

# Interim Highlights

## Agriculture & Agri-business

### Avian Influenza

An agriculture expert from the National Conference of State Legislatures (NCSL) gave a presentation to the Agriculture and Agribusiness Committee about avian influenza.

The speaker noted there are two basic classifications: low-pathogenic and high-pathogenic. The low-pathogenic varieties are commonly found in wild birds and pose no threat to humans. The high-pathogenic forms kill many domesticated flocks and often have the potential to infect humans.

There have been three outbreaks of high-pathogenic forms in the United States. The first, in 1924, affected birds in the Northeast. The second, in 1983, led to the culling of 17 million birds in Virginia and Pennsylvania. The latest outbreak, in 2004, was contained to one flock in Texas.

In addition to classification based on pathogenicity, the flu viruses are often identified by their genetic structure using hemagglutinin (H) and neuraminidase (N), two types of genetic sequences. There are 16 H types and nine N types, leading to 144 possible subtypes, or strains.

The strain that presents the highest risk of causing widespread human infection is H5N1. However, the speaker said this strain has not been seen in humans in the United States and typically only infects people in third-world countries who work with or around birds. This includes Southeast Asia, where governments have culled more than 100 million birds in response to the threat.

The NCSL expert provided an overview of the process in place to protect flocks in West Virginia. He said the poultry industry is usually more than willing to welcome government oversight, since early detection of an outbreak can help limit its impact.

The federal government, however, does not have the resources to inspect every domestic flock, so the inspections are contracted through the states. When state inspectors find an infected flock, they quarantine and cull the birds. Any



*Senate President Earl Ray Tomblin and House Speaker Richard Thompson co-chair the Joint Committee on Government & Finance meeting held October 9th, 2007. Consisting of leadership and major committee chairs from both chambers, the committee is responsible for the overall administration and operation of the legislature.*

*photo: Martin Valente*

affected equipment is disinfected or, if disinfection is not possible, destroyed in order to reduce the risk of recurrence.

Producers can protect themselves in case of an avian flu outbreak by enrolling in an indemnification program offered by the U.S. Department of Agriculture's National Poultry Improvement Plan (NPIP). This allows producers to get full compensation for the market value of any culled flocks. However, to be eligible, the producer must comply with the quarantine. State governments must then vouch for the producer's compliance.

## Broadband - Select Committee E

### Broadband Availability

Representatives from Cisco Systems addressed the committee about its partnership with the state to improve broadband availability and access in West Virginia. The partnership is still in its infancy, the representative said, but moving along.

Members questioned whether Cisco had any role in the governor's veto of a broadband bill passed during the 2007 regular session. In past meetings, representatives from the governor's office said the bill was vetoed because it could have threatened existing partnerships like the one with Cisco. The Cisco representatives told members that their company had nothing to do with the veto.

## Interim Meeting Schedule & Agendas

Please visit West Virginia Legislature's Web site:  
<http://www.legis.state.wv.us/committees/interims/intcomsched.cfm>



## Interim Highlights

### Children, Juveniles & Other Issues, Select Committee A

#### **Child Protective Service Personnel**

Continuing to work on state law affecting the safety of children, Select Committee A moved a bill from its charge that would expand the definition of “imminent danger to the physical well-being of a child.” If in “imminent danger”, the child may be removed from a home if circumstances indicate a severe threat to the health and safety of the minor(s).

The proposed change in the committee’s draft measure includes a provision strengthening charges of child abuse and neglect. “Alcohol and substance abuse” by the parent(s) has been added to existing instances that are used to determine if a child or children are in “imminent danger”. The bill has been approved for further legislative review during the 2008 Legislative Session.

Following up on problems relative to the retention and recruitment of Child Protective Service (CPS) personnel throughout the state, lawmakers in October heard from the Cabell County Community Service Manager. Concerns of Eastern Panhandle CPS workers heard by the committee during the September interim meetings in Martinsburg were mirrored by the Cabell District manager. The manager told legislators that low pay, high case loads and high job risks for CPS personnel severely affect the retention, recruitment and morale of caseworkers.

According to the Cabell County Community Service Manager, the primary concern for the district is staffing. The district did not gain any CPS positions with the addition of staff across the state, but in fact, lost positions. While he extolled the diligence of his CPS team, he also expressed concern that staff is utilized to its fullest extent but are unable to fulfill all of their responsibilities in a timely manner because of the severe shortage. “In particular” his report noted, “this (shortage) negatively impacts their (CPS workers) ability to provide services in the open cases which do not involve court.”

He listed barriers to recruitment efforts as: a cumbersome hiring process; low compensation; safety issues related to the existence of meth labs, drugs, guns and other social health issues; lack of professional respect by clients as well as the public; and, the availability of other employment opportunities for social workers in Cabell County. The community service manager told legislators that the financial incentives offered by three major hospitals, a variety of profit/non-profit service providers and Marshall University, all located in and around the river community, significantly

restrict the state’s competitive edge regarding recruitment and retention of CPS workers.

Recommendations provided to the legislative committee by the Cabell County CPS manager called for a merit approach in providing salaries, the establishment of numbers of caseloads assigned, provisions for additional CPS staff funding, the creation of an “on-call” position to assist night CPS workers and to review the current status regarding assaults to CPS employees and reimbursements for costs to the employee(s).

While additional material is being prepared for the committee, lawmakers requested staff to look into existing state law regarding “civil personal liability” for the purpose of drafting an inclusion in state law that would provide an exemption from personal lawsuits from clients toward CPS workers and their supervisors while on duty.

### Economic Development, Joint Commission on

#### **Procurement Technical Assistance Cooperative Agreement Program**

In an effort to increase competition for contracted services and products, the U.S. Department of Defense (DoD) created the Procurement Technical Assistance Cooperative Agreement Program in 1986. This helped fund the creation of procurement assistance programs that help private businesses bid for DoD contracts.

West Virginia has two such programs: the Mid-Ohio Valley Regional Council Procurement Technical Assistance Center (PTAC) and the Regional Contracting Assistance Center (RCAC). PTAC provides services in counties in northern West Virginia, while RCAC covers the Eastern Panhandle and the southern part of the state.

Representatives from PTAC and RCAC spoke to the Joint Commission on Economic Development about their organizations. The commission also heard from businesses that had received DoD contracts thanks to these organizations.

The speakers talked about the kind of support the organizations provide. The programs provide their services for free to businesses located within historically underutilized business zones (HUBZones) or other similar programs offered by the U.S. Small Business Association.

PTAC and RCAC provide technical support for businesses looking to bid for government contracts. This includes



government registration with Central Contractor Registration, Dynamic Small Business Search, the Online Representations and Certifications Associations and other online vendor databases. They also help businesses with reporting requirements, contract bidding and other administrative tasks.

According to figures provided by the organizations, RCAC and PTAC have served about 2,000 businesses in West Virginia. Nearly 7,100 contracts and subcontracts totaling more than \$2.5 billion have been rewarded during the 21 years. Several speakers said the state received a high rate of return on its investment in the programs.

## LOCEA

### Chancellors' Reports

In its first meeting of the October interims, the Legislative Oversight Commission on Education Accountability received reports from the chancellors of the Community and Technical College System (CTCS) and the Higher Education Policy Commission (HEPC).

In his statutorily required annual progress report to LOCEA, the CTCS chancellor highlighted both improvements and areas of concern for community and technical colleges throughout the state over the past three fiscal years.

The chancellor listed several positive achievements during this time span, including: a 21 percent increase in the number of career-technical certificate degree programs offered, a 43 percent increase in the number of certificate degrees awarded, a 92 percent passage rate on national and state licensure/certification exams and a 6 percent increase in retention rate.

However, the chancellor pointed out several areas where colleges could be improving. The primary concern of many members of the commission was the six-year graduation rate. Only 28 percent of community and technical college students graduate in six years, the chancellor said, well below CTCS's goal of 36 percent, the national average.

CTC's also fell short when it came to students moving from developmental courses to college-level courses. About 66 percent of students enrolled in developmental English courses moved on to successfully complete the next subsequent college-level English course. The goal is 88 percent. Similarly, 62 percent of students in developmental math courses successfully completed the subsequent college-level math course, short of the goal of 82 percent.

The commission is planning to follow up on the report by asking the presidents of lower-performing technical and community colleges to talk about their performance and what they are doing to improve.

The HEPC chancellor's report highlighted graduation statistics for the state's public and independent institutions of higher education.

After a slight dip during 2005-06, the number of certificates and associate's degrees awarded by public institutions increased from 2,955 to 3,225. Over the last 10 years, this number has risen by nearly 39 percent. For independent institutions, 299 certificates and associate's degrees were awarded in 2006-07, compared to 334 the year before. This number has dropped nearly 18 percent over the past decade.

Bachelor's degrees awarded rose from 8,025 in 2005-06 to 8,278 in 2006-07. During the last decade, there has been an approximately 20 percent increase in baccalaureate degrees awarded by public institutions. Independent institutions awarded 1,961 bachelor's degrees in 2006-07, an increase from 1,906 the year before. Since 1996-97, this number has risen 52 percent.

The number of graduate and professional degrees conferred by public institutions remained fairly steady, increasing from 3,226 in 2005-06 to 3,230 in 2006-07. However, the number of such degrees awarded rose more than 23 percent since 1996-97. Independent institutions awarded 422 professional and graduate degrees in 2006-07, compared to just 335 the year before. In the past decade, this number has risen more than 210 percent.

The chancellor also talked about potential changes to improve the state-sponsored need-based scholarship system. The first change was regarding application deadlines. Currently, students must complete the Free Application for Federal Student Aid (FAFSA) and the state's common scholarship application by March 1. The chancellor recommended extending this deadline, or possibly eliminating it altogether, depending on available funding. He estimated that 3,000 additional students, especially non-traditional students, could apply if given more time.

The second change was to do away with the common application. This would make the process simpler for applicants and for staff who must process them.

The final change the chancellor suggested was to do away with the fixed, 75 percent grant and replace it with a sliding scale based on need. Such a change could be made within the current \$33 million grant, he said.



### 21st Century Skills

In its second meeting of the October interims, members of LOCEA heard from the director of the Office of Education Performance Audits about proposed changes to Board of Education policy related to the 21st Century Skills Initiative.

Policy 2320 is up for public comment until Oct. 22. It is part of an effort to begin implementing the provisions of Senate Bill 657, which, among other things, required the incorporation of 21st Century Skills into public school standards. This initiative is a multi-state effort to incorporate technology into the educational process.

Besides technical changes, the proposed policy creates a pilot program for 21st Century Skills for the 2007-08 school year. The director said the proposed policy sets very broad goals and the specific implementation of Senate Bill 657 will probably be embodied by changes to Policy 2510, which the director said should be finalized later this year.

According to the proposed changes to Policy 2320, school systems in the pilot program are required to implement 21st century curricula and instructional processes. Schools are also required to work on continuous improvement and planning for meeting students' needs. Management practices are also required to be conducive to 21st century learning.

### Education Subcommittee A - Public Education

#### County School Superintendents

A speaker from the West Virginia School Board Association provided the committee with an overview of the superintendent study the association is preparing to undertake. The study is a response to concerns over the preparedness of several county school superintendents.

The speaker highlighted several reasons why a superintendent may not be prepared for his or her position. These include the "silo effect" of having specialized training that does not help with the general demands of being superintendent; micromanagement by some county boards; limited past experience with central office "culture" and external interests trying to exert influence.

According to the speaker, there are several potential ways to address these problems. These include the implementation of local leadership academies or a statewide program for aspiring superintendents or both.

The School Board Association, the speaker said, is currently conducting a survey regarding superintendents. The as-

sociation hopes the survey will include measures of current demographics, interest in becoming a superintendent among current doctoral students, county board member opinion about what makes a good superintendent and opinions of other interested parties. The survey should be completed by January 2008.

### Education Subcommittee C - Public School Finance

#### Purchasing Cards

Following up on an issue discussed in recent meetings, the subcommittee invited the deputy superintendent of schools to talk about what policy changes need to be implemented to encourage K-12 schools to use purchasing cards (P-cards) in lieu of traditional purchase orders.

The deputy superintendent said that of the 48 counties the Department of Education surveyed, 38 were using already P-cards in some capacity. Currently, purchases are covered by Policy 8200 issued by the State Board of Education. This policy allows local boards of education to use P-cards but still requires the prior issuance of a purchase order.

To encourage school boards to use P-cards more often, the deputy superintendent recommended changing Policy 8200. Even without an advance purchase order, P-cards are audited and all purchases must be reconciled, he said. As the subcommittee heard in past meetings, post-secondary schools do not require purchase orders for most P-card purchases. A change to Policy 8200, the speaker said, would allow K-12 schools the same freedom.

Members also heard from a representative from Marshall University about alternative ways to calculate special education funding for public schools.

According to the speaker, West Virginia's system is an anomaly compared to the rest of the nation. When calculating adjusted enrollment, special education students are counted three times: once for being a student and twice for being a special education student. This weight also covers Honors, Advanced Placement and gifted students. The speaker said the only other state that uses a "one weight fits all" calculation is Oregon, which is looking to change to a different system.

While the weighted calculation may reflect the average cost of each special education student, it does not allow for students at the extremes of the range of costs, the speaker said. For example, some special education students require very little extra attention and, therefore, very little extra funding.



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On the other hand, students with severe disabilities could cost a school board hundreds of thousands of dollars a year. He estimated that 75 percent of disabled students are being weighted too highly by this system, with the remaining students costing well more than their weighting would indicate.

The speaker then provided an overview of alternative methods of special education funding. He listed six primary classifications of calculation methods: flat grants, per-pupil weighted formulas, census systems, resource-based formulas, cost-based formulas and block grants.

Seven states use some variant of flat grants. In this system, each school district is given a fixed amount of money for each special education student. This amount may or may not vary depending on the severity of the disability.

The per-pupil weighted formulas are similar to what West Virginia uses. However, most states that use this approach use variable weights, depending on the severity of the disability and/or the age of the student.

Census systems are used by 10 states and the federal government. This approach allots money based on some measure of total student enrollment with no reference to the number of special education students. Many states combine this approach with a special hardship fund, which reimburses local school districts for any exceptionally expensive interventions. However, in four states, this system has been deemed unconstitutional or unlawful on the grounds it does not provide equal and adequate education to handicapped students.

Resource-based formulas provide local districts reimbursements for specific resources they need to provide special education services. The amount of aid is based on the wealth of the district or its ability to support special education. The reimbursement is limited to expenses above the standard cost for students without disabilities.

Cost-based formulas are similar to resource-based formulas in that the state reimburses districts for actual costs. However, there is no consideration of a district's ability to pay for special education itself. The amount of reimbursement varies by state, but no state fully reimburses its districts. Six states use this system.

Block grants come in two varieties: flat and variable. Flat grants are awarded based only on the number of students, while variable grants are based on the severity of disabilities. Seven states use some form of block grant.

The speaker said every system has some advantages and disadvantages and there is not one ideal approach. However, he advocated moving away from the current one-size-fits-all weighting system.

During the past regular session, a subcommittee of the House Education Committee wrote a proposal that, among other things, would have eliminated the current weighting completely but would have provided a special reimbursement fund for children with extreme or multiple disabilities. As part of the proposal, the focus would shift on early intervention programs to prevent students from being labeled as needing special education. The speaker said the proposal raises several questions but does merit serious consideration.

Finally, the subcommittee heard from staff counsel about the fiscal impact of the changes proposed by the House Education subcommittee. Besides changing the way special education students are counted, the proposal would alter the calculation of allowances for fuel, current expenses, alternative education, etc. The proposal would be phased in over the next three academic years. It would cost the state nearly \$30 million more than the current formula but provide a potential \$51 million growth in the local share given to counties over those three years.

### Teacher Shortages

During its second meeting of the October Interims, the committee listened to a report presented by the Bureau of Business & Economic Research (BBER) on the Teacher Shortages that are plaguing West Virginia and the rest of the country.

West Virginia's Education Personnel Data Report for the 2006-2007 school year showed more than 3,800 teaching positions posted for K-12 public schools. 390 of those positions were left unfilled for the school year, 75 percent of them due to lack of qualified applicants. More than half of the positions that were left unfilled were for special education teachers, followed by math and science.

Various reasons for the current teacher shortage were presented to the committee including: uncompetitive wages, increased demand in special education and high rates of departure from younger teachers. Other problems presented in the study were the strict certification requirements and teacher training programs that numerous qualified individuals will not partake in.

The study conducted showed that highly qualified teachers require competitive pay, which is lacking. This causes many young teachers to depart and enter into non-teaching professions.

West Virginia's overall rating by the National Council on Teacher Quality (NCTQ) was "needs significant improvement." Evaluation of teachers and linking teacher performance to pay; providing meaningful alternate routes to certification and preparing; preparing teachers, especially ones in special education; and accountability of individual teachers on their performance in the classroom were areas of needed improvement.

There was some good news to report. West Virginia fully met six goals: secondary teacher preparation, standardization of credentials, awarding meaningful licenses, entry into preparation programs, program approval and accreditation, and interstate portability of teaching certifications.

Numerous recommendations for resolving the teacher shortage in the state were also presented. A few of them included providing housing assistance to teachers in high-need high-growth areas, improving data policies and alternative routes to teacher certification.

### Finance - Joint Standing Committee on

#### Tax Collections, FY 2007

Lawmakers heard a report in the Joint Finance Committee meeting regarding the fiscal year 2007 wrap up and an assessment of tax collections for the past year. Lawmakers were informed that the state could wind up with a nearly \$64 million surplus in the bank if collections go as previously forecast. The Legislature has budgeted \$3.7 billion in general revenue spending for the fiscal year that ends next June 30, but current projections say tax collections are expected to exceed that figure by \$43.4 million. That could be added to the \$20.3 million left over from the prior budget year.

In figuring these financial numbers, assessors did not consider whether tax revenues might exceed expectations, which they had done during the last fiscal year by over \$90 million and have so far for each month during this fiscal year. A representative from the Department of Revenue credited stronger-than-expected revenues from income taxes, the business franchise and cigarette taxes, and from interest on investments for the higher than expected financial figures.

Lawmakers were told that last year's surplus reached \$106 million. And, as required by law, legislators deposited half into the state's emergency reserve fund. Another \$33.2 million from that surplus supplemented existing spending measures.

The recent deposit into the emergency reserve fund, or state's "rainy day" fund, brought the reserves to \$566.2

million, or 14.8 percent of general revenue. That exceeds the 10 percent benchmark set by the Wall Street firms that grade the state's credit rating.

### Finance Subcommittee A

#### Public Defender Corporations

Continuing their study of Public Defender Corporations (PDCs), members of Finance Subcommittee A spoke with an official from the Department of Administration. The speaker took questions from members during a discussion of PDCs. The subcommittee has been looking at whether PDCs should be expanded statewide.

### Finance Subcommittee B

#### Special Reclamation Fund

This subcommittee heard a presentation from the Marshall University Center for Business and Economic Research (CBER) regarding the solvency of, and compliance surrounding, the Special Reclamation Fund.

Their report concluded that the current method of pay-as-you-go funding will not work long-term for acid mine drainage reclamation as costs to reclaim these lands may occur in perpetuity. Full-cost bonding is the best solution for surface reclamation sites. The report stated that these costs are easily ascertained and can be completed in a definite period of time. These characteristics make land reclamation an ideal candidate for full-cost bonding. Indications for the insurance industry are that these are the type of bonds they are most likely to issue due to their predictability and relatively low cost.

The CBER analysis indicates that most operators would choose this option on economic grounds if it were available. Each bond would have to be site-specific and would vary with the conditions at the site. Since the DEP permitting process already includes a detailed evaluation of each site, devising individual bonds does not appear to present a formidable deficiency.

The report also recommended creating a trust fund to deal with legacy and water reclamation costs. The fund would have to be funded in part by a continuation of the current tonnage tax. That tax, however, would quickly and significantly decline as the backlog of reclamation projects is completed. Also, the trust fund would need to have sufficient reserves (20 percent to 50 percent) to cover any

defaults in bonds as well as unforeseen problems. The trust fund could also be financed in part by site-specific bonds to cover water treatment costs. This approach has been used in Pennsylvania.

## Forest Management Review Commission

### West Virginia Timber Industry

Members of the commission heard from the owner of Allegheny Wood Products about issues facing the timber industry in West Virginia.

The owner said the future of the Mountain State's timber industry looked bleak. He cited foreign competition as a major reason. China, for example, is able to produce cheaper furniture products made to look like more expensive hardwoods, which cuts into revenues for hardwood manufacturers. In addition, Europe is getting ready to bring timber to market, and Russia is able to more efficiently market its timber products in China.

The speaker cited other threats to West Virginia's timber industry. One was the 4 percent severance tax charged on timber. He said that unlike coal and other nonrenewable resources, timber is renewable, similar to corn and other crops. He added that 40 percent of his company's timber comes from West Virginia, a number that would be higher were it not for the tax.

He also said poor timberland management is threatening the sustainability of West Virginia's forests. He said West Virginia timber is going to be valuable someday, possibly 50 years from now, but it was questionable if the industry can survive until then.

The commission heard about another threat to West Virginia's woodlands – forest fires. A representative from the Division of Forestry told members that there was a high risk of fire this year due to dry weather. Statewide precipitation is more than 8 inches below average this year. He compared the conditions to 1987, when a nearly 4-inch drop in average precipitation led to more than 428,800 acres of land burned.

November 26 - 28  
December 9 - 11  
January 6 - 8, 2008

**2007-2008  
Interim Committee  
Meetings**

**Note:** Dates subject to change.

Government Operations, Joint Committee on & Government Organization, Joint Standing Committee on (Joint Meeting)

### Division of Forestry Audit Report

During a joint meeting of the Government Operations Committee and the Joint Standing Committee on Government Organization, a representative of the West Virginia Division of Forestry responded to a legislative audit that found, among other things, a total of \$12.5 million left undocumented during a recent fiscal year. Other problems included a lack of records to justify \$2.5 million paid to employees, and of paperwork to reflect whether the division collected such revenues as timber and logging license fees.

The audit also found no records to support \$4.9 million in receipts and \$7.5 million worth of spending from the budget year that ended in June 2003. They also were unable to find records for the license fees as well as for penalties from civil violations, reimbursements from fire suppression work and other revenues the division is supposed to collect. Those records were absent for the 2004 and 2005 fiscal years.

Because of the poor record-keeping in the division, the report stated no opinion as to the agency's financial soundness.

The representative from the DOF stated that high turnover among the agency's accountants contributed to the poor record-keeping, as did flooding at one of its offices.

The joint interim committee that fielded the report voted Sunday to relay it to legislative leaders from both chambers. Lawmakers also plan to recall state forestry officials during their January interim meetings.

## Government Organization - Subcommittee B

### City Liens on Neglected Property

Lawmakers on this committee heard a brief presentation from the Mayor of Summersville regarding possible changes to State Code so cities can impose liens on neglected properties that become a danger to residents.

In regard to his city, one structure in Summersville required 5 percent of the town's budget in getting it razed, the mayor said. Money to cover such costs was removed from the street department, leaving the city simply hoping it doesn't get hit by major snowstorms this coming winter.

Also, the mayor told the committee that the city must pay \$70 per ton to dispose of debris at a landfill, and if such wastes contain asbestos, the fee goes higher. He then stated that

the issue becomes even more difficult for cities to cope with once a property is thrown into bankruptcy because the city is not high on the list of priorities after a bankruptcy.

The mayor stated that the committee could help cities by allowing them to sell a property to satisfy a lien. In current practice, cities are barred from imposing liens on properties that have fallen in arrears on service fees.

### Government Organization - Subcommittee C

#### Professional Employer Organizations

In October, the subcommittee heard a presentation from the Office of the Insurance Commissioner (OIC) regarding Professional Employer Organizations (PEO), which are being studied pursuant to Senate Concurrent Resolution 63.

A PEO provides outsourcing of payroll, workers' compensation, human resources and employee benefits administration. It accomplishes this by hiring a client company's employees, becoming their employer of record. Then the PEO leases the employee back under contract to the original employer. This is also referred to as staff leasing or co-employment.

The Office of the Insurance Commissioner appoints a rating organization for workers' compensation insurance to the PEO, which in West Virginia, the National Council on Compensation Insurance (NCCI) has been appointed.

The OIC looks forward to working with the Legislature, insurance carriers, NCCI and the PEO community as this new industry grows in West Virginia. The OIC is looking to revise the current rule, Rule 31, which oversees employee leasing to better define how PEO policies can be handled. Rule 31 was last revised in December 2005. The committee will continue to study this matter in future meetings.

### Health - Select Committee D

#### State Children's Health Insurance Coverage / Autism

Following the recent veto of federal legislation by the President, West Virginia lawmakers heard from the Director of the SCHIP program to determine the status of the state's children's health care coverage.

The federal measure vetoed allowed for states to expand their coverage to children who are below 300 percent of the federal poverty level (FPL) instead of the existing 200 percent FPL. It also would have phased out adult coverage

and put an emphasis on coverage of children below the 200 percent FPL.

Presently, five states have filed suit regarding the action. New York had a waiver to rise to 400 percent of the FPL while California, Washington, Maryland and Arizona were planning on expanding their programs. With West Virginia using a 220 percent FPL, and a plan to increase the level by 20 percent each year, the new provisions had no effect on the state either way to date, the director told lawmakers.

According to the spokesperson, the current financial status of WVCHIP (West Virginia Children's Health Insurance Program) is in good standing with the total federal funds available as of October 10, 2007, being approximately \$25.6 million.

West Virginia has already acted upon imposed federal regulations approved in August 2007 by the Centers for Medicare and Medicaid. These regulations call for waiting periods between losing private coverage and CHIP enrollment; cost sharing relative to private coverage; monitoring health insurance status at application; verifying family insurance status through insurance databases; and preventing employers from changing dependent coverage policies that would favor a shift to public coverage.

The SCHIP director told lawmakers that WVCHIP has a six-month waiting period for regular CHIP and a one-year period for premium coverage. Monitoring health insurance status is in play. The program has changed its contract for insurance review to strengthen database reviews. But, the director noted WVCHIP has no authority to prevent employers from changing coverage policies, which would be under the purview of the Insurance Commissioner.

In responding to legislative inquiries the director indicated that advocates of the beefed-up congressional plan believe the increase in the federal poverty level is highly significant to West Virginia but is confident the state is already moving forward in providing its children with health care coverage.

Presently CHIP's scope of coverage leaves 5 percent of the state's population without coverage, which amounts to 19,000 to 21,000 children. It also believes the count may be "off" to a certain degree since children are mobile and citizens in rural areas may not be aware of the program.

Although lawmakers are attempting to ensure all West Virginia children have health care coverage, most admit it difficult to work under uncertain federal conditions. But whether or not Congress raises the FPL to 300 percent, West Virginia will already be covering the 4,000 additional children within the next three years with its 20 percent annual increase.

In another area of discussion, lawmakers were informed that by 2003, all doses of preservative-containing vaccines were off the shelves of immunization providers in the United States and thimerosal removal began in 1999, but autism rates have not decreased.

Appearing before the health care committee was the State Epidemiologist and Director of the Division of Surveillance and Disease Control, Bureau of Public Health of the Department of Health and Human Resources (DHHR). Because of an interest in the increase of autism and its causes, the idea of vaccines containing mercury as a possible source for the affliction entered health discussions.

The epidemiologist assured committee members that vaccines are no longer mixed with the mercury-containing preservative thimerosal. Since the 1930s, thimerosal was necessary for the packaging of multi-dose vials to prevent contamination. As with the 1930s data, there is still no evidence of ill effects, the expert told lawmakers.

To assuage the fears of the public and after conducting extensive tests on the use of thimerosal in childhood vaccines, the Federal Drug Administration (FDA) and the Center for Disease Control (CDC) in 1999 asked manufacturers to remove thimerosal from pediatric vaccines. This removal has been done.

## LOCHHRA

### Medicaid Management Information System

An official with the state Department of Health & Human Resources (DHHR) provided the Legislative Oversight Commission on Health & Human Resources Accountability (LOCHHRA) an overview of the Medicaid Management Information System (MMIS), a Medicaid claims service operated by Unisys Corporation.

According to the official, 15 million total claims were handled during Fiscal Year 2007, with 92 percent of those submitted electronically. About 58 percent of the claims are through pharmacies.

As of September, 24,614 providers were enrolled in MMIS. Unisys's Provider Help Desk handled 15,860 calls during September.

The official also provided information on the number of Medicaid participants. As of September, there were 302,245 members enrolled. Of these, 41,290 were eligible for both Medicare and Medicaid. In addition, 6,538 of the members

were foster children.

Another representative from DHHR talked about the Personal Options program. This is an option for participants in the Medicaid Aged and Disabled Waiver Program that allows for more self-direction over care and services. The program was created earlier this year.

Under this program, participants are treated as an employer and can hire and manage their care workers. Participants can hire friends, neighbors or family members, but not spouses. These employees must have or receive proper training. Money is handled through an agent and not by the participant; however, the participant can set employee wages within certain guidelines. Participants can transfer back into the traditional service option at any time.

## Infrastructure - Select Committee C

### Federal REAL ID Act

The Select Committee on Infrastructure heard from several speakers about the impact the federal REAL ID Act will have on West Virginia.

A policy director from the National Conference of State Legislatures (NCSL) provided the committee with a detailed explanation of what REAL ID is, where it is at, what challenges it presents and what the NCSL's position is.

According to the speaker, REAL ID came out of recommendations contained within the 9/11 Commission Report. This report called for secure driver's licenses and ID cards (DL/ID cards) among other changes. The commission's recommendations were implemented in the Intelligence Reform and Terrorism Prevention Act of 2004. This act established a negotiated rule-making process regarding DL/ID cards.

However, in 2005, Congress passed the REAL ID Act as a rider to an emergency military spending bill. This replaced the negotiated rule-making process with prescriptive standards. Under the act, states must meet certain requirements for DL/ID cards by May 11, 2008. If a state fails to do so, its residents would not be able to use state-issued driver's licenses or ID's for certain federal purposes, e.g., boarding a commercial aircraft or entering a federal building.

The speaker went on to provide an overview of REAL ID's provisions. The law requires states to electronically verify the validity of all identification documents, such as birth certificates and utility bills. Each state must also provide other states electronic access to its motor vehicles database. In



addition, certain motor vehicles employees would be subject to background checks.

In regards to DL/ID cards, states must ensure the physical security of locations where the cards are produced. These cards must meet certain standards, which have yet to be adopted. Non-conforming cards must contain a clear physical indicator that they cannot be used for federal purposes.

The NCSL speaker said that these standards are one of the many challenges created by REAL ID. The law requires states to start following these standards by May 2008, but the regulations creating the standards are still in the draft phase. The speaker said he expects the "final" rules to actually be interim final rules.

Another challenge the speaker highlighted was the cost of implementation. The federal government allocated \$40 million for state implementation. Of this, \$31.1 million is earmarked for competitive grants for states, with another \$4 million set aside for database connectivity grants.

However, the NCSL estimates that it will cost states more than \$1 billion in start-up costs with another \$10 billion in costs over the first five years. Despite these estimates, the federal government has done little to stem the costs of the program, the speaker said. The president's budget and the U.S. Senate's Homeland Security appropriations bill contained no additional money for state implementation of REAL ID. The House of Representatives appropriated \$50 million for such purpose in its version of the appropriations bill. The speaker said it was unlikely this number would increase in the final version of the bill.

Another major challenge facing states is how to verify documents and data. The NCSL representative went over a list of existing databases that could do this, as well as ones still in development. Under the proposed rules, states would be able to query these databases but not add or change information. The rules would also require states to submit a comprehensive security plan for protecting the privacy of its citizens.

The response among the states has been primarily negative, the speaker said. Of the 130 bills related to REAL ID introduced in state legislatures this year, about 66 percent have been anti-REAL ID, with only 20 percent in favor of compliance and many of the remaining bills calling for the study or funding of alternatives. The speaker added that some states have even looked at the option of subsidizing passports, which can always be used for federal purposes.

There have been some efforts within Congress to repeal or modify the REAL ID Act. Some of the bills would have re-

turned to the negotiated rule-making process and provided more privacy protections. Another would extend the deadline for implementation and ensure that electronic databases were available prior to states being required to use them.

The NCSL, according to the speaker, supports the intent of REAL ID, but not the implementation. Its official policy is to urge Congress to "fix and fund" REAL ID. The organization is lobbying Congress to provide \$1 billion for start-up costs. However, if Congress fails to act by the end of the year, the speaker said, the NCSL will lobby for the repeal of REAL ID.

State agencies provided information on how REAL ID would impact West Virginia specifically. A representative from the Department of Military Affairs and Public Safety said that it was difficult to pinpoint final costs for the state since the lack of finalized standards presents a moving target. However, he said the state might already have a compliant computer system, depending on the flexibility in the final regulations.

A speaker from the Division of Motor Vehicles (DMV) gave some ballpark cost estimates based on the latest proposed standards. He said it would initially cost the DMV \$42 million to implement REAL ID and another \$29 million per year for the first few years after that. However, significant changes are expected in the final rules, and these estimates are likely to change, he said.

## Judiciary Subcommittee A

### Draft Legislation Review

Counsel presented several pieces of draft legislation for the committee's consideration.

The first bill would prohibit the practice of captive audience meetings. These are meetings in which an employer requires employees to attend a meeting discussing political, labor-related or religious matters. The bill would allow an employee forced into one of these meetings to sue the employer within 90 days of the meeting. Such suit would not prevent an employee from also suing for wrongful termination.

Organizations, such as political or religious groups, where knowledge of an employer's opinions and beliefs is required would be exempted from this prohibition. The bill also would not apply to activities already regulated by the National Labor Relations Act.

Another bill would create the Legislative Oversight Commission on Workers' Compensation Insurance. This com-

mission would consist of six senators and six delegates, selected by the Senate President and Speaker of the House, respectively.

The legislation would require the Insurance Commissioner to submit any proposed rules, policies and guidelines related to workers' compensation to this legislative commission. The commission would review the rules and would be able to hold public meetings, if desired. In addition, the commission would be allowed to suggest changes to the rules. The commission would also be allowed to draft its own legislation relating to workers compensation.

The final draft bill would subject rules from the West Virginia Department of Health and Human Resources (DHHR) to a public comment period. In addition, any rules related to a state implementation of a federal program and requests for exemptions from federal requirements would have to undergo a public hearing in each of the state's three congressional districts.

Proposed rules would also require the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) to review each rule after the public comment period. LOCHHRA would be authorized to offer amendments to the rules and introduce legislation that would change any rules.

### Judiciary Subcommittee C

#### **Drivers License Vision Screening / DUI Laws**

As a follow-up of last month's meeting in Martinsburg, members heard from legislative staff on draft legislation pertaining to drivers' license renewal vision screening. Committee members then heard from the DUI Work Group on proposed statutory changes to West Virginia's DUI laws.

The draft legislation would require an applicant to have a vision screening, along with the current provisions, before their license can be renewed. If the applicant fails to demonstrate that he or she meets the minimum vision standards, the Division of Motor Vehicles is not permitted to renew their license.

Committee members then heard from three members of the DUI Work Group, Executive Director of the West Virginia chapter of Mothers Against Drunk Driving(MADD), General Counsel from the West Virginia Division of Motor Vehicles, and a member of the American Prosecutors Research Institute (APRI).

The DUI Work Group includes various organizations and groups that have come together and proposed various recommendations for changes in the current problems with the DUI law. Some of those included in the group include police, concerned citizens, and prosecutors.

The Executive Director of MADD stated to the committee that DUI cases are 100 percent preventable and considers them to be a violent crime. West Virginia's current Blood Alcohol Content (BAC) level is .08. More than half of fatal car wrecks where drinking was involved showed the motorist's BAC as .15 or above. Currently, West Virginia has no "aggravated DUI" law, which the DUI Work Group finds unacceptable.

Various recommendations were presented to the committee members. Two of these recommendations would be significant changes. The first would not require the arresting officer to attend the revocation hearing. The decision would be made solely on the officer's affidavit. Current law requires the arresting officer to be present at the hearing. If they do not attend, the charges are automatically dropped.

The second recommendation proposed by the DUI Work Group would require a BAC test of all drivers involved in a crash involving a fatality. Currently, the only parties who are given a BAC test are those who died in the crash.

### Select Committee on PEIA - Advantra Medicare Part D Program

#### **Co-pays, Prescription Costs and Coverage**

Members of the Select Committee on PEIA discussed concerns reported to them by constituents regarding the newly implemented Advantra Medicare Part D Program.

Changes in the insurance program were based upon the recommendations of the Public Resources Advisory Group (PRAG) and unanimously adopted by the Finance Board in December of 2006. The changes have reduced the state's OPEB (other public employee benefits) liability from \$8 billion to \$4 billion.

Effective July 1, 2007, the new health care insurance program covers approximately 36,000 West Virginians who are covered by Medicare. Co-pays, prescription costs and coverage questions were explored during the interim meeting.

Lawmakers were provided a PEIA coverage comparison plan to illuminate changes relative to the Advantra Medicare program. The chart compared Previous Medicare Retire Benefits to Current Medicare Retire Benefits and Current Active Employee Benefits.

The comparisons ranged from making no “out-of-pocket” payments for previous-to-Advantra-plan participants, up to \$500, including co-payments and coinsurance, for the newly enrolled participants. Current active employees included in the health care coverage plan (PEIA) pay a maximum out-of-pocket cost of \$1,250 for a single employee and \$1,250 for family coverage. This maximum limit for current employees includes only the coinsurance, not the co-payments.

Committee members were also provided information regarding changes in the three-tiered drug change. Uniform across the entire benefit system, non-preferred brands of drug went up from \$30 to \$50 per month.

Availability of coverage included in the Advantra plan was also addressed. While Florida, South Carolina and North Carolina did not recognize the insurance coverage, Coventry Health Care has contacted various physicians in those states who are being made aware of the changes in the retiree program, according to its spokesman. He also said 200 people have been transferred back into the old plan with new levels of benefits.

Also during the insurance coverage meeting, legislators discussed “mail order” or “90-day-retail” sale of prescription medicines. Some lawmakers expressed concern over the possibilities of small pharmacies losing their competitive edge over the mega-sales concept of mail-order delivery and receipt of prescribed medicines. In addition, some chain retail pharmacies can by law establish a reimbursement rate for physicians.

### Pensions & Retirement, Joint Standing Committee on

#### TDC-TRS Merger

The Joint Committee on Pensions and Retirement members continued their discussion of the TDC-TRS merger.

The Teachers’ Defined Contribution (TDC) and the Teachers’ Retirement System (TRS) merger has been a hot-button issue since the Legislature’s idea of merging both pension plans in 2005.

Merging both plans would give teachers and school workers the option of enrolling in TRS, which is based on salary and years of experience. The TDC lets the enrollee make their own financial decisions.

Although more than half of those enrolled in the TDC plan agreed to the merger, 1,000 enrollees sued to block it. A judge then ruled the merger unconstitutional.

Since then, the legislature has been working diligently to resolve the issue by listening to various other options that would satisfy all parties involved. They are also looking at an option that would be most cost-effective for the state. This was made clear, as the committee’s main focus of discussion was the meetings that were held with the stakeholders of the proposed TDC-TRS merger.

### Regional Jail & Correctional Facility Authority, Legislative Oversight Committee on

#### Day Reporting Centers

The committee heard a report from a chief probation officer who outlined the progress the 17-day reporting centers have made with an outlay of \$1.2 million.

The officer said the program emphasizes five major points that included treatment, education, housing, employment and mentoring. The representative stated that the alternative sentencing approach for lower or moderate risk offenders is a means of easing pressure on prisons and jails at a time when more and more jails are seeing overcrowding problems.

The centers act as an intermediate sanction that blends high levels of control with intensive delivery of services needed by offenders. The center’s programs accept offenders from several referral services, pre-trial release, direct sentence/intermediate sanctions, and halfway-back sanctions for probation. Offenders must report on a regular basis as a condition of release or supervision in order to account for the presence of their movements or to participate in programs, services or activities offered at the Center.

Lawmakers were told that the goals of the Day Report Center are to expand the continuum-based sanctions and treatment options available to the courts, to provide a safe and cost-effective method of reintegrating non-violent offenders into the community, to provide a broad spectrum of structured reintegration services to non-violent offenders serving commitments in the Regional Jail, to reduce the daily census of pre-trial inmates in the Regional Jail, and to provide highly structured supervision, sanction and services coordinated from a central location.

The Lee Day Report Center has had significant success in its early existence. There have been 259 offenders sentenced to the Center. 151 have successfully completed the program, while 60 offenders were revoked. The Center has 48 offenders currently in the program, and has completed 30 assessments for the courts.

Further, the representative stated that thousands of dollars of incarceration costs have been avoided, and offenders have been sanctioned in the context of a positive, firm and strict improvement program that protects the long-term safety of the community by deterring crime and reducing recidivism.

State Water Resources,  
Joint Legislative Oversight Commission on

### Water Resource Protection and Management Act

Legislative counsel reviewed draft legislation that expands legislative findings relating to the Water Resource Protection and Management Act during the committee's October meeting.

According to the co-chairman of the legislative joint committee, West Virginia must continue to keep vigilance over its water resources. Noting that water usage and availability coincides with the health and safety of the state's citizens and to the value of industrial and economic development, the committee is reviewing a management proposal.

The legislative draft would continue an on-going water survey that is to be updated every five years. Participants in the water usage survey include large quantity users as well as persons bottling water for resale.

The bill calls for a full survey to be due five years from the enactment of the proposed measure. Expansions to the first survey are to include ways to improve date collection, reporting and water monitoring of past problems as well as efforts of counties and regions in adopting water resource plans.

Calling upon the Division of Environmental Protection (DEP) to develop a State Water Resources Plan in cooperation with other state agencies regulating water, the bill requires the DEP to submit a finalized overall state plan by Nov. 30, 2013.

The plan should include consistent meanings for the specific conditions identifying a drought or a flood in the overall state plan, among other clarifying definitions. It should assess groundwater resources, recharge capacity, consumptive limits and relationship to stream base flows. It should also identify areas where demand exceeds resources and identify projects implemented by users to conserve water resources.

Overall, the legislation calls for a bottom-up approach to evaluating the state's water resources. Input to the overall plan would come from the counties, through the region and on to the state for final review.

Water and wastewater project funding was also on the committee's agenda. Providing an explanation of the funding

process to the committee was the Executive Director of the West Virginia Infrastructure and Jobs Development Council.

According to the director, the complex funding process, financed through state and federal dollars and bonds as well as money provided by the excess video lottery, could take two to six years for approval on local projects. At the close of his presentation, lawmakers requested a listing of outstanding requests for water and wastewater projects.

To add to the complexity of maintaining water systems is the conundrum of defining a "failed utility." Again, definitions vary from the PSC to the DEP regarding failed, failing, troubled or abandoned utilities. Legislative counsel is presently gathering material relevant to future discussions on water systems that are "in trouble."

Technology, Joint Committee on

### Center for National Response

The Technology Committee toured the Center for National Response (CNR) located at the West Virginia Memorial Tunnel. The CNR is a unique training center for first responders. It allows response teams to practice their procedures and equipment as well as experiment with new techniques without alarming or disrupting commercial or public activities.

Various scenarios, from "Meth Labs" to "Weapons of Mass Destruction", are realistically re-created to allow various first responder groups to train and practice. It is utilized nationwide as well as internationally to deal with various forms of terrorism and threats to public safety.



photo courtesy of the Center for National Response

### Veterans' Issues - Select Committee B

#### **Veterans' Nursing Home & Veterans' Cemetery**

The director of the state Division of Veterans' Affairs updated the committee on the status of two of the division's major projects: the Veterans' Nursing Home and the state-run Veterans' Cemetery.

Groundbreaking for the nursing home took place in Clarksburg in 2003, but the facility has experienced several setbacks since then. One such setback was the recent suspension of a couple employees who oversaw the nursing home, the director said. However, he added that the division has recently hired a consultant to help with the opening of the facility.

One of the major setbacks had been with the facility's engineering, including problems with the building's airflow. However, those problems have been fixed, and all the involved engineering firms and contractors have given the division the go-ahead to take patients, the director said.

Currently, the nursing home's 52 staff members are undergoing significant training in anticipation of the opening. This includes one meal a day to test the quality of the facility's cafeteria. Another major component to the training has been realistic drills recreating such emergencies as a fire or a heart attack.

While there is no set date for opening the facility, the director said they are beginning to reserve beds for veterans.

Another major veteran's project – the state-run Veterans' Cemetery – will soon become reality, the director said, pending approval from the Governor. Development of West Virginia's first state-operated cemetery, which will provide free plots to veterans and their spouses, could begin early next year.

The project is moving forward after Dow Chemical donated 300 acres of land near the Institute exit of I-64. The land is hilly and heavily forested, making it unsuitable for commercial or residential development but well suited for the division's purposes, the speaker said. The primary reason Dow purchased the land was for a pipeline that runs underneath it, which developers will have to stay 300 yards away from when building the cemetery.

The site was one of three considered. One near Carnifax Ferry Battlefield State Park was eliminated because of its historic status. Another site outside Chapmanville would have required the construction of a bridge to make it easily

accessible. Attempts to figure out how to fund the bridge proved unsuccessful. The Dow site was decided to be the best choice, the director said.

The director explained ways the cemetery would be funded. Currently, the lottery offers a veterans' scratch-off ticket that brings in about \$950,000 per year. Of this, \$700,000 goes toward repaying bonds; the rest is put into an account that, with interest, has grown to \$2.75 million.

The Division of Veterans' Affairs plans to keep \$750,000 in this account as rainy day money, using the other \$2 million as seed money for the cemetery. This money will go toward startup costs such as surveying, environmental studies, design, engineering and so forth. The federal Department of Veterans Affairs will reimburse the state for these startup costs. Also, the sale of timber on the land could help defray some of the costs.

Based on a similar cemetery in Kentucky, the director estimates the Institute site will cost about \$350,000 per year to maintain. With interest and excess lottery money, the division would be about \$5,000 shy of meeting this. He suggested that the division would not have much trouble finding this extra money. In addition, he recommended the creation of a second scratch-off game with a higher payout to help supplement the costs of the cemetery. He said the current law would have to be changed to allow this.

#### Workforce Investment for Economic Development, Legislative Oversight Commission on

#### **Region 7 Workforce Investment Board**

Following up on its Martinsburg meeting, members of the Legislative Workforce Investment Commission heard from the chairman of the Region 7 Workforce Investment Board and its chief local elected official.

To ensure efficiency and open communication within the Eastern Panhandle workforce investment group, legislators heard concerns relative to the programs' operations. 

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#### **Interim Meeting Schedule & Agendas**

Please visit West Virginia Legislature's Web site:  
<http://www.legis.state.wv.us/committees/interims/intcomsched.cfm>

November 26 - 28  
December 9 - 11  
January 6 - 8, 2008

## 2007-2008 Interim Committee Meetings

**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 "Joint" link.

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### Bill Status

For bill history information and full bill text of all Legislation from the 2007 Regular and Special Sessions, please go to the West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Bill Status" link.

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