

Interim Highlights

Legislature Passes 19 Bills During Special Session The 2nd Special Session of the 78th Legislature took place June 24-28, 2008 and coincided with the Legislature's June Interim meetings. Nineteen bills were passed, including several supplemental appropriation bills and various measures that had been vetoed during the Regular Session due to technical errors. Below are brief summaries of each of the 19 bills passed, for complete bill information visit the Legislature's website at: www.legis.state.wv.us

Teachers' Retirement System Transfer

House Bill 210 allows teachers and other eligible personnel, who voluntarily chose, to transfer their assets from the Teachers' Defined Contribution Retirement System (TDC) to the State Teachers' Retirement System (TRS). Those who chose to transfer must have sent their "date of transfer" into the Consolidated Public Retirement Board by May 12 of this year and became effective the first day of July. Those who missed the May 12 deadline date but the board received their "date of transfer" by or on May 20 will also be counted and go into effect August 1 of this year. In order to receive full credit in the TRS for the transfer of assets, members must pay into the TRS a 1.5 percent contribution by no later than June 30, 2009. This contribution will be calculated as 1.5 percent of the member's estimated total earnings plus interest of four percent per year from the date of the member's initial participation in the TDC system.

Scrap Metal Purchasing

House Bill 211 requires certain purchasers, generally scrap metal purchasers, of catalytic converters to obtain and maintain information from the sellers. The following does not apply: A purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter or a motor vehicle on which a catalytic converter is installed and for personal, family, household, or business use.

School Bus Operators

House Bill 212 establishes a competency testing schedule for all school bus operators. Those bus operators with regular employee status and continuing contract status will be tested



Senate President Earl Ray Tomblin and Speaker of the House Richard Thompson oversee the floor proceedings from their respective podiums during the 2008 2nd Special Session.

photo: Martin Valent

every two years. Substitute bus operators or bus operators with regular employee status but on a probationary contract will be tested yearly.

Greyhound Racing

House Bill 213 limits the participation in the Greyhound Breeding Development Fund to Greyhounds owned only by West Virginia residents and allows those without association membership to participate in the Greyhound Breeding Development Fund. There must also be three races featuring accredited West Virginia whelped greyhounds per race card. It also provides money, no more than \$1 million, for the construction and maintenance of a new training track and requires the Greyhound Owners and Breeders Association

Interim Meeting Schedule & Agendas

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

to submit changes to the West Virginia greyhounds' registry each month.

State Employee Increment Payments

House Bill 214 increases the annual incremental payment to certain state employees by \$10. Every eligible employee who has three or more years of service will now receive an annual payment equal to \$60 times the employee's years of service.

Library Board Term Limits

House Bill 215 eliminates consecutive term limits for library boards of directors. Directors may now serve until their successors are appointed and qualified.

State Employee Sick Leave Fund

House Bill 216 establishes the state Employee Sick Leave Fund effective on July 1, 2008. It also requires the Department of Administration to promulgate rules relating to the reimbursement of payments made to employees whose salaries are funded from a non-General Revenue Fund source. This bill also allows employees, who upon retirement, credit his or her accrued annual and sick leave for extended insurance coverage.

Summer School Program Hirings

House Bill 217 gives regularly employed individuals on a full-time basis employment preference over other applicants when filling summer school program positions.

Gas Tax Freeze

House Bill 218 freezes the motor fuel excise tax for 2009 and creates a funding mechanism to offset revenue shortfalls in the State Road Fund.

Electioneering Communications

House Bill 219 provides rationale for the regulation of non-broadcast media as well providing requirements for direct advocacy of the election or defeat of an identifiable candidate. It also clarifies provisions relating to corporate election communications.

Supplemental Appropriations

Senate Bill 2011 makes several supplemental appropriations from Lottery Net Profits for Fiscal Year 2009. Under the bill, the Department of Education and Arts will receive \$100,000 for unclassified purposes, and the Division of Culture and History will receive an additional \$112,000 for fairs and festivals.

Senate Bill 2012 makes several supplemental appropriations from the Excess Lottery Revenue Fund for Fiscal Year 2008. The bill appropriates \$3 million to the West Virginia

Development Office for recreational and economic development grants. It also gives the Development Office \$5 million for the Broadband Deployment Fund and \$9 million for the Infrastructure Jobs and Development Council. The bill also appropriates nearly \$2.5 million to the Division of Health for Early Intervention programs.

Finally, the bill includes a \$5 million appropriation to the Division of Finance for the planning of an enterprise resource system. The Governor vetoed an additional \$25 million appropriation to joint legislative expenses that would have acted as a reserve for the future development of this system.

Senate Bill 2013 makes a \$1 million supplemental appropriation from Lottery Net Profits to the Lottery Senior Citizens Fund for Fiscal Year 2008. The money is intended to for in-home services and nutrition for senior citizens.

Senate Bill 2014 makes several supplemental appropriations to executive branch agencies from the General Revenue Fund. This includes a \$30.7 million appropriation to the Other Post-Employment Benefit Contribution Accumulation Fund, a \$30,000 appropriation to the Governor's Office, and a \$50,000 appropriation to the Route 2 Highway Authority. The bill also includes a \$100,000 appropriation to the Hi-Y Youth in Government program and a \$2 million appropriation to the School Access Safety Fund.

Senate Bill 2015 treats a \$13.7 million Fiscal Year 2009 appropriation to the Other Post-Employment Benefit Contribution Accumulation Fund as elective payments made by certain employers in the Public Employees Insurance Agency state fund risk pool. These employers will be credited on a pro rata basis toward the annual required contributions mandated by state law.

Senate Bill 2016 treats a \$46.6 million Fiscal Year 2009 appropriation to the Other Post-Employment Benefit Contribution Accumulation Fund as elective payments made by certain employers in the Public Employees Insurance Agency state fund risk pool. These employers will be credited on a pro rata basis toward the annual required contributions mandated by state law.

Senate Bill 2017 treats a \$5.8 million Fiscal Year 2008 appropriation to the Other Post-Employment Benefit Contribution Accumulation Fund as elective payments made by certain employers in the Public Employees Insurance Agency state fund risk pool. These employers will be credited on a pro rata basis toward the annual required contributions mandated by state law.



Senate Bill 2018 makes a \$45 million supplemental appropriation from federal funds to the West Virginia State Police for Fiscal Year 2009.

Senate Bill 2019 makes several supplemental appropriations from the General Revenue Fund. The bill transfers \$40 million into the Motor Fuel Excise Tax Shortfall Reserve Fund, created by House Bill 218. In addition, the Consolidated Public Retirement Board will receive \$25 million to cover the costs of transferring participants from the Teachers' Defined Contribution Retirement System to the Teachers Retirement System.

The bill also appropriates funds to several other executive agencies. This includes: nearly \$24 million to the Department of Administration for debt reduction; \$5 million to the Department of Education for transportation costs; \$5 million to the Division of Natural Resources for the purchase of land; \$2.5 million to the West Virginia Development Office for local economic development assistance; about \$1.4 million to the Higher Education Policy Commission for the PROMISE Scholarship; and \$800,000 to the Department of Education and the Arts for digital conversion of documents.

June Interim Meetings

held June 22- 24, 2008

Agriculture & Agri-business

2008 Farm Bill

Members listened to a presentation by a West Virginia State Conservationist with the United States Department of Agriculture, USDA, regarding the 2008 Farm Bill, especially the "Food, Conservation and Energy Act of 2008."

The path towards the 2008 Farm Bill began in 1985 with the passage of the Food Security Act followed by the Food Agricultural Conservation and Trade Act (1990), Federal Agriculture Improvement and Reform Act (1996) and Farm Security and Rural Investment Act (2002). Each of these acts by the Federal government established various conservation programs that are updated and renewed in the 2008 Farm Bill.

One of those programs, first established in 1996, is the Environmental Quality Incentives Program, or EQIP, which offers financial as well as technical assistance to agriculture and forestry producers to promote agricultural production, forest management, and environmental quality as compatible goals. Under the 2008 Farm Bill, EQIP is reauthorized until 2012 and funding beginning in 2008 at \$1.2 billion. One key

point of EQIP is it places a priority on reduction of water use or no new lands irrigated.

Another program included in Farm Bill 2008 is the Wildlife Habitat Incentives Program, or WHIP, which assists landowners in developing and improving wildlife habitats on private or tribal land. WHIP has also been reauthorized through 2012 with \$85 million annually. Key aspects of WHIP includes:

- Limits contracts to private agricultural land, non-industrial private forestland, and tribal lands.
- Increases the percentage of long-term agreements from 15 to 25 percent.
- Allows a priority for projects that further national, state, or regional habitat goals
- Establishes annual payment limits to a person or legal establishment of no more than \$50,000.

Another program mentioned in the presentation is the Agricultural Management Assistance, or AMA, which provides cost-share and incentive payments to agricultural producers to voluntarily address issues, such as water management, water quality, and erosion control by incorporating conservation practices into their farming operations. This assistance program is only available in 16 states, one of those being West Virginia. Annual funding for the program is \$15 million.

The Farm and Ranch Lands Protection Program, or FRPP, provides matching funds to help state or local governments and non-governmental organizations purchase development rights to keep productive farm and rangeland in agricultural uses. This year the program will receive \$97 million and by 2012 will have reached \$200 million.

The 2008 Farm Bill requires a review and update of program allocation formulas by January 1, 2012.

Other programs were also mentioned during the Conservationist's presentation to committee members all of which can be found on the USDA Service Center website at <http://www.nrcs.usda.gov>.

Children, Juveniles & Other Issues, Select Committee A

HB 4295

Counsel presented committee members with an abstract of House Bill 4295, which did not pass during this past regular session. Following counsel's presentation, the Commissioner of the Bureau for Children and Families remarked on the bill.



HB 4295 would have created within the Department of Health and Human Resources (DHHR) a Commission comprised of both public and private citizens whose purpose would be to study the current child welfare system especially in regards to services offered and financing. Members appointed to the commission would have included; representatives from the DHHR, educational entities, Juvenile Services, the Prosecuting Attorney’s Institute and three service recipients.

Commissioner of the Bureau for Children and Families addressed the committee in regards to the bill, stating that the DHHR remained neutral in the bill’s passage due to a Commission that had already been established to do the very same thing and feared the bill might derail the commission from a path they have already successfully begun.

LOCEA

CTC President Hirings

Pursuant to House Bill 3215, passed last March by the Legislature, the Chancellor of the West Virginia Community and Technical College (CTC) System presented emergency rules regarding the hiring and evaluation of presidents at CTCs.

HB3215, which made several changes to the administration of community and technical colleges, required CTCS to propose emergency rules to implement the bill’s provisions. The bill further required the Legislative Oversight Commission on Education Accountability to accept the emergency rules before they could be implemented.

After the chancellor briefed members on the emergency rules, the commission approved them, thus bringing them into effect.

Under the new rules, the presidential interview process remained unchanged, the chancellor said, because the current process is effective. However, the maximum initial contract period was reduced from three years to two years. Additionally, after this initial contract, CTC governing boards are allowed to offer contracts up to five years.

Another substantive rule change dealt with presidential evaluations. Under the old rules, governing boards had to evaluate presidents every four years. The new rule requires evaluations every three years.

Next, the state superintendent of schools talked to lawmakers about assessment tests for public school students. The federal No Child Left Behind Act mandates many of these tests. The superintendent expressed his displeasure with the

assessments required by NCLB, pointing out that the United States is the only country in the world that tries to improve student education through standardized testing.

The superintendent said the National Assessment of Educational Progress exam is a better indicator of academic progress than the NCLB tests. He said NAEP, coupled with critical thinking exams, should replace the NCLB exams.

Higher Education Capital Projects & Facilities, Committee on

Facility Planning & Funding

The committee heard a presentation by the Co-Interim Director of Finance and Facilities for the Higher Education Commission regarding higher education facilities planning and capital project funding priorities.

Under the Vision 2020 bill that was passed during this year’s regular session, the Higher Education Commission provided goals to the committee, the first goal being “access and affordability.” It is important to the Commission in establishing tuition and fee levels for residential students that do not inhibit access to public education or cause students to incur excessive debt. In order to achieve this goal the Commission is requiring all higher education institutions to form “Master Plans” which will set forth system goals, objectives and strategies as well as align with the state’s goals, objectives and priorities. Each institution must provide the Commission with an annual capital appropriation plan/request, a five-year progress report/ implementation plan and a ten-year campus development plan. Each institution will provide goals they hope to reach within the time frames allotted in the plans.

Providing more guidance concerning the facilities planning process if additional state capital funding is forthcoming is one recommendation the Director gave to the committee. At present time there is no state-level facilities plan mainly due to so little state funding has been devoted to capital projects.

The Director provided other areas of importance for both the Commission as well as the committee take into consideration which can be found on the West Virginia Higher Education Policy Commission’s website at <http://wvhpcnew.wvnet.edu/>.

Can’t Find Your Committee?
Please refer to the index on page 19.



Education Subcommittee A - Public Education

Education Auditing Procedures

A representative from the state Auditor's Office addressed the subcommittee about education auditing procedures. The subcommittee is looking at ways to improve the efficiency of education accounting and auditing practices.

The representative pointed out that failure to follow government auditing standards could lead to a loss of federal funding. To combat this, the Auditor's Office provides guidance to schools and county boards of education.

"No one looks forward to being audited," the representative said, but there are things schools and boards can do to make the process easier. Keeping records organized and filed can make audits go more smoothly, the speaker said.

The treasurer for Cabell County Schools talked about the education accounting experience. The treasurer praised the accounting manual provided to schools by the state Department of Education. However, the manual is a little outdated, the treasurer said, since it does not include information regarding credit card use.

One thing that has helped ease the accounting burden for schools, the treasurer said, was the consolidation of food services billing. Handling billing at the county level allowed school administrators to focus more on accounting issues specific to their school while adding very little extra work to the county board. The treasurer said school principals have expressed gratitude for billing consolidation.

A representative from the West Virginia Association of Elementary and Middle School Principals next spoke to the committee. The representative also mentioned that the accounting manual was helpful but was in need of updating. He then said the accounting process needs to become more efficient without affecting accuracy. Simplifying the accounting process would be part of this.

The final speaker, from the Office of School Finance in the Department of Education, emphasized the importance of internal controls, that is, the accounting and auditing procedures outlined in the manual and in government standards. These controls ensure that assets are handled properly and protect the schools and school boards when questions arise.

The speaker also mentioned that food program centralization is currently done in about half the counties in the state. Further centralization, she said, can ease auditing and ac-

counting for schools while placing little extra burden on the counties.

The procedures for credit card purchases, she said, are provided to schools and county boards but are in a different manual. Plans are in place, she noted, to update the primary manuals with information about credit cards.

Education Subcommittee B - Higher Education

West Virginia Research Trust Fund

The Vice Chancellor of Science and Research for the Higher Education Policy Commission (HEPC) updated lawmakers about the implementation of Senate Bill 287, which created the West Virginia Research Trust Fund (WVRTF).

The vice chancellor presented the subcommittee with proposed legislative rules implementing many of the bill's provisions. The rules set eligibility requirements consistent with the bill. Under the rules, during the first five years of the fund's existence, 70 percent of the fund would go toward matching qualified donations and pledges to West Virginia University and 30 percent would be used to match qualified donations and pledges to Marshall University.

Under the proposed rules, a donation or pledge would have to be a new one made after March 8, 2008, the effective date of SB287. In order to be eligible, these gifts, as outlined in the proposed rule as well as the bill, must be directed toward at least one of the following scientific disciplines: energy and environmental sciences; nanotechnology and materials science; biological, biotechnical and biomedical sciences; transportation technology and logistics; biometrics, security, sensing and related technologies; and gerontology. If these criteria were all met, money from the WVRTF would be used to match the gift.

Any interest earnings in the fund, as well as money in the fund that is not distributed by March 8, 2013, would be available to fund research at the state's other public four-year institutions as well as the West Virginia School of Osteopathic Medicine. The vice chancellor would issue notices to these schools about the availability of matching funds. Peer scientists and the vice chancellor would evaluate solicitations for funds, and matches would be granted in a merit-based, competitive process.

The vice chancellor's report indicated that the proposed rules would be brought before HEPC in July or August. Once reviewed and approved by HEPC, the emergency rules will be brought before the Legislative Oversight Commission for



Education Accountability (LOCEA) for its approval. Final rules would be presented to LOCEA for approval in September or October.

Planned Salary Increases at Four-Year Institutions

Another representative from HEPC spoke to members about the planned salary increases at four-year institutions. Most of the state’s four-year schools will implement salary increases on October 1. Bluefield State College, Glenville State College, West Liberty State College and the School of Osteopathic Medicine will provide increases starting July 1. All state Community & Technical Colleges (CTCs) will provide raises effective October 1, except for West Virginia State CTC, which will implement its raises on July 1.

After the raises take effect, five four-year institutions and three CTCs will be at full funding under the legally defined classified staff salary schedule. The remaining institutions will be between 90 percent and 98 percent of full funding.

Most of the raises increase the raise pool by 3 percent to 4 percent. The largest increases are at WVU, which will increase its faculty and non-classified staff raise pools by 7.3 percent and its classified staff pool by 9 percent. WVU, however, has yet to finalize the raises for its regional campuses, Potomac State College and WVU Institute of Technology.

Education Subcommittee C - Public School Finance

ESL/LEP Students

Committee members heard various presentations regarding English as a Second Language (ESL)/ Limited English Proficient (LEP) students.

The Office of International Schools Executive Director was the first to address the committee and posed two areas of consideration, the changes occurring in West Virginia’s classrooms as well as the programs and resources that support the change.

There are currently 2000 LEP students from over 60 different languages in West Virginia alone. That number has risen by 400 since the 2001-2002 school year, with at least one LEP student in each county. With the change in numbers of the ESL/LEP students in the state’s schools there are challenges in providing each of those students with proper instruction in the classrooms.

The Director pointed out the court case *Lau v. Nichols* (1974) which states that “there is no equality of treatment merely by providing (ELL) students with the same facilities,

textbooks, teachers and curriculum: for students who do not understand English are effectively foreclosed from any meaningful instruction.”

Under the No Child Left Behind Act is the establishment of Title III/ESL programs, which provide language instruction for LEP and immigrant students. Title III also provides \$500,000 annually in grant money to each state. Currently, those are the only funds given toward programs for LEP students. The committee asked the Director how much would sufficiently fund each LEP student in West Virginia. The Director estimates that to provide the essential programs and educational needs would be \$2,000 for each student. With the Title III funds, only \$267 is allotted for each LEP student in West Virginia.

The committee also heard from a board member of the West Virginia Teachers of English to Speakers of Other Languages (WVTESOL) who stressed the same concerns as the Director from the Office of International Schools. The WVTESOL board member also mentioned court cases in four other states regarding the inadequate funding for LEP students showing that this is not only a one state issue.

A representative from the Department of Education also reported to the committee members, the effects of HB 4588, SB 541 and SB 603 on schools throughout West Virginia.

HB 4588, passed during this regular session, makes numerous changes to the Public School Support Program and phases in the changes over a five- year period. The total allowance increase provided through this legislation is \$31,497,783. SB 541, effective July of last year, makes changes in the calculations of local shares. This bill increases the allowances for all West Virginia public schools by a total of \$33,837,353. SB 603, passed during last year’s regular session, provides for 21st century instruction and learning in all public schools. This bill gives an extra \$3 million to all of the state’s schools. Combined, all three bills provide over \$65 million allowance monies.

Equal Pay Commission

Career Success for Women

The Commission heard a presentation by WVU Associate Professor of the Divisions of Social Work and Public Administration. The topic was a study regarding the social costs of career progression for women in state government and around the state of West Virginia.

Part of the presentation focused on designing a workplace for individuals with families with the first priority being paid



maternity and paternity leave. In a survey conducted 78 percent, mainly women, couldn't take leave because they couldn't afford to. Providing maternity and paternity leave would be both beneficial to the individuals as well as their children. Other suggestions for designing a workplace for individuals with families include ability to bring a child to work, flexible work hours, flexibility to care for a sick child, ability to work from home, transformation of job classifications and compensation based on knowledge and skills rather than the status quo of gender-biased tradition.

West Virginia ranked 41st among all other states in equal pay and at the current rate of change, women in the state won't obtain equal pay until 2023. Nationally, women will not achieve equal pay until 2050.

Finance - Joint Standing Committee on

Teachers' Retirement Issues

The executive director of the Consolidated Public Retirement Board updated members of the Joint Finance Committee on teachers' retirement issues.

The primary focus of discussion was on the transfer of Teachers Defined Contribution Plan participants to the Teachers Retirement System. The transfer election was successful, with TDC participants who elected to transfer doing so officially on July 1. These transferees have until the end of June 2009 to purchase full retirement benefits, the executive director said. Failure to buy back into the TRS will result in a 25 percent reduction in benefits. Those who wish to buy in have to pay a 1.5 percent charge per year in the TDC, along with 4 percent interest for each year.

The director said there are some unresolved issues with the transfer. A major concern is with participants who were accidentally enrolled in the wrong system. This typically happened when a teacher transferred from county to county. The payroll clerks would occasionally put the teacher in the TRS when, in reality, he or she should have remained enrolled in the TDC. The CPRB is working on handling these cases, she said.

The CPRB director emphasized that although enrollment into the TDC is closed, the plan is still operational. About 5,000 participants remain in the plan, she said, and these participants will be unaffected by the transfer.

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

Finance Subcommittee A

State Fairs & Festivals Grant Funding

Members of this subcommittee discussed the state funds distributed in the state budget to the many fairs and festivals throughout the state. A representative from the Budget Division of the Division of Culture and History discussed the process these groups requesting state funds must go through before they get any money but also stated that West Virginia officials regularly accept without question information sent them by the more than 300 fairs and festivals funded through the state budget.

The representative stated that all organizations requesting such funding must fill out a form for the division, generally stating the funds were appropriately used. The division has had several reports over the past few years that festivals the state funded did not occur and those incidents were investigated. However, unless they receive a complaint, no one from the division attends or even telephones to question if the event was held stating that they generally accept the data that has been given to us by the individuals putting on the events.

The representative went on to say that the division requires a sworn statement indicating the grant funds were used as intended for those receiving less than \$50,000. Those getting more must submit a report to ensure they are in compliance with the State Agency Grant Awards requirements.

Also, while the budget lists 320 fairs and festivals to be funded for the next fiscal year, which began on July 1, Governor Manchin line-item vetoed a number of fairs and festivals that had been included in those numbers.

This subcommittee will continue taking a look at the oversight of the \$2.6 million allocated for fairs and festivals across the state. The funds were formerly allocated through the Budget Digest and now must go through the regular budget process.

The representative stated she would provide additional information to the committee in the future regarding some unanswered questions.

Finance Subcommittee C

OPEB Liabilities

The Chief Financial Officer of the Public Employees Insurance Agency (PEIA) provided subcommittee members with



an overview a recent report on the state's Other Post-Employment Benefits (OPEB) liabilities. Most of these liabilities apply to retirees who are or were eligible to convert unused sick leave into health insurance coverage. Changes to government account standards in 2004 required state and local governments to report these liabilities.

The PEIA report covers the 2007 fiscal year. The CFO highlighted that the report estimates the baseline OPEB liability at \$3.1 billion. The report outlines the projections and assumptions that led to arriving at this number.

The CFO also highlighted several recommendations for reducing the OPEB liability. This included increasing current and future employee contributions, changing the retiree premium structure and moving the current OPEB plan to a defined contribution OPEB plan.

The CFO said the full report is available on PEIA's Web site at <http://www.wvpeia.com/> under "Financial Reports."

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

FSA Accounts

Lawmakers heard a detailed account of two flexible spending accounts (FSA's) available through the Public Employees Insurance Agency (PEIA) that can lower a worker's taxable income and save West Virginia money in the process.

A survey performed by the Performance Evaluation and Research Division (PERD) during an audit of PEIA discovered that out of 500 public workers chosen randomly, 36 percent were unaware of such accounts, and 35 percent who had didn't understand it.

One such flexible account allows workers to invest for medical expenses, the other covers dependent needs, such as day care centers for children, baby-sitting fees, nursery and pre-school.

A speaker presented a graph to the committee showing that a \$5,000 deposit into an FSA account lowers one's federal taxable income by a like amount, in turn, obligating the worker to a smaller tax debt.

Also in the chart, the example of an employee with an annual pay of \$31,000 led to a potential tax cut of \$1,132. Two years ago, some 12 percent of West Virginia's public employees took advantage of such accounts, or 3,721 workers. That meant the state saved \$168,672 since its required Social Security and Medicare matches are lowered in the process.

If as many as 30 percent of the public workers opened a flexible account, lawmakers were told, the state could save more than \$400,000 a year. The audit suggested stepped up marketing and informational efforts in order to get more state workers interested and involved with these programs.

A representative from PEIA acknowledged room for improvement, but doubted the state would ever see a third of its workers using the flexible accounts. Currently, with 12 percent of public employees holding these accounts, West Virginia has one the highest percentages of any state that has a voluntary FSA program.

One reason for his doubts was that the accounts aren't arranged to be cumulative so what isn't exhausted by the individual employee during the fiscal year reverts into the general PEIA account. On average, the amount returned to the PEIA has been running about \$50,000 per year.

Government Organization - Subcommittee A

Green Buildings

A representative from the Department of Environmental Protection (DEP) provided information to committee members on "green buildings." A green building is also known as a sustainable or high performance building that increases the efficiency of energy, water and material use.

Green buildings have numerous benefits including:

- Reduction of the overall impact of the built environment on human health and the natural environment
- Efficient use of energy and water
- Protects occupants' health and improves productivity
- Reduces waste, pollution and environmental degradation

Any type of building has the potential of becoming green through remodeling, retrofitting and improved operations.

To show the effectiveness of a green building, the DEP decided to build their own and consolidated 6 facilities into one headquarters. The project began in 2001 and a consultant was hired to work with contractors in ensuring the building met the criteria established for LEED certification and Energy Star.

LEED stands for Leadership in Energy and Environmental Design and is based on a point system in six different categories: sustainable sites, water use, energy use efficiency, material and resources, indoor environmental quality and innovation in design. The DEP's building earned this award.



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Over 97 percent of all construction waste was recycled including concrete, asphalt, paper, metal and cardboard. The building has a Carbon Dioxide monitoring system as well as other measures to provide excellent indoor air quality.

The Energy Star Award, which the DEP won, is awarded to those buildings that use up to 40 percent less energy than typical buildings.

Weatherization

The Director of West Virginia’s Weatherization Assistance Program spoke to committee members on its purpose and the services it provides to low-income families who sometimes have to choose between heating their homes and other necessities.

There are currently 33.8 million homes throughout the United States eligible for weatherization services. In West Virginia, there are 215,000 homes eligible for these services. Typical services the program provides include heating system diagnostic testing, repair, duct sealing and insulation, attic insulation and dense pack sidewall insulation.

The Director predicts that in 2008 alone, the Weatherization Assistance Program will weatherize 1,400 homes. That is a fairly large number, but the Director also stated that there is a three-year waiting list and they have to prioritize what homes need the most attention first, usually the elderly and families with disabilities. The Weatherization Program will save a family, on average, \$413.

Government Organization - Subcommittee B

Occupational Therapy

Members of this subcommittee heard a report regarding House Concurrent Resolution 91, which requests a study of the law governing the West Virginia Board of Occupational Therapy.

A member of the Board was on hand to present an overview of what his industry does and what changes they would like to see made in laws governing their occupation.

The representative stated that occupational therapy is a skilled treatment that helps individuals learn or re-learn daily living and developmental skills, which may include dressing, bathing, feeding, fine motor, and play/hobbies. The primary purpose of occupational therapy is to insure that individuals achieve or maintain their capacities to function in daily activities at a level that allows as much independence as possible.

It is a duty of the Board to regulate and license persons providing occupational therapy services to the general public in the State of West Virginia. The Board is also relied upon to protect consumers and promote the quality of occupational therapy services, and to assure the highest degree of professional care and conduct on the part of occupational therapist and occupational therapist assistants.

Other duties include licensing occupational therapists and occupational therapist assistants, setting standards for the practice of occupational therapy through regulations and legislation, and receiving and resolving complaints from the public regarding occupational therapists and occupational therapist assistants who may have violated the West Virginia Occupational Therapy Practice Act.

That Act however has not been changed or amended since 1978 and at the time there were only 30 occupational therapists in West Virginia. The Board would like the Legislature to rewrite the definition of “The Practice of Occupational Therapy” to more clearly define and reflect current practice as well as adopting the AOTA Model Practice Act.

West Virginia is also one of only two states to have a referral requirement, meaning a patient must be referred by a physician. Removing this provision would allow patients with non-medical conditions access to OT services. They would also like to change the license renewal frequency from one year to two years in a cost savings move. The committee will continue studying this issue during future interim meetings.

Government Organization - Subcommittee C

Cable Television Oversight

Members of this subcommittee heard a presentation from a representative from the Public Service Commission (PSC) regarding television cable company oversight.

Committee members were told that the PSC has very limited oversight authority regarding cable television companies. Cable television falls under the Utilities Division’s Telecommunication and Cable TV section of the PSC. One full time staff member is designated to handle Cable TV related matters with work overflow handled by other Telecom staff.

There are a total of 24 cable companies that are registered with the PSC. State Code states that the PSC is required to regulate cable TV rates to the extent permitted by Federal Law. Federal law allows only rate regulation of the Basic Tier Service and only when it is not subject to effective competi-



tion. Basic Tier service is the tier of service that includes the air broadcast signals such as NBC, CBS, ABC and FOX. While federal law allows the regulation of Basic Tier service in certain situations, the FCC prescribes the form, methodology and calculations used to determine the rates.

The state of Ohio recently amended their state code relating to the regulation of cable and the committee compared certain aspects where the two states are different as well as similarities between the two. One big difference is in regards to the franchise fee application. In Ohio, the fee application costs \$2,000 with any amendments costing an additional \$100 whereas in West Virginia a franchise application costs \$250. Ohio also believes that local franchising creates a barrier to entry in the market while West Virginia believes that franchising is primarily a local matter.

The committee will continue to study this topic along with the other assigned study topics.

Government Organization - Subcommittee D

State Gaming Commission Proposal

In a meeting of this subcommittee, members heard a proposal from a representative of the state Revenue Department to consolidate three state agencies, the Lottery Commission, Racing Commission, and a section of the state Tax Division, which in some way all regulate the various forms of legalized gambling in the state. The representative stated that consolidating these agencies into a single proposed "Gaming Commission" makes sense.

The representative stated it would be particularly true at the state's four racetracks, where the Lottery regulates video lottery and table games, but the Racing Commission governs live horse or dog racing, requiring a duplication of services, particularly in the security and licensing sections.

In 2007, the Lottery had 120 full-time employees, while the Racing Commission had 40. There are 17 employees in the Tax Division's Charitable Bingo and Raffle section. By consolidating in to a single commission they would be able to perform the same tasks with fewer employees, the representative stated without, however, citing a specific plan.

As proposed, a seven-member Gaming Commission would oversee all forms of gaming authorized in the state. One member would have to have a background as a veterinarian or in agricultural sciences.

Health - Select Committee D

Certificate of Need Programs

According to information provided to the Select Health Committee by the National Conference of State Legislatures (NCSL), "Certificate of Need" (CON) programs are aimed at restraining health care facility costs and to allow coordinated planning of new services and construction."

The material also indicated "about 36 states retain some type of CON program, law or agency as of December 2007."

Upon reviewing all services and entities regulated by CON processes in West Virginia, lawmakers found some discrepancies in the material provided. For instance, the NCSL did not include West Virginia's CT (computed tomography or computed axial tomography (CAT) is a medical imaging process used to generate a three-dimensional image) services in its listing which called into question the most recent data available. As such, legislators are seeking additional information from the Health Care Cost Review Authority (HCCRA) regarding hospital costs in West Virginia from those in surrounding states.

A HCCRA spokesperson noted that it was worth a look at how services are regulated. She told lawmakers that not all states use CONs but may regulate by licensure. Other areas to measure include not only procedures but also penetration of managed care, administrative costs and other areas in the health care system, she suggested.

Another suggestion made by a committee member requested HCCRA to investigate looking at areas which are hard to measure in examining rate reviews, such as convenience, choice, inter-community identification and overall costs of health care while making this extremely complex border state comparison.

Committee members were reminded by one of their colleagues that the federal government also would soon be looking at ways to regulate hospitals and services and to keep possible federal discussions in mind in the coming months.

LOCHHRA

State Olmstead Office

The state's Olmstead Coordinator talked to legislators about the Transition Navigator Program. Olmstead v. L.C. is a 1999 U.S. Supreme Court decision that required states to



better integrate individuals covered by the Americans with Disabilities Act. The state's Olmstead Office is charged with helping the state comply with this decision.

The Transition Navigator Program, as part of the state's effort to comply with Olmstead, provides assistance to individuals covered by the decision who are making the transition from institutional care to home and community-based support. It was initiated last November and began full operations in March.

The program also offers start-up funding to pay for reasonable and necessary costs to support individuals who wish to return to or remain in their home and community. The program covers costs such as housing security deposits, utility setup fees, furniture, moving expenses and home modifications. The funding is capped at \$2,500 per person.

There are two types of start-up funding. Transition Navigator Program funding is available to participants in the 22 pilot counties. Olmstead Transition/Diversion Funding is available in all 55 counties to individuals not participating in the Transition Navigator Program.

According to the coordinator's report, the Transition Navigator Program provided \$20,900 in start-up funding as of April, with an additional \$21,387 approved from Olmstead Transition/Diversion Funding. In that time period, it provided transition support to 31 individuals and diversion support to seven individuals. Also during that time, seven people have been transitioned or diverted from nursing facilities to community-based support.

Infrastructure - Select Committee C

State Highway Engineers

An engineer from the Federal Highway Administration addressed the committee about the need for retention, replacement and recruitment of qualified, experienced highway engineers by the West Virginia Department of Transportation. Retiring engineers are not being adequately replaced by younger engineers, creating a shortage problem, the speaker told members. He recommended the state take a strategic look at how to rectify the problem.

As an employee of a federal agency, the engineer said he could not lobby for any specific legislation. However, he did provide an overview of what other states are considering to fight the problem, which is not limited to West Virginia.

An important step in the process is having a place for strate-

gic discussion of the problem, which he said the Infrastructure Committee provided.

As far as actual policy changes, the engineer noted making the workplace more family-friendly, thus encouraging engineers to stay. Possible ways of doing this include allowing engineers to work from home when possible or moving to a four-day workweek.

Recruiting is another area that states are struggling to address. One idea is to offer immediate opportunities and responsibilities for young engineers. Placing them in leadership roles could help encourage them to pursue jobs with the state while providing experience to replace soon-to-be-retired engineers.

Another possible solution to staff shortages is to allow retirees to be hired back part-time without giving up annuities. According to the engineer, Congress is considering for the FHA, which is also affected by staff shortages. He concluded by saying that the federal government and the states need to work together to address this common problem.

State Infrastructure Bank

Committee members next heard from the state Secretary of Transportation about creating a State Infrastructure Bank (SIB). According to a synopsis the secretary provided to committee members, West Virginia's SIB would begin July 1, 2009, and would be run by board consisting of six members appointed by the Governor with the Commissioner of Highways serving as chair.

Local governments would be able to apply to the SIB for low-interest loans for eligible projects. To be eligible, a project must be a highway project that provides public benefits, promotes economic development or increases the quality of life and general welfare of the public. The board would determine if a project meets these requirements. The board would also determine if the project fits in with the state Division of Highways transportation plan and does not adversely impact the current highway system.

If the board qualifies a project, it would receive a loan for either the entire cost of the project or a portion of it. Financing cannot exceed a 40-year term. The local government has to decide how to raise revenue to pay back the loan during that time. In the case of default, the board would be authorized to require the state Treasurer to withhold all funds from the defaulting entity until payment is received.

Initial funding for the SIB would come from a \$50 million appropriation. After that, the DOH would be allowed to contribute 5 percent of funds appropriated for highway



construction and maintenance to the fund, in addition to contributions from other public authorities and from reimbursement of funds.

Judiciary Subcommittee A

Sequestration of Greenhouse Gases

The Director of Project Development for the Mingo County Development Authority spoke to committee members on the sequestration of greenhouse gasses.

In his briefing paper, the Director states that experts on the Intergovernmental Panel on Climate Change (IPCC) declared most of the rise in temperatures since the mid-20th century is very likely due to man-made greenhouse gases mainly carbon dioxide. This is a problem in West Virginia since the state's economy has been built on coal, oil, and natural gas production and the heavy industry attracted by it.

Suggestions have been made in solving the greenhouse gas problem but the one that has proven to be most effective is carbon sequestration, which decarbonizes fossil fuel by capturing carbon dioxide from fossil fuel sources and locking it away.

One issue that has come forth in regards to carbon dioxide sequestration: the environment. Currently, there are 98 commercial or research-level carbon dioxide/enhanced oil recovery projects operational worldwide with 82 of those in the United States. It is understood that any environmental issues that come up due to carbon sequestration can be managed by current industry best practices. In the long run, it is too soon to tell but there is currently no evidence to date that shows there would be significant leakage to cause harm to the environment.

The Chair for the West Virginia Environmental Council Renewable Energy Committee also spoke to committee members on the issue of carbon sequestration.

One of the concerns posed by the Chair in regards to carbon sequestration is by the time sequestration is ready to begin; will industries be retrofitted to handle it? The Director suggests that if sequestration is the path that West Virginia plans to take, permits need to be issued to industries based on the promise of retro-fitting so that they will not back out later on. The emphasis on timing by the Chair is due to the fact that scientists have projected that something must be done by 2015 in order to avoid catastrophic effects of carbon dioxide and other greenhouse gas emissions.

The Chair raised other questions for the committee to take into consideration regarding carbon sequestration. Will the carbon that is sequestered stay underground? If leakage does occur, what effects will it have on the environment?

Judiciary Subcommittee B

Legal Liability of Park & Recreation Owners

Staff counsel provided members of Subcommittee B with a summary of Senate Bill 676, which died in the House Judiciary Committee during the regular session. This bill would limit the legal liability of park and recreation owners in certain circumstances.

Counsel said the bill would apply to municipal, county and state parks and recreations agencies. Specifically, these agencies would not be liable for any injuries, loss or damage caused intentionally or by the negligence of someone who is not an agent or employee of that agency.

A parks and recreation entity would be liable, however, if the injury, loss or damage was directly caused by an employee or other agent of the entity. Further, the event that led to the injury, loss or damage would have to have taken place on property owned by the entity.

The director of the Greater Huntington Park and Recreation District, which was created by a special act of the Legislature in 1925, told members that his district might not be adequately covered by SB676. As the district is not under a county or municipality, it might need to have a specific liability exemption written for it.

The director went on to explain the need for liability limitations. He said outdoor recreation can be dangerous, but the risk is an apparent one that should not fall on the parks themselves. He cited examples of parks being successfully sued in cases where, in his opinion, there was no negligence on the part of the parks or their employees. Limiting park and recreation owners' liability would help prevent this from happening.

The director emphasized that he was not looking for blanket immunity. Instead, he said wants enough protection that parks and recreation opportunities in the state are not scaled back because of litigation risks.

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

Judiciary Subcommittee C

Drug & Mental Health Courts

Pursuant to Senate Concurrent Resolution 68, the subcommittee heard from two judges about the possibility of state-wide implementation of drug and mental health courts.

A judge from the Ninth Judicial Circuit provided an overview of the Southern Regional Drug Court, which he oversees. This drug court theoretically covers the entire district but is only currently implemented in Mercer County.

The court is targeted at curbing drug-related crimes through an intensive treatment process, the judge said. To be eligible, a defendant must have been charged with a nonviolent offense motivated by drug or alcohol abuse. Violent crimes, domestic violence, crimes involving a weapon, sexual offenses and any crime with a child victim are not eligible. In addition, felony drug offenses – such as for dealing – are not eligible.

The defendant must be an adult West Virginia resident to receive treatment through the drug court. Also, the defendant must live in Mercer County or close to Mercer County. He or she must also be able to frequently travel to Princeton. Finally, the defendant must have had a substance abuse diagnosis to be eligible for drug court.

According to the judge, a law enforcement officer, defense attorney, prosecutor, probation officer, day report center, judge, magistrate or a jail may refer a defendant to the program. Once referred to the program, the defendant's attorney provides an overview of the program for the defendant.

If the defendant gives consent to enter the program, the lawyer notifies the prosecutor that his or her client is eligible and willing to participate. The prosecutor must agree to accept the defendant, at which point the defense attorney and prosecutor negotiate a diversion agreement.

If the court accepts the agreement, the defendant must go through a clinical screening for substance abuse. If the diagnosis is positive, the defendant is enrolled in the program.

The judge then provided an overview of the three-phase drug treatment process. Phase One lasts a minimum of four months. During this part of the treatment, participants must appear before a circuit court judge once a week. They must also report to a case manager once a week. They receive eight to 10 hours per week of substance abuse treatment.

They must also complete 28 hours of community service per week. To move on to the next phase, a participant must remain drug-free for 60 consecutive days.

Phase Two also lasts a minimum of four months. Mandatory court appearances are reduced to twice a month, as are meetings with case managers. Participants must complete 28 hours of community service a week while also actively seeking employment. If employed, the community service requirement is reduced to eight hours per week. To complete this phase, a participant must remain drug-free for 90 days.

The final phase – Phase Three – lasts at least four months, also. Participants in this phase must appear before the court once every three weeks. The participant must also report to a case manager once a week. As with Phase Two, a participant must actively seek employment or, alternatively, education or job skills training. If employed, the participant must complete at least eight hours of community service per week; otherwise, the participant must complete 28 hours per week. To complete the phase and the program, the participant must remain drug-free for 120 days.

Between each phase, the participant must apply to move on to the next phase. This application is reviewed by a treatment team, which consists of a judge, magistrates, probation officers and several others involved in the program. The team then makes the recommendation for whether the participant should move on to the next phase or, if in the final phase, should complete the program.

The judge highlighted that the program is completely voluntary and requires a waiver of certain constitutional rights. Additionally, there is no right to a drug court, and a judge may deny defendants entry into the program at his or her discretion. The judge also noted that the program is post-plea, meaning any sentences will be set aside pending completion of the program.

A judge from First Judicial Circuit gave committee members an overview of the Northern Panhandle Mental Health and Drug Court, which covers Brook, Hancock, Marshall, Ohio and Wetzel counties. That program works similarly to the Southern Region Court, except that the Northern Panhandle court covers people with mental health issues or substance abuse problems.

The First Circuit judge said drug courts were effective. However, he said part of running an effective treatment program is adapting to particular needs. He noted that the Northern Panhandle has a significant number of heroin addicts. Heroin addictions are harder to combat than other drugs, he said.

Because of this, more than half of drug court participants were out of the program in its first year.

Now, the judge said, heroin addicts must undergo a long-term program before becoming eligible for drug court. This has reduced the failure rate to 14 percent.

Both judges recommended expansion of the drug court program, citing success in their respective circuits.

Regional Jail & Correctional Facility Authority,
Legislative Oversight Committee on

Overpopulation

The committee asked questions of the Division of Corrections Commissioner (DOC) regarding the overpopulation problem facing the state's regional jails.

One of the problems of overcrowding is "pocket parolees" who are inmates given parole but are kept in jail after being released because they do not have a proper home plan. Many of the parolees are repeat offenders and placement into the communities has become more difficult, the Commissioner said. Lack of support between the DOC and the West Virginia Parole Board's conflicting "philosophies" are to blame for inmates receiving parole before filing their required home plans. There are over 200 of these pocket parolees currently being housed at the jails, costing the state around \$350,000 a month. The Commissioner predicts that this problem could be solved by January of next year.

The Commissioner did point out that the numbers of "pocket parolees" could be somewhat skewed since parole might be granted during the first of the week and the inmate discharged but their name remains in the tracking system.

Another issue brought up regarding the overpopulation problem is the fact that the DOC has to pay about \$22 million annually to the Regional Jail Authority to house state prisoners that the DOC can't accommodate because of space limitations.

Members asked the Commissioner to create a plan to present to the committee during September interims regarding what the Legislature could be doing to solve the overpopulation problem in West Virginia's regional jails.

The Executive Director of the West Virginia Regional Jail and Correctional Facility Authority updated the committee on the progress of the Rubenstein Project, which began construction on June 20 and should be completed in the fall of next year.

Parks, Recreation & Natural Resources Subcommittee

Cass Scenic Railroad State Park

Lawmakers were pleased to receive a report from the Secretary-Treasurer of the Mountain State Railroad and Logging Association (MSR&LHA). The Association is committed to supporting Cass Railroad at Cass Scenic Railroad State Park. Consisting of 525 volunteers from 40 states and five countries— over the past 15 years – the Association has committed over \$500,000 in direct cash benefits since 1992 and 10-20,000 hours of volunteer time spent annually. This financial support and personal dedication by the volunteer railroad aficionados equates to a market value of material and volunteer labor exceeding \$1 million.



Cass Scenic Railroad's "Shay No. 5" Locomotive

Founded in 1982, the MSR&LHA is dedicated to the research, collection, preservation, publication on, and restoration of equipment and structures related to West Virginia lumber and railroad operations.

Since 1982, the Log Train, the group's publication has raised the visibility of Cass and its historic significance and reaches over 600 members throughout the nation.

The all-volunteer group has reconstructed the Whittaker Logging Camp, acquired a ballast car, rebuilt five miles of track near Spruce Knob, reconstructed the "wye" which allows trains to turn around by-passing a sharp curve to Bald Knob thereby allowing the big "Shay 6" locomotive to get to the Knob and hosted the Train 99 convention in 1999 at Cass.

Working with Snowshoe resort and the State Park management, the association put together in recreation building in Cass. It also constructed a restoration shop in 2002 needed for the Climax locomotive restoration that has been donated to the Park. This facility is 40 x 100 feet and within its steel walls, the first completed project by the group was the rebuilding of the Bobber Caboose. The group also restored the Climax Locomotive.

Among its many restorations including buildings and out buildings, the group also operates the museum in a Park building. The display items are privately owned but the knowledge and promotion offered by the Mountain State Railroad and Logging Association has been priceless to the State Park system and members of the Committee lauded the Association for its efforts.

Select Committee on PEIA , Seniors & Long-term Care

Informing Retirees on Advantra Freedom Plan

During an update on communications with West Virginia retirees, the Director of the Public Employees Insurance Agency (PEIA) told lawmakers the agency recognizes the need to have on-going contact with state retirees moved to the Advantra Freedom plan. While initially retirees were concerned about co-pays, it appears they've discovered the changes in the plan oftentimes are proving more cost effective than their enrollment in PEIA.

Complaints about the shift in plans have stabilized and have dwindled, according to the director who attributes the change to PEIA's efforts to keep retirees informed through repeated mailings. The informational materials sent to retirees are reviewed by an advisory committee who ensures the message is clear to the readers. Letters have been sent to retirees regarding in changes from the 2007 formulary to the 2008 formulary as well. A post-enrollment packet mailed includes a member handbook, helpful telephone numbers and the federal-mandated patient's rights document.

In addition, PEIA is reaching out to health care providers. Coventry, Advantra Freedom's parent company, has been contacting health professionals in Florida, Ohio and the Mayo Clinics. As of mid-July, the PEIA director noted that no patients were rejected by physicians or hospitals, which at one time numbered in the hundreds. Coventry is also maintaining extensive interaction with federal authorities as well.

Inquiries regarding medical supply reimbursements, formulary purchases and notifications to retirees upon reaching the age of 65 were met by the PEIA director.

He indicated that medical supply bids were put out because of a federal initiative and all bids were based on the best possible price. The initiative only applied to Medicare lawmakers were told. Best prices for drugs, such as the \$4 pledge offered by box stores, is being reviewed to ensure West Virginia is on their lists. And, the PEIA director said that prior to turning 65-years-old, a retiree will receive a letter 90 days before their birthday informing the retiree of their impending enrollment in Advantra Freedom coupled with informational materials explaining the transfer.

Treating Seniors Successfully

Also appearing before the Select Committee was guest speaker Len Nichols, PhD, who is a highly respected health-care economist who directs the Health Policy Program at the New America Foundation, which aims to expand health insurance coverage to all Americans while reining in costs

and improving the efficiency of the overall health care system. He has testified frequently before Congress and state legislators and has published widely in a variety of health related journals. His presentation covered elderly issues and health reform.

Dr. Nichols' outline for success in treating seniors included ensuring:

- an efficient delivery system;
- commitment of a senior's community;
- stewardship of available money/no waste plans;
- "choice" for participants seeking health care; and,
- a trust factor instilled in patients that is verified by patient satisfaction.

In response to queries of lawmakers, Nichols supported employer based health coverage but indicated large pools of patients were most efficient. He also told the committee that everyone should be included in a pool regardless of risk levels.

In addition, he said there is evidence in professional literature that indicates seniors, given choices, select the most effective. While most prefer home care, if serious medical care is needed, services should begin at home and then transitioned to nursing facilities gradually as the patient's condition worsens.

The nationally recognized healthcare economist closed his presentation by telling lawyers "long-term care is on the back burner in Washington DC; health care costs are reaching a crescendo; and the solution is comprehensive reform."

Pensions & Retirement, Joint Standing Committee on

TDC-TRS Transfer

The Executive Director of the WV Consolidated Retirement Board provided the most recent data on the TDC-TRS transfer. Legislation was taken up and passed regarding the transfer during the Second Special Session (House Bill 210 - See summary on page 1).

Armed Forces Retirement Credit

Also in attendance was the Chief Operating Officer of the WV Consolidated Retirement Board who answered queries from lawmakers regarding armed forces retirement credit. The spokesperson listed the numbers of years allowed for each of the state's retirement programs.

Five years of service is credited by PERS for active duty compulsory military service (draft) or period of armed conflicts:



Interim Highlights

Spanish-American war, Mexican border period, WWI, WWII, Korean conflict, Vietnam era, Persian Gulf War, Operation Noble Eagle/Enduring Freedom.

The teachers' retirement system grants military active service in which the federal Selective Service Act (draft) was in effect. The credit is not to exceed 25 percent of total service at retirement or 10 years.

The State Troopers' Plans A & B grants five years credit for military service for any active duty service after the member has obtained 20 years of service with the WV State Police.

Five years of retirement benefits are also granted to the Deputy Sheriff and Emergency Responders for any active duty served.

Five years of retirement benefits are also granted to judges/justice who was on the bench prior to July 1, 2005 with 12 or more years on the bench for any active full-time duty. Any judge/justice on the bench July 1, 2005 or after with 14 years on the bench may receive five years of military service credit for any active full-time duty.

State Water Resources, Joint Legislative Oversight Commission on

Mitigation of Streams and Wetlands

According to the U.S. Environmental Protection Agency, Thousands of property owners undertake projects that affect the nation's aquatic resources each year. The Corps of Engineers reviews these projects to ensure environmental impacts to aquatic resources are avoided or minimized as much as possible. A Corps permit may require a property owner to restore, establish, enhance or preserve other aquatic resources in order to replace those impacted by the proposed project. This compensatory mitigation process seeks to replace the loss of existing aquatic resource functions and area.

During the interim State Water Resources Committee, lawmakers called upon spokespersons representing the WV Conservation Agency, the US Army Corps of Engineers and the WVU Water Research Institute to provide information regarding the status of mitigation of streams and wetlands in West Virginia.

This complex issue includes the involvement of the Corps of Engineers, the US Environmental Protection Agency (EPA), the state Department of Natural Resources (DNR), the Department of Environmental Protection (DEP) and numerous other regulating offices.

Not only are there scientific formulas to be followed but also a wide arena of other factors to explore, all of which are continuing to evolve with new findings regarding restoration and regeneration. For instance, a professor from the WVU Research Institute provided an explanation to lawmakers regarding the reduction of nitrogen levels in streams. Complicated strategies involving such techniques as macrobenthos monitoring in native streams are also in play.

To assist in mitigation costs, discussions also covered the feasibility of establishing a mitigation bank to help a landowner cover some of the financial responsibilities that come with a stream project. For instance, presently in West Virginia, EarthMark, based in North Carolina, is currently working with area regulatory agencies to establish the state's first private Stream and Wetland Mitigation Bank to further support the coal mining industries and other commerce efforts to enhance & restore the environmental degradation to their aquatic resources. Included in the scope of their projects are efforts aimed at water quality enhancement. Committee members were told no legislation is required to establish such a bank.

While lawmakers are hoping to receive a proposal to ease the process and appease all stakeholders in the coming months, it was noted that with recent changes in federal rules further inquiries would be required. Legislators noted efficiency and effectiveness in stream and watershed mitigation should be prominent to any proposal.

In line with efficiency or not, committee members also were provided with an overview of the water and sewer funding processes.

The 17 step process for obtaining a loan from the Clean Water State Revolving Fund administered by the WV Department of Environmental Protection (DEP) includes procuring a consulting engineer, submission of a preliminary application and engineering report to the Infrastructure and Jobs Development Council (IJDC), the IJDC's recommendation to pursue assistance from the fund, submission of a community priority list fact sheet to the DEP, submission of the proposed project included on the DEP's intended use plan, submission of the facilities plan to the DEP for review and approval, the DEO's approval of the facilities plan, submission of plans and specifications to the DEP for review and approval, plans and specs approved by the DEP, the community's application for permits, initiation of advertisements for bids, bid openings, submission of the state revolving fund loan application to the DEP within 10 days after the bid opening, an agreement of the issuance of the loan, loan closure and initiation of construction,



completion of the project and ultimately...the repayment of the loan.

The 11 step process, administered by the WV Department of Health and Human Resources Bureau for Public Health regarding the Drinking Water Treatment Revolving Fund involves the Infrastructure and Job Development Council, the Bureau for Public Health, a project priority list, and meeting of all parties involved, an environmental review, a pre-bidding process, a bidding review process, a pre-loan closing checklist and site inspections, is done before money is released from the drinking water Treatment Revolving Fund.

Following the explanations of each step involved in both processes, lawmakers requested all stakeholders meet in a working session. The stakeholders were directed to determine ways to shorten both processes in obtaining a loan from both the Clean Water State Revolving Fund and the Drinking Water Treatment Revolving Fund.

In addition, lawmakers are asking to be informed on when the meeting will be conducted and to ensure summaries of the working group's findings will be provided to them.

Veterans' Issues - Select Committee B

West Virginia Veterans' Monument

A representative from the West Virginia Division of Culture and History presented committee members with the history and information about the West Virginia Veterans' Monument located at the State Capitol Complex.

By Executive Order in 1985, planning began on what was then supposed to be a Vietnam Veterans Memorial Commission. The name was officially changed to the West Virginia Veteran's Memorial Foundation in 1989, when the winning design for the monument incorporated all major 20th century conflicts.

The first statue, the WWII sailor, was dedicated in 1995 followed by the WWI doughboy in 1997, the Korean aviator in 1998 and the Vietnam marine in 1999. Plaques have been added to the monument with the names of 20th century Medal of Honor winners and casualties from post-Vietnam conflicts.

From records received and members of the public, it was established that some names were misspelled, fell outside the scope of dates covered by the various conflicts or were missing all together. Another unforeseen event, a motorist drove into the WWII panel, has led to the planning and renovation of the monument.

A Veterans Advisory Committee, established in 2004, has been doing extensive research to make sure that all names that should be included on the wall are added. It is estimated that the costs for erasing the current names, carving the new list and re-caulking the memorial is estimated to cost about \$300,000. At least 1,000 names need to be added and 235 other corrections must be made.

WV National Guard Family Support Services

The State Family Program Director for West Virginia's National Guard Family Support Services informed the committee on the duties and services the program provides to service members and their families as well as Veterans.

There are five family assistance centers throughout West Virginia who provide important services to service members and their families. The Director of the program told the committee that problems would arise if individuals were unsure of whom to contact. The National Guard Family Support Services will not only tell them who they need to contact but also give them the number who is nearest to where they live.

The National Guard Family Services has other programs as well such as the "Beyond the Yellow Ribbon Program" which was first introduced in Minnesota. The program has become a model for helping Iraq returnees maneuver through obstacles by attending various events that will help them readjust to their normal routines.

Volunteer Fire Departments - Select Committee F

Overview of State Volunteer Fire Departments

Continuing its review on recruitment, training and retention of volunteer firefighters, lawmakers of Select Committee F heard from legislative counsel the sources of available funding for the state's VFDs. In material provided to lawmakers, West Virginia is protected by over 425 volunteer fire departments whose firefighters are unpaid, yet professionally trained.

According to counsel, there may be direct payments from a city, fire service fees paid to fire boards and a reimbursement for services up to \$500 from the county commission. Not all counties have fire fees but those that do also receive state funding provided by a 1 percent tax imposed on any fire and casualty insurance policy. Fifty percent of the 1 percent goes to volunteer fire departments and an additional 1 percent levied on fire and casualty insurance policies (premiums), according to material provided by the State Treasurer's Office. The latter funds are collected by the Insurance Com-



missioner and transferred to the State Treasurer’s Office for distribution. Twenty-five percent goes to the volunteer fire departments.

From both the insurance policies and 25 percent of the premiums, each fire department may receive anywhere from \$40,000 to-\$50,000 a year in state funding. The State Fire Marshall’s Office works with FEMA to ensure fire department compliance with federal grand funding.

If VFDs form a fire board, an excess levy may provide additional dollars. One lawmaker noted that school excess levys are approved by a 50 percent vote but VFDs must have a 60 percent advantage. Another issue discussed related to the population who vote for a levy. If a levy is up for a municipality, only city dwellers vote although many VFDs cover fires outside of the voting district. It was also noted that it was possible for a county commission to approve a levy for the entire fire service areas should it choose to do so.

Other information garnered by the committee related to rising fuel costs. A query was made regarding VFDs’ use of off-road diesel reimbursements and the required 250 gallon fill-up – and if so – are the departments are taking advantage of the tax reimbursement? Respondents noted the departments are not provided credit by the state. While some fire companies can fuel up at state road divisions, some departments fill up at the pumps. The respondents are seeking a 30-day limit without state law interpreting the fill-up as “credit.”

Also appearing before the committee was a retired career firefighter from Harrison County who suggested beefing up the recruitment process to include requiring individuals to serve as volunteers for three years before applying to be career firefighters. He also suggested community colleges may consider providing credit for certain volunteer experiences.

The committee also reviewed the possibility of conducting a public forum to be scheduled in the House of Delegates’ chamber to receive insight from the “nuts and bolts” people involved in volunteer firefighting.

Workforce Investment for Economic Development, Legislative Oversight Commission on


CTC Apprentices Program

Members of this committee heard a proposal from a representative of the Council for Community and Technical College Education regarding the expansion of an apprentice program that puts workers into classrooms simultaneously while holding down jobs or training to land them.

The apprentice program has graduated 663 students in the seven years in has existed, which is far fewer than the number of workers needed to replace the aging West Virginia work force with many more people nearing retirement age than there are qualified workers to replace them.

The representative floated the idea of starting a Promise II Scholarship program to get more young people into trades buttressed with college degrees.

Currently, West Virginia ranks 48th in the nation in regards to it’s educated work force. However, if a bigger emphasis was placed on getting young workers in college programs, however, that could change dramatically, the committee was told.

The representative briefly traced the history of the apprenticeship program and pointed out that his agency is seeking \$236,000 to expand it. 



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 August 24 - 26
 September 7 - 9 (Bridgeport)
 October 12 - 14
 November 16 - 18
 December 7 - 9
 January 11 - 13, 2009
 February 8 - 10, 2009

2008
Interim Committee Meetings

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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