving health and wellness of school age children; supporting safe and stable homes for at risk children; and, promoting high quality early care and education for children birth through age four, will not only have a significant positive impact on the well-being of children and families, but will, over time, reduce costs otherwise incurred by the state.

In addition to focusing on the core areas mentioned above, the representatives also recommend improving how agencies work together to improve life results for children and families in West Virginia.

For one, the representatives discussed mandating cross-agency teams to work together across agency lines to implement promising practices and strategies that lead to desired core results. Secondly, the representatives recommend the state implement new financing strategies that identify dollars from applicable funding streams and redirect those dollars away from failed approaches and toward proven practices produce desired results.

In addition, the representatives stated the establishment of an on-going cross-agency data and information working group charged with developing integrated databases that provide the necessary information to make sound policy decisions and monitor progress is greatly needed. In closing, the representatives noted that strengthening legislative and citizen oversight of programs effecting children and families is highly recommended to assure a cross-agency focus on achieving the core results of the state plan, promote shared ownership and joint reporting on results and provide for on-going accountability.

In conclusion of the presentation, representatives from GCAC requested the Governor and the Governor's Cabinet on Children and Families to endorse the recommendations and reports of the Council. Also, representatives would like to present the GCAC report and recommendations to the Governor-Elect for consideration.

<p>2004 - 2005 Interim Committee Meeting Dates</p>	<p>January 9-11-05 February 6-8-05</p>
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### Joint Standing Committee on the Judiciary

Citing the importance of encouraging the voluntary reclamation of lands that have been adversely affected by mining activities, members moved draft legislation that would establish the Environmental Good Samaritan Act during the December meeting of the Joint Standing Committee on the Judiciary.

This measure, which was originally studied and approved by Judiciary Subcommittee A, would remove potential liability for landowners, citizens and watershed associations who voluntarily assist in reclamation projects that look to reduce and abate water pollution caused by unreclaimed lands. The bill would not limit the liability of any person or group who by law is required or agrees to perform reclamation projects for compensation.

In addition to the Environmental Good Samaritan Act, members also moved legislation that would make certain changes to the motor vehicle test and lock program. The proposed bill would define the term “conviction” as a plea of guilty or nolo contendere, a forfeiture of bond or collateral or a finding of guilt by a court or jury and require mandatory participation in the program for repeat offenders. Also included in the legislation was a change in language that would permit individuals in the test and lock program to operate a motor vehicle on the job site without test and lock equipment as long as the operation of the vehicle is required for employment. The bill contains a limitation, however, and would prohibit motor vehicle test and lock participants from operating a vehicle on public roads and highways even if doing so is part of their job requirement.

Also, members of the committee approved proposed legislation that would make certain changes to the West Virginia Contractor Licensing Act, adding consumer protections to the Act regarding the licensing and regulation of contractors. The bill, more specifically, would change the composition of the West Virginia Contractor Licensing Board by adding a consumer advocate who would serve without compensation of reimbursement of expenses.

### Joint Commission on Pensions & Retirement

In 2000, lawmakers passed the Pension Liability Redemption Act (c. 192) which authorized the Governor, with the approval of the Legislature and under specified circumstances, to issue bonds to fund the unfunded actuarial accrued liability the death, disability and retirement fund of the Department of Public Safety, Judges’ Retirement System and the Teachers Retirement System, not to exceed \$3.9 billion.

This measure (SB 175) allowed bonds to be issued within five years after a determination had been made by the WV Supreme Court of Appeals that the issuance of the bonds and the provisions of the act were constitutional.

In 2002, lawmakers amended the Act (HB 4021, c.258) to repeal the provision that required a judicial determination of the issuance of bonds.

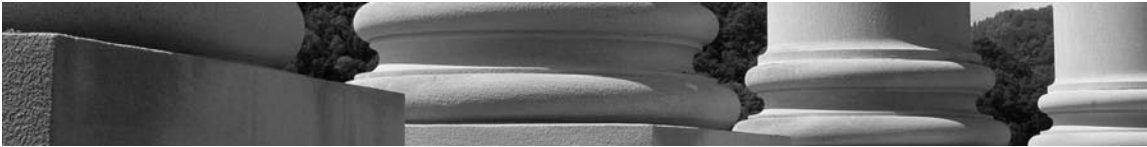
After the passage of HB 4021, state officials questioned the constitutionality of allowing the state to take on new debt without voter approval, although administrative officials believed the sale of the bonds were refinancing old debt. However, in the early days of December 2004, the Court ruled, to pass constitutional muster, voters must ratify a constitutional amendment allowing for the sale of bonds.

The idea of selling bonds to pay down the unfunded liabilities of the three pension plans was based upon reducing the state’s annual requirement of funding according to a 40-year-plan. This existing plan calls for ballooning payments, which will cover the existing \$5.45 billion in unfunded liabilities. This year, the state spent \$345 million to keep the pension funds solvent and will spend \$363 million next year, and more the year after that.

If the bonds were sold to the tune of \$3.9 billion, then that money would be invested and proceeds from the investments would be applied to the pension liabilities. The plan was designed to shorten the length of time for payback and to lesson the total amount owed. If investments paid off at a better interest rate than the state has to pay its lender, then the state could save \$5 billion between 2024 and 2034, noted supporters of the sale.

During its December Interim meeting, lawmakers on the Pension and Retirement Committee noted the passage of time has made changes in underwriter’s fees; interest rates and other costs associated with the sale of bonds and are seeking an update on the financial probabilities. While some believe the window of opportunity of low interest rates has passed, others wish to pursue the data so that an accurate analysis of the situation may be provided to voters in a clear and concise manner. Legislative staff has been directed to investigate changes in charges for use in further discussions.

Another issue addressed during the meeting dealt with the actuarial impact of possible legislation that would allow Jobs for West Virginia Graduates to terminate their participation in the Public Employees Retirement System. Presently, three people are active members currently employed by Jobs for West Virginia Graduates. However, nine people may be recalled full time if budgeting allows. These 12 people were



included in the actuarial study, according to an actuary from the Consolidated Public Retirement Board.

Of the 12, only those meeting the five years of service for full vesting are entitled to a deferred retirement benefit. Those who do not have the five years are entitled to a refund of their member contribution account. According to the actuary, the group had a withdrawal liability of \$42,166.

Since there is \$67,539 available to the group at withdrawal, the Consolidated Retirement Board actuary said there are no actuarial accrued liabilities regarding the withdrawal from the plan.

**Judiciary Subcommittee A**

The subcommittee continued its charge to adopt legislation establishing rules applicable to Bed and Breakfast (B & B) facilities. The Chief of the Beckley Fire Department discussed his perspective on B & B fire safety. He specifically addressed a proposal to increase the existing occupancy limit under the Code from three to six occupants in the dwelling at any one time and conveyed his reluctance to support the proposal unless any dwelling offering additional occupancy is required to install overhead sprinkler systems.

A member of the State Fire Commission added that some dwellings have inadequate kitchens and allow smoking on the premises, which cause many of the fires that occur in the state's B & Bs. The member also noted that many of these B & Bs are not handicapped accessible and fail to meet the standards of the American Disabilities Act. The member stated that focusing only on the fire codes applicable to B & Bs would not alleviate all of the problems surrounding these dwellings.

Finally, a representative of the B & B Association addressed the subcommittee regarding the criteria B & Bs must meet in order to be eligible for insurance coverage. Some of these requirements include having smoke alarms in all common areas, guest rooms and hallways; installing and maintaining an emergency lighting system; and that requires the facility must be monitored either by an on-site manager or by a monitoring system connected to the owners property if they reside nearby.

The Subcommittee requested the State Fire Commission review the draft legislation for its thoroughness and any offer possible suggestions to the measure.

**Judiciary Subcommittee B**

In compliance with their charge to consider legislation dealing with credit card fraud, members of this committee met and first heard an overview of a draft bill regarding card-not-present transactions from staff counsel. Currently, the merchant bears all the risk of loss in instances of fraud after these transactions, which include online, telephone and mail-in orders.

Counsel told lawmakers the draft legislation, among other changes, would shift this burden under certain circumstances. In reaction to the committee's consideration of this bill, various interested individuals presented their cases either for or against enacting this type of law.

An attorney representing the Bankers Association said any changes made on the state level could have far-reaching effects by impacting the market internationally. Additionally, she believes passing a bill like this would have a negative effect on West Virginia's merchants and banks because credit card companies will not re-engineer the system specifically for West Virginia. She said in speaking with processors regarding this bill, she was told they would not permit purchases from state merchants.

A lobbyist for American Express then told committee members they are willing to work with the Legislature to explore options to reduce and eventually eliminate fraud; however, they believe it would be inappropriate to unbalance the entire system. Similarly, a representative from the West Virginia Chamber of Commerce said this legislation would put West Virginia out of balance with the rest of the nation and the world.

Expressing support for this legislation, a business owner from Mineral County said he believes taking this step would attract businesses to the state and would help consumers by dealing with the true criminals.

**Juvenile Foster Care, Detention and Placement Task Force**

The Commissioner of the Bureau for Children and Families, within the West Virginia Department of Health and Human Resources (DHHR), presented its regular monthly report, "Children in Care" to the Task Force. For the month of October 2004, there were 2,479 in-state placements of children to DHHR adoptive homes, foster care, family emergency shelters, group residential care homes, psychiatric facilities and hospitals, therapeutic foster care homes and transitional



living environments. Four hundred and ten children were placed in out-of-state facilities.

From October 2003 to October 2004, there were a total of 33,409 in-state placements of children and a total of 5,549 out-of-state placements of children.

The Commissioner also discussed the number of beds being utilized at four different types of facilities around the state. In agency emergency shelters, 124 of the 149 available beds are presently occupied. In the group residential care facilities, 608 of the 727 available beds are presently occupied. In the psychiatric facility (long term), 74 of the 122 available beds are presently occupied. In the psychiatric hospital (short term), 10 of the 63 available beds are presently occupied.

The Task Force reviewed the adoption subsidy figures as of October 31, 2004. A total of 2,612 children are currently receiving adoption subsidies. Adoption subsidy payments as of that date were \$1,235,973, with IV-E adoption subsidy payments totaling \$874,472. The total amount of DHHR-issued adoption subsidy payments is \$361,500.

The second presentation made to the task force was from the Assistant Program Manager of the West Virginia Earned Income Tax Credit Conference and Campaign (WVEITC Campaign), a part of the West Virginia Welfare Reform Coalition. The WVEITC Campaign is a collaborative network of various state organizations and agencies dedicated to increase public awareness about the availability of the tax credit, the use of free Volunteer Income Tax Assistance sites to maximize credits, and to educate the public on Refund Anticipation Loan scams.

So far, a primary function of the WVEITC Campaign has been to print educational outreach materials for distribution, including 125,725 brochures, 6,722 fact sheets, 2,600 church bulletins, 3,821 envelope stuffers, and 379 posters. Another effort to increase public awareness included mailing sample packets to every Board of Education in West Virginia requesting them to distribute information about the WVEITC Campaign to school children. Also, both West Virginia Children's Health Insurance Program (WV CHIP) and West Virginia Women, Infants & Children (WIC) offices distributed information to their mailing list recipients, including several past and present Temporary Assistance for Needy Families (TANF) recipients.

Since the creation of the campaign, there has been a steady increase in filings by 20 percent each year resulting in \$239 million in revenue for the state in 2003.

The general public can obtain further information about the

WVEITC by calling the toll-free hotline at 1-800-WVA-EITC. The hotline receives an average of 2,000 calls each year.

### LOCEA

Persisting in their commitment to monitor West Virginia's educational systems, members of this committee met and received an update from the Chancellor of the Community and Technical College (CTC) Council. He provided attending lawmakers with the Performance Indicator Report for Fiscal Year (FY) 2003-2004 and detailed a comprehensive overview of the CTCs' challenges and successes.

According to information provided, enrollment reached 46,824, consisting of 19,991 credit students and 26,833 non-credit students. Among the credit students in West Virginia's CTCs, 60 percent were women and 40 percent were men. Also, 202 certificate degrees and 1,808 associate degrees were awarded. The average annual tuition was \$2,357, while the national average was \$1,479.

Some future challenges indicated by the Chancellor include increasing the adult population (ages 25-44) enrollment, which currently is 35 percent of total enrollment. Other concerns that were raised include the low number certificate degrees currently offered and the three-year graduation rate, which remains at a low 11 percent. In addition, WorkKeys scores have declined, with an average of 93 percent in FY 2002 and 85 percent in FY 2004.

The highlights of the report include the continual increase of enrollment in credit and non-credit programs, as well as career-technical certificate and associate degrees awarded. Also, the number of programs provided to employers has increased over the past three years and the number of enrollees in workforce education or training continues to increase. Consequently, the job placement rate of career-technical completers is persistently increasing, with 79 percent in FY 2002 and 93 percent in FY 2004.

During its second meeting on the December Interims, and with a recommendation for a \$300,000 supplemental appropriation to restore the Jobs for West Virginia's Graduates (JWVG) program, the executive Director of the program addressed the committee as to the importance of restoring this funding.

The JWVG program, established in 1997, was developed deliver employability and life skills training to at-risk youth in select schools across West Virginia. Since 1997, JWVG has delivered its services to over 9,000 youth exceeding

both national and state standards for youth training programs to include a 90 percent graduation rate and a 91 percent full-time employment placement rate. On average, nearly 30 percent of the program's youth achieve post-secondary training opportunities.

According to the representative, the purpose of the funding request is based on annual budget cuts from state and federal funds that have reduced the JWVG's operational budget at an approximate rate of 50 percent per year - from \$2.3 million in 2000-2001 to \$350,000 this year. With the funding reductions, according to the representative, the scope of the program and the service delivery area has dropped proportionally, from a 2000-20001 high of 44 counties to only eight in 2004-2005.

By immediately restoring the \$300,000 in supplemental funding, the representative stated the JWVG program would be restored to 12 schools, and subsequently over 400 youth, by the spring semester.

### LOCHHRA

Lawmakers on this committee were told that West Virginia has one of the highest rates of overweight kids in the country. Because of that, the Public Employees Insurance Agency (PEIA) has decided to study a new video game aimed at taking off pounds that will appeal to youngsters.

A representative from PEIA said that a game called "Dance Dance Revolution" is a big hit at arcades throughout the country. A home version that aims to get kids off the couch and on their feet has been released. The game incorporates a multi-colored footpad which, when plugged into the television, directs a participant's actions and incorporates them into a dance routine.

By following the directions and the music, the participant is challenged to increase the pace of the program. The faster the pace, the more calories burnt. A representative from PEIA told the committee that not only is the game really fun, but also is offers a great cardiovascular workout to the unbeknownst user.

According to the representative, the video game study includes 85 kids from around West Virginia. First they'll be weighed, have their blood pressure taken and take several other fitness tests. Researchers at WVU will send each child home with their personal game. They'll be monitored on a regular basis for the next six months to determine if the video game actually reduces weight gains in adolescents.

In addition, Dance Dance Revolution is being tested in one West Virginia school -- Franklin Elementary in Pendleton County. The PEIA representative said the kids "can't get enough of it." Those who used to dread physical education class are actually running to play. She also said that if the results of the study are positive, PEIA might make the game widely available to children throughout the state.

The committee continues to closely study child obesity problems in West Virginia with a mind toward affecting change.

### LOCWIED

Resuming its task of determining ways to leverage West Virginia's workforce for the economic enrichment of the state, lawmakers met to hear from three state representatives involved in this initiative. They first heard from the Chancellor of the Council for Community and Technical College (CTC) Education regarding the Middle College Implementation Plan, which is intended to expand educational services to adult students in West Virginia.

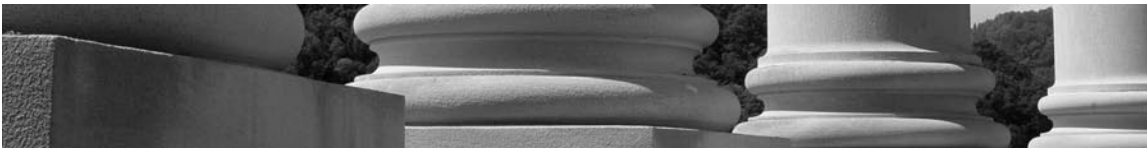
He introduced a representative from the West Virginia Department of Education, who succinctly outlined the five-year plan. According to the speaker, the Council is working to blend what is done in Adult Basic Education (ABE) with developmental programs. By building a bridge between these two elements, he said, a seamless educational system will be created to establish a foundation upon which students can prepare for post-secondary education.

The Middle College will allow adult students to enroll in day and evening classes in English, Mathematics and computer literacy; participate in day and evening tutoring sessions; obtain financial aid counseling; prepare for the ACT WorkKeys exam and the ACT college entrance exam; and, gain speaking, listening, problem-solving and critical thinking skills.

The primary target populations for this program are the 16-24 and 25-44 age groups, which have been pinpointed because of the need for keeping these individuals in the state when they begin their careers. According to the representative, the Middle College program will prepare students to be competitive in West Virginia's workforce.

Additionally, he said the Middle College program would promote collaboration among state agencies and will greatly benefit from the local Workforce Investment Boards (WIBs).

The Council for CTC Education Chancellor then told attending lawmakers this is a three-phase plan, with the ultimate goal of



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extending the program to all of West Virginia’s CTCs. Phase One, the current stage, will target the CTCs that already accommodate ABE classes in their facilities. These colleges will build on existing partnerships to expand the Middle College concept. Phases Two and Three will extend this program to additional CTCs.

The following presenter was the Director of the Governor’s Workforce Investment Division, who provided lawmakers with a report on the Workforce Investment Act. Fulfilling a committee request from November’s Interims, he provided lawmakers with a comparison of West Virginia’s performance with benchmark states, including Delaware, Pennsylvania, Virginia, Maryland, South Carolina, North Carolina, Kentucky and the District of Columbia.

According to the comparison, which covered data from the 2003 annual report, West Virginia generally is at or above the average levels. Among other comparisons provided, members were told West Virginia’s adult-entered employment rate of 78.8 percent slightly exceeds the national average of 74.3 percent. This rate reflects the percentage of adults who were not employed when entering the program, but entered employment within 90 days of exiting the program.

Additionally, West Virginia has significantly improved benchmarks in youth (ages 14-18) skills attainment. In this category, the state exceeds the national average and, among the benchmark states, is second only to Maryland. West Virginia’s youth diploma rate, which reflects the number of youth who attain either a high school diploma or GED after they exit the program, also exceeds the national average.

A representative from the Region III WIB concluded the meeting with a brief update on progress being made. She said the WIB is continuing collaboration with other regions, corporations, community colleges, the Bureau of Employment Programs and ABE. The speaker told lawmakers that ABE’s curriculum has helped Region III in meeting employees’ requirements.

### Parks, Recreation & Natural Resources Subcommittee

Members of this committee met and heard from a spokesperson from the Division of Natural Resources (DNR) regarding West Virginia’s trout management programs. He reviewed the various hatcheries throughout the state, including the Spring Run Hatchery located in Grant County and the Reeds Creek Hatchery in Pendleton County.

The Spring Run Hatchery produces approximately 150,000 pounds of fish annually and provides trout to other hatcheries

in the state. Similarly, the Reeds Creek Hatchery produces an estimated 160,000 pounds each year.

The total average production for all hatcheries is 750,000 pounds annually and is dependent upon the amount of rainfall. Each fish averages between 1.5 and 1.9 pounds each and there are approximately 750 miles, or 2,900 acres, of trout streams in West Virginia.

There are special regulated trout areas throughout the state that allow for catch-and-release fishing, fly fishing and fishing for children. Attending lawmakers noted that with these locations, definite economic opportunities exist. The representative told members that many out-of-state tourists visit the catch-and-release sites and the committee encouraged the DNR to utilize tourism funds to further promote these opportunities.

### Select Committee A - Flooding & Railroad Issues

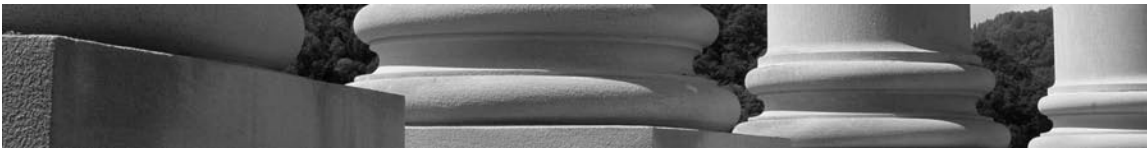
Lawmakers were presented with a 367-page flood prevention plan prepared by a task force made up of the U.S. Army Corps of Engineers, the West Virginia Conservation Agency and many other state agencies. The flood plan seeks \$2.8 million to improve the state’s early warning system for floods.

According to the spokesman, West Virginia has the worst death rate from flooding in the nation with 252 people dying in floods between the years 1960 and 1996. Only big population states Texas and California had more flooding casualties.

The plan included 11 recommendations to improve timbering and two to improve mining. The plan says the West Virginia Division of Forestry should be realigned to prioritize as urgent the inspection of each logging job during, and upon completion of, each operation. It also calls for the Division of Forestry to reduce the number and severity of wildfires in the state. Fire can reduce the ability of a forest to absorb rain.

Currently, timber operations must follow voluntary best-management practices (BMP), which are guidelines devised and monitored by the Division of Forestry. The report also indicated the Division of Forestry would do a better job of ensuring the BMPs are followed if it were provided with more inspectors.

As for mining operations, the report says all recommendations of an earlier state task force should be implemented. More than two years ago, state regulators proposed rules to decrease runoff from strip mines and to ensure tougher logging procedure enforcement.



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The representative from the Corps of Engineers said the report did not focus on mining because it already is well regulated. An environmental advocate said she had trouble with that argument because while the Corps of Engineers approves valley fill permits for coal companies, it is well recognized that runoff from valley fills is a big problem.

The representative also said that dredging a stream does not solve flooding problems and sometimes makes floods worse. During previous floods, he said the corps had cleaned a lot of debris out of streams. Two floods later, it was all back. He said the preferred way of clearing a stream is "channel modification," which is an engineered plan to change the stream or river. The Corps of Engineers is working on one such modification on Island Creek in Logan County.

Many states have regulations for storm-water retention. An attractive pond next to a shopping mall is not just for aesthetics; it also retains runoff rainwater.

Current West Virginia state law does not require developers to control runoff. The task force's plan calls for every county to implement a storm-water ordinance. Any development of more than three acres should be required to submit a storm-water management plan, the spokesman said.

Other proposed changes in the report would ask state and county officials to adopt flood plain ordinances; require real estate agents to notify buyers if a property sits in a flood plain; and, require a special permit for all construction, deconstruction or any major renovation within a flood plain, which if ignored would be punishable by a \$5,000 fine. Another suggestion for change would be to require homeowners living in a flood plain to anchor items that might float away.

Lawmakers are drafting storm-water legislation that would include a provision to create a permanent flooding inter-agency task force.

## Select Committee B - Insurance

Noting the Insurance Committee was charged with investigating affordability and availability of insurance coverage in West Virginia, the Insurance Commissioner told lawmakers that rate setting methods regarding commercial insurance coverage is becoming a problem for a myriad of small businesses that deal with product and service liabilities. Commercial enterprises such as assisted living and nursing home facilities, landlord associations, small trucking industries, and automobile retailers are having trouble securing liability coverage. As such, it was suggested a study of deregulating

the commercial line for multiple reasons might be of interest to lawmakers.

West Virginia presently uses a "prior approval" procedure to oversee rates charged by carriers who provide insurance coverage for small businesses. By deregulating the insurance industry regarding commercial lines only and allowing it to implement a "file and use" system used by other states, the Commissioner believes insurers would perceive West Virginia as a good state in which to do business and would encourage insurance carriers to enter the state's market.

By law, the definition of prior approval calls for insurance companies to report (file) their rates with the Insurance Commission. The state agency then has 60 days to either approve or disapprove the rate. If the state does neither in that time frame then the rate automatically goes into effect, which is called a deemer provision.

The definition of file and use calls for rates to be filed with the Insurance Commission but specific approval is not required. However, the Insurance Commission retains the right of subsequent disapproval.

Because the Commission can deny the rate filed if it deems necessary and the federal Unfair Practices Law also protects the consumer, the Commissioner does not believe implementing the file and use system for commercial lines to be a problem. She does believe, however, that moving from prior approval to a less regulated approach may draw more insurance carriers into the state, which ultimately would serve the state's citizens better.

Also during the interim meeting, a draft proposal to allow insurance carriers to issue non-renewal notices to no more than one percent of its property owners was addressed by the committee. A provision in the draft bill specifies that a company cannot target any specific county or location and another section requires the insurer to report to the Insurance Commission as to the reasons for not renewing the property insurance.

While a measure was passed last year that allowed auto insurers to drop one percent of their customers, property insurance was not included. Lawmakers will review this proposal in greater detail during the committee's January 2005 meeting.

<p>2004 - 2005 Interim Committee Meeting Dates</p>	<p>January 9-11-05 February 6-8-05</p>
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### Select Committee C - Pharmaceutical Availability & Affordability

The Co-Chair of the Pharmaceutical Cost Management Council addressed the Committee to summarize the main points of Executive Order 18-4. This Order established the Pharmaceutical Advocate's Office and provided authority for the Governor to appoint the Pharmaceutical Advocate by March 1, 2005. The Advocate is authorized to make decisions for the various executive agencies of government with respect to the purchase of prescription drugs and to coordinate all prescription drugs activities, practices and policies within the Executive Branch of State Government.

Under the Order, the Pharmaceutical Advocate is authorized to employ the personnel necessary to achieve the provisions and purposes of the Order and may draw upon staff of other agencies for advice and assistance in the formulation, implementation and execution of administrative and operational plans and policies.

As of November 29, 2004, the Pharmaceutical Advocate will administer existing cooperative purchasing agreements entered into by the Executive Director of the Public Employees Insurance Agency.

For further information about Executive Order 18-4, or to obtain copies, contact the West Virginia Secretary of State's Office.

### Select Committee D - Water Resources Protection

The Director of the Division of Water Resources and Waste Management spoke with the committee regarding a memorandum of understanding between the West Virginia Department of Environmental Protection (WVDEP), West Virginia Water Research Institute (WVWRI) and Center for Environmental Geotechnical and Applied Sciences (CEGAS) regarding what each entity's part is in the collection of water usage data.

The WVWRI and CEGAS will be responsible for preparing/collecting the data of the water usage survey to be submitted in a format comparable to the WVDEP's. Currently, Marshall University is developing a website to house general information concerning the Water Resources Protection Act (WRPA).

The link to the web page will be ([www.marshall.edu/CEGAS](http://www.marshall.edu/CEGAS)), which is expected to be up and running by the end of December 2004.

The WVWRI and the CEGAS will prepare a discussion of any area of concern regarding historic or current conditions that indicate a low flow condition or any areas where potential flooding or droughts could occur that may threaten the availability of groundwater. According to the Director, WVWRI and CEGAS need to evaluate in-stream and off-stream uses, which are likely to aggravate natural flow conditions to the detriment of the water source. Growth areas should be evaluated where there may be competition for water resources and practices or methods where individuals have created ways to reduce water withdrawals.

To prepare these materials, CEGAS will provide \$86,034 by the beginning of September 2004 and apply deferral cost match of \$74,092 in April 2005. The Center will also provide \$80,000 beginning September 2004, plus \$66,193 of in-kind matching funds.

Data managers from West Virginia University, Marshall University, and WVDEP met last month to discuss the data that will be provided for the final report. The managers have obtained data from the West Virginia Bureau of Employment Programs and found that in order to comply with the survey requirements mandated by the WRPA, the WVDEP would need to obtain water estimates from 40,000 West Virginia businesses.

During the December interim, staff also reviewed two draft pieces of legislation reforming the Joint Legislative Oversight Commission on State Water Resources. In the first draft legislation, the President of the Senate and the Speaker of the House would designate eight members from each house with one being from the minority party on each side. Also, the Speaker of the House and the President of the Senate would select a member from each house to represent each of the eight largest watersheds in the state as designated by the US Office of Geological Services. These different watersheds are established as six digit hydroponic units by the Office of Geological Services and are: the Middle Ohio Raccoon, the Guyandotte, the Upper Ohio, Little Kanawha, the Kanawha, the Upper Ohio Beaver, the Monongahela and Potomac watersheds.

In the second draft legislation there would be seven members from each house with one being from the minority party. Four of the appointments from the Senate shall be the chairman of these standing committees: Agriculture; Energy, Industry and Mining; Finance; Judiciary; and, Natural Resources. Four of the appointments from the House of Delegates shall be the chairmen of the following standing committees: Agriculture and Natural Resources; Finance; Industry and Labor; and, Judiciary.

## Select Committee E - Racial Profiling

During the December Interims, a representative from the Department of Health and Human Resources' (DHHR) Office of Community and Rural Health addressed the committee regarding its Office of Minority Health.

The representative stated there is a one-person-staff operating the Office of Minority Health that is charged with providing educational information and outreach services to the minority community. The original funding for this office came from a Kellogg Foundation grant. The program coordinator works closely the State Minority Advisory Committee, which is not part of DHHR. Since this committee helps hold a State Health Conference, a minority health track has been added to its curriculum with the help of the Office of Minority Health.

The representative also stated that the Division of Health Statistics collects information on diseases and medical issues that effect the minority population such as sickle cell immunization and heart disease.

In other matters, the committee also discussed three possible resolutions to be considered during the regular session. One resolution calls for a study on the process of state procurement; another resolution calls for a study to consider funding of the demonstration professional development school projects; and the final resolution would call for a study on the state guaranteed loan pool for disadvantaged business enterprises.

## Select Committee F - Campaign Finance Reform

In order to better understand the federal and state climates with regard to campaign finance reform, members of Select Committee F were presented with information dealing with "527" political organizations.

Counsel for the committee briefly discussed the history and current implications of "527" political organizations. According to the Brookings Institution, "527" political groups emerged from Internal Revenue Code in 1974, giving political organizations an exemption from federal income tax and gift tax on any funds contributed and used for political purposes. In 1996, the Internal Revenue Service (IRS) was asked whether an "issue advocacy" organization that was not registered as a candidate committee, party committee or political action committee (PAC) could qualify for the Section 527 tax exemption. The IRS reasoned that groups seeking to influence elections through candidate-specific issue advertising would qualify as political organizations, regardless of whether they

were registered with the Federal Election Commission (FEC) or state election agencies.

In 2000, federal law amended Section 527 because a loophole was found that allowed groups to use the "527" title and not have to file any registration statements or even have an existence beyond a registered agent and a post office box. The ads were covered under law and allowed the "527" groups to attack specific candidates by avoiding using specific words such as "vote for" or "oppose" a specific candidate. In addition, the "527" group officers and contributors were not required to be known or filed. The new law obligated groups under Section 527 to disclose their political activities and a listing of their contributors.

Currently, based on continued changes to the IRS Code, most Section 527 organizations must now register with the IRS and file periodic reports disclosing names and addresses of all person who contribute \$200 or more and all persons receiving expenditures of \$500 or more. These changes, according to the Brookings Institution, was widely viewed as an important breakthrough in campaign finance disclosure and has provided more information to the public regarding "527" political groups. Some contend that current law is unconstitutional and overbroad, violating both the First and 10th Amendments.

Members of the Committee asked Counsel if it was possible to establish a "cap" on the amount of money an individual may contribute to a "527" political group. Counsel stated he would look into the possibility and whether or not doing so would violate the First Amendment of the US Constitution.

In addition to reviewing "527" political organizations, members of the Committee were presented with information regarding campaign finance legislation in the State of Wisconsin. The bill creates a "democracy trust fund" under which eligible candidates for Supreme Court justice may receive public financing. Members of the committee requested counsel establish a report listing several different scenarios for West Virginia with regard to public financing of political campaigns, using the Wisconsin legislation and other states' provisions as guidelines.

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