

# Final Wrap-Up

2,127 bills were introduced during the 2004 Legislative Session - 1,390 came from the House, 737 came from the Senate and 280 were passed into law.

## The First Extraordinary Session (1st Special Session)

14 bills were introduced, 13 of which were supplemental appropriations. One vetoed supplemental appropriation (SB 1013) would have expired \$5 million in funds from the PROMISE scholarship program and redirected the money to the Department of Military Affairs and Public Safety's Division of Corrections to pay jails for housing inmates destined for the state's prison. Another supplemental appropriation (SB 1006) to the Local Economic Development Assistance Fund, FY 2004, was reduced from \$3.9 to \$2.29 million.

Also passed was HB 101, which relates to fees collected and moneys expended by state institutions of higher learning.

## Veto Messages

Senate Bill 160	House Bill 4119
Senate Bill 563	House Bill 4354
Senate Bill 566	House Bill 4377
Senate Bill 616	House Bill 4623
Senate Bill 636	
Senate Bill 694	

## Budget Bill (SB 133)

The Governor's proposed budget was \$3,072,356,000 for Fiscal Year 2005.

This budget included the following monies which would have been derived from the passage of legislation. However, none of the tax proposals met lawmakers' approval, leaving lawmakers with a hole to fill.

Cigarette/Smokeless	\$37,100,000
Tax Amnesty	\$10,000,000
Premium Tax	\$2,500,000
Decoupling	\$5,100,000
ATV sales tax	\$3,900,000
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Total	\$58,600,000

While the governor's budget included several tax issues with which the Legislature would not agree, the final amount approved by the conferees and ultimately all lawmakers was \$3,050,996,045.

More than \$30 million in one-time only education dollars for the budget was reappropriated to assist filling some of the deficit. This includes \$12.9 million from a program used to replace school buses and \$19 million from the state School Building Authority (SBA) with permission to take an additional \$5 million if necessary from the SBA.

The one-time money amounted to:

\$12 million from school buses

\$10 million from Tax Amnesty

\$17.5 million from higher education lottery surplus (used in higher education)

\$19.0 million from SBA:

\$5 million was used for General Revenue budget

\$14 million was originally placed in TRAFFIC (Tax Reduction and Federal Funding Increased Compliance) however it was eventually reduced by \$4.6 million going to the Governor's Civil Contingent Fund leaving a remaining balance in TRAFFIC of \$9.4 million (use of this money has to meet legislative approval via passage of a bill).

The conferees reported out and the Legislature approved a budget which gave approximately:

\$1,611,320,721 or 52.47% to public education

\$564,366,934 or 18.38% to health and human resources

\$238,603,208 or 7.77% to military affairs and public safety

Funding for the health department restored \$250,000 for the Cardiac Project and \$50,000 was added for the Health Rights Free Clinic and the Center for the End of Life was restored for a total of \$195,000.

The three branches of government received the following:

Judicial - \$76,402,510 or 2.49%

Executive - \$43,172,226 or 1.41%

Legislative - \$33,331,665 or 1.09%

The state's administrative offices received \$53,171,502 or 1.73%. Of the constitutional offices and their affiliated divisions, the Public Defenders received \$26,942,879.

The Division of Education and the Arts, consisting of Culture and History, the Library Commission, Rehabilitative Services and Educational Broadcasting, received a total of \$25,686,857 with approximately \$11.7 going to “rehab” services.

A total of \$5,000,000 will go to workers’ compensation.

Senior Services received \$883,000.

Tax and revenue received \$26,635,738; transportation received \$7,407,569; commerce received \$49,308,413; environment received \$7,827,222; and, Court of Claims received \$3,621,385.

### OTHER FUNDING PROJECTS:

**Senate Bill 197** relates generally to the distribution of net income of racetrack video lottery terminals.

After June 30, 2004, one percent of net lottery terminal income will be distributed as follows:

The existing Capitol Complex Parking Garage Fund will receive \$500,000 and the remainder will go in equal amounts to the Capitol Dome and Improvements Fund and the Cultural Facilities and Capitol Resources Matching Grant Program Fund until each receives \$1.5 million. Thereafter in the fiscal year, the remainder of the one percent will be paid to the existing Capitol Dome and Improvements fund.

In addition, beginning after June 30, 2004, three percent of the lottery net terminal income and excess net terminal income will be distributed as follows:

\$11 million to the Tourism Promotion Fund  
\$ 3 million to a new Development Office Promotion Fund  
\$ 4 million to a new Research Challenge Fund  
\$5.5 million to a new Capitol Restoration Fund  
\$ .5 million to a new Parking Garage Fund

### Joint Resolutions

**House Joint Resolution 114** proposes an amendment to the West Virginia Constitution entitled the Veterans’ Bonus Amendment. This amendment would authorize the sale and appropriation of additional state bonds for the purpose of paying bonuses to certain veterans or their relatives. The

additional bonds would not be permitted to exceed \$8 million. The bonuses provided through the sale of these bonds would be awarded to those veterans of the United States Armed Forces or reserve components who were called to active duty to serve in the War in Iraq and/or veterans, active service members, or members of reserve components of the Armed Forces of the United States, who served on active duty in one of the military operations for which he or she received a campaign badge or expeditionary medal while in Kosovo, between the November 20, 1995 and December 31, 2002; or Afghanistan between the October 17, 2001 and the date determined by the President or Congress of the United States as the end of the United State’s military involvement in Afghanistan.

This amendment will appear on the November 2004 General Election ballot.

### Areas of Specific Interest

#### **Pharmaceutical Bill (HB 4084)**

The pharmaceutical bill introduced in the Legislature that could allow West Virginians to buy prescription drugs at the same low rates paid by the federal government -- a strategy that would save Mountain State agencies, businesses and residents an estimated \$500 million a year -- was passed.

Employing the House initiative, a provision is contained in the final bill which creates a council to seek the same prices the federal government acquires for several of its programs through the Federal Supply Schedule (FSS), prices which are on average 42 percent lower than the market price. The bill also states that other appropriate referenced prices, such as the ones set by the Canadian patented medicine price review board, may be used to establish a prescription drug pricing schedule if adjusted for currency valuations.

Under this provision, the state council will be empowered to waive the price requirement in cases when a prescription drug company can prove the costs associated with making and distributing the drugs are too high to incur a reasonable profit under the FSS.

But, in making that determination, the council will not factor in the cost of marketing and advertising of prescription drugs.

The council can approve much higher prices than those listed in the federal schedule in order to help provide for research and development, if necessary.

By contrast, the Senate proposed legislation for two programs - a clearinghouse that directs people to discount cards offered by pharmaceutical manufacturers and a voluntary discount card program for people under two hundred percent of the federal poverty level. Participating drug companies could offer lower prices on a voluntary basis to those qualified.

The agreed-to legislation combines the two bills by enacting the Senate provision immediately and leaving a trigger in place for the House recommendations.

The progress of the clearinghouse program and the voluntary discount card program will be assessed by a council, which also will be examining other methods of lowering prescription drug costs. The council will issue a full report in September 2004.

Based on the results of the clearinghouse effort, the Legislature must decide whether or not to take further action.

Governor Wise has indicated he may convene a special session in the Fall to allow the Legislature to vote on whether or not to trigger the cost containment measure. If not, the Legislature will consider the issue during the 2005 session, which convenes in February.

### **Nurse Overtime (SB 251)**

This bill will provide requirements and limitations for mandatory nurse overtime in hospitals. A recent study by the Institute on Medicine cited mandatory overtime as one of the major reasons for medical errors in hospitals.

The bill will allow nurses to work overtime for the completion of a single patient procedure, or during a natural disaster, an outbreak of disease or under similar emergency circumstances. According to this measure, any nurse who works 12 or more consecutive hours in a shift will be allowed eight hours of off-duty time immediately following the completion of the shift and no nurse shall work more than 16 hours in a 24-hour period. Nurse anesthetists and any nurse consenting to work additional hours will not be impacted by this legislation. Any fines imposed on violating hospitals will be directed to the Health Care Authority.

This bill will not apply to four state-run hospitals that employ 270 nurses or to any federally-run veterans' hospitals.

### **Insurance Fraud Unit (HB 4004)**

This measure, designed to keep insurance prices down, creates an Insurance Fraud Unit (HB 4004) within the state's Insurance Commission Office. The "West Virginia Insurance

Fraud Prevention Act elevates West Virginia as the 41st state in the country with an insurance fraud unit.

According to the bill, the unit is given investigative and prosecutorial powers and both civil and criminal penalties could be imposed on those found guilty of falsifying a claim. Not only is that person committing a crime of deceit but also any other person with information regarding the falsification is required to provide this information to the Insurance Commissioner. Among other responsibilities, the insurance fraud unit is authorized to initiate investigations.

Other provisions in the measure allow insurance companies to refuse to renew policyholders who have two accidents within three years or two moving violations in two years; cuts in half, from 90 days to 45 days, the amount of time a person has to pay a late premium before the insurance company can drop them; and, provides that insurers could refuse to renew insurance for up to one percent of their customers in each county every year, for any reason.

Additionally, the measure requires the Insurance Commissioner to submit a report to the Legislature on the impact that third party causes of actions have on rates and availability of insurance in the state and to make recommendations on ways to improve the insurance climate in West Virginia.

### **ATV Bill (HB 4022)**

No ATV can be operated in WV:

- on any interstate highway except by public safety personnel responding to emergencies
- on any road or highway with a center line or more than two lanes, except to cross the road at a 90 degree angle (when crossing, the vehicle must be brought to a complete stop and must yield to all other traffic)
- with more than one passenger unless otherwise specified by the manufacturer
- with a passenger under the age of 18, unless the operator has at a minimum a level two intermediate driver's license or its equivalent, or is 18 years old
- unless the operator is under 18 and wears a helmet
- anytime when dark, unless the ATV has head and tail lights
- without a spark arrester and mufflers that work properly
- unless traveling from one field, trail or area of operation to another upon the shoulder of any road, street or highway other than interstate for up to 10 miles and at a maximum speed of 25 mph

Safety Awareness Courses:

- the Commissioner of Motor Vehicles must offer free ATV rider safety awareness courses and award certificates for its completion

- no person under the age of 18 starting in January of 2005 who has no certificate of completion may operate an ATV as offered by the Commissioner

#### Local Government Authority:

- municipalities, county commissions and/or homeowner associations may regulate in any manner or prohibit the operation of ATVs upon any street, road or avenue within their jurisdictions

#### Rental Dealers:

- renters of ATVs must provide users with proper safety equipment and meet the standards set in this bill  
- all users under 18 renting ATVs must wear helmets

#### Exemptions:

- given to private property, farm and commercial use, including oil and gas operations, timbering, surveying and public utilities access  
- for parades, exhibitions and other special events and emergencies

#### Rules of Operation:

- ATVs are subject to the "rules of the road" already established by WV Code  
- exemption from the driver's license requirement set by current Code when crossing or on the shoulder unless under the age of 18 and transporting a passenger under 18

#### Criminal Penalties:

- a violation of this provision for an operator is considered a misdemeanor with a fine of up to \$100  
- parent, guardian or person of responsibility for a child under 18 who knowingly allows for operation without a helmet is guilty of a misdemeanor and subject to the following:  
- 1st offense = from \$50 to \$100 fine and/or 10 hours of community service  
- 2nd offense = fine between \$100 and \$200 and/or up to 20 hours of community service  
- 3rd and subsequent offense = fine between \$200 and \$500 and/or up to 100 hours of community service

#### DUI Bill (SB 166)

This measure, which has been referred to as the .08 legislation, lowers the Blood Alcohol Content (BAC) for driving under the influence (DUI) from its original .10 to .08, freeing-up \$2.7 million in federal highway funding. Also, the bill places an additional \$55 processing fee on all persons convicted of a DUI to assist with the counties' fiscal liability for processing these offenses.

Additionally, the bill prevents prosecutors from using DUI violations dating back more than 10 years to charge persons with second or subsequent DUI offenses.

The bill also states that all provisions of DUI law are relegated to motor powered vessels and boats. It was the opinion of the legislative conference committee that if a person is over the legal limit and is endangering the welfare of any citizen, regardless of being on land or water, then the person must be held accountable.

## Bills by Subject

### Actions & Suits

**House Bill 3097** prescribes proper venue in civil actions involving West Virginia University and Marshall University. The bill states that if civil action suits are filed against the two universities or their employees, agents, interns or residents acting in the scope of their work, then the trial will be brought in the circuit court of the county in which the action occurred, unless otherwise noted by the parties involved.

**House Bill 4308** provides immunity from civil damages to any worker, contractor, engineer or architect who, in good faith, provides services or materials for the installation of universal accessibility features if the action is done without pay. Also, to receive immunity, the accessibility feature that was built must be in accordance with applicable state and federal laws.

**House Bill 4658** relates to the defense of self, others and property and provides limited immunity from civil liability. The bill states that any person committing a crime on personal property assumes the risk of injury as a result of the activity. However, the assumption of risk does not apply to the creation of a hazardous or dangerous condition on the property designed to prevent criminal conduct or cause injury.

### Americans with Disabilities Act

**House Bill 4009** creates a full-time job for a State Americans with Disabilities Coordinator, who will be appointed by the Secretary of the Department of Administration. The Secretary will have authority to assess, charge and collect fees from each state spending entity which uses the services of the Coordinator for his or her direct costs and expenses.

### Agriculture

**Senate Bill 631** adds definitions for “local legislation” and “political subdivision” to the West Virginia Fertilizer Law. The bill also adds a new section that will prohibit political subdivisions from the regulation of packaging, labeling, sale, storage, distribution, use or application of fertilizers.

**House Bill 4516** continues the State Conservation Committee and adds the President of the West Virginia Association of Conservation Districts to the Committee. The Administrative Officer and all other employees of the Committee will be known as the West Virginia Conservation Agency.

### Banking

**Senate Bill 286** requires all monies collected by the Banking Commissioner from financial institutions and bank holding companies for assessments, examination fees, and investigation fees to be paid by the Commissioner to the State Treasurer to the credit of a new special revenue account called the “Commissioner’s Assessment and Examination Fund.”

**Senate Bill 506** permits the use of the word bank, banker, banking company and trust company in the name or conduct of the business of a licensed insurance company.

**House Bill 4168** requires lenders to have the funds for mortgage loans available for the customer when the loan closes. The measure also creates penalties for noncompliance, such as if any person suffers a loss due to the failure of a lender to comply with the law, then in addition to actual damages, the person may get double the amount of any interest which is collected plus reasonable attorney fees.

**House Bill 4294** requires that costs collected by magistrate courts for issuance of notice to be retained by the county in the Worthless Check Fund. Counties are authorized to appropriate monies from the fund to provide a deputy sheriff to serve warrants for worthless check offenses.

### Boards & Commissions

**Senate Bill 199** corrects the inconsistency of the appointments to the Commission for the Deaf and Hard-of-Hearing in relation to the terms and the number of people appointed. Current law states that three members are appointed to three

year terms, three members are appointed to two year terms and three members appointed to a one year term.

**Senate Bill 460** relates to regulating surveyors and underground surveyors. This bill changes the name of the regulating Board from the Board of Examiners of Land Surveyors to the Board of Professional Surveyors, and sets the requirements, and terms for the members of the Board. The Board is responsible for establishing continuing education requirements and setting job requirements and salaries for investigators and employees. The bill establishes specific education, experience and examination requirements necessary for obtaining a surveying license. Any individual holding a license to practice land surveying which was issued by the Board prior to July 1, 2004 is grandfathered into licensure and all renewals of those licenses must be made consistent with new Code requirements. The bill specifies requirements for license by reciprocity and license renewal. Also, any firm or company practicing surveying must have a Certificate of Authorization issued by the Board. The bill addresses two additional grounds for refusal to renew, suspension or revocation of a license or endorsement and disciplinary actions the Board may take, along with procedures for reinstatement are outlined. Criminal violations of provisions of the Article may be brought to the Prosecuting Attorney or other law enforcement officer so that criminal charges may be filed.

**Senate Bill 508** provides that no more than eight voting members of the Commission on the Arts may be from the same political party. The composition of the board is 15 members and ex officio non-voting members. The change verifies voting members and does not include non-voting members. Additionally, the bill confirms that a maximum of five members may be from the same congressional district.

The bill allows the Commission to use its funding (50 percent of the funds from the matching grants program) for preservation and operating costs with funds going to operating costs limited to 25 percent of the available funding. The bill also allows 50 percent of the funds that go the Division of Culture and History to be used for capitol improvements, preservation and operation of cultural facilities.

**Senate Bill 513** removes advisory members from the House of Delegates and the Senate from the Jobs Investment Trust Board and expands the authorities of the Board. The Board will be able, for example, to hire private counsel.

**Senate Bill 574** relates generally to the powers and duties of the Alcohol Beverage Control Commissioner. This bill allows the Commissioner to sell a liquor warehouse, upon approval of Governor and the Board of Public Works, when the sale is in the best interests of the state.

**Senate Bill 718** relates to authorizing the Board of Examiners of Psychologists to set fees and other requirements by legislative rule. Also, upon proper application, the Board may issue, without examination, a temporary permit to engage in the practice of psychology in this state. The Board may propose rules for legislative approval to provide for: licensure requirements, including requirements for applications, examinations, reciprocity, temporary permits and reinstatement; fees for licenses, renewals of licenses and other services provided by the board; and, experience, education and continuing education requirements and approval of courses.

**House Bill 4134** continues the Employee Suggestion Award Board, while replacing the Secretary of the Department of Commerce, Labor and Environmental Services with the Governor's Chief Technology Officer. The Board also will include one additional Senator and Delegate.

**House Bill 4247** clarifies that the Board of Registration for Professional Engineers may assess civil penalties to any person who violates the law pertaining to engineers and/or violates any of the rules promulgated by the Board.

**House Bill 4374** relates to the Manufactured Housing Construction and Safety Standards Board. This bill removes out-dated language, provides for inspections and the payment of the costs of inspection and authorizes the issuance of cease and desist orders. West Virginia, acting through this Board, is granted all powers and authority necessary to act as a primary inspection agency and to perform the functions of a "design approval primary inspection agency" and a "production inspection primary inspection agency," as defined in federal standards. The board may apply to the Secretary of Housing and Urban Development on behalf of this state to act as the primary inspection agency, including application for approval to act as the exclusive production inspection primary inspection agency in West Virginia.

**House Bill 4607** relates to the Economic Development Authority Board and confers the authority and duties of the Industrial Revenue Bond Allocation Review Committee to the Board of the West Virginia Economic Development Authority. This bill also adds members to the Board of the Economic Development Authority. Also, members of the Authority are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

**House Bill 4709** allows the Commissioner of Labor to promulgate rules to assess expenses for weights and measures, laboratory calibrations and testing. The bill also permits the

Commissioner to allocate monies until June 30, 2006 after which monies would not be expended except by legislative appropriation.

## Bonds

**Senate Bill 671** relates to the appeal bond that master settlement agreement signatories must post to stay the execution of a judgment pending appeal. An appeal bond may not exceed \$100 million for compensatory damages and all other portions of a judgment other than punitive damages; and, \$100 million for punitive damages unless the appellee proves by a preponderance of the evidence that the appellants are purposefully squandering or diverting assets outside of the ordinary course of its business to the effect that the ability to pay the ultimate judgment is impaired.

**Senate Bill 720** relates to the unused state private activity bond volume cap. The bill eliminates the provision that a discretionary reservation of state allocation of the annual ceiling for private activity bonds may not be granted unless the project receives a certification from the Federal Energy Regulatory Commission. Due to federal changes, this certificate is no longer available. Additionally, this legislation allows certain energy-producing projects to carry forward a reservation of funds to a future fiscal year. These projects must be qualified solid waste facilities which rely upon coal waste as fuel.

**House Bill 3150** addresses the West Virginia Fairness in Competitive Bidding Act by prohibiting state officers, agencies or entities from requiring that surety, payment, performance or bid bonds be secured from any specific bonding company. This ban applies to government contracts and design-build, state, county and city projects.

**House Bill 4033** authorizes the Parkways Authority to issue parkway revenue bonds up to \$200 million. Bonds will be used for costs of the West Virginia Turnpike for the purposes of improvement, maintenance and enhancements, including lane-widening and construction. Projects must include a connector and interchange in Shady Spring.

**House Bill 4295** relates to exempting state bonds from taxation. Under this legislation, all bonds of the state, a state agency or state authority which are issued will be exempt from all state, county, and municipal taxes including income, inheritance and property taxes.

## Business & Economic Development

**Senate Bill 139** creates the West Virginia Tourism Development Act. The bill establishes a tourism development project tax credit, which will not exceed a total of \$1.5 million per year. The bill also gives the West Virginia Development Office duties including approving tourism development project applications and hiring fiscal consultants, attorneys, and other agents to work on tourism development projects.

**Senate Bill 204** expands the Strategic Research and Development Tax Credit by exempting certain hardware and software from sales and service tax regarding Internet support services by companies engaged in Internet sales and e-commerce from WV locations. It establishes a consumer tax exemption to encourage computer software developers, hardware designers, system engineering firms, electronic data processing companies and other high tech companies to locate and expand their businesses in West Virginia. The measure allows an eligible taxpayer who has revenues less than \$20 million and a payroll of less than \$2.5 million to apply for a refund on his or her Strategic Research and Development Tax Credit. The bill also states that a taxpayer may only receive up to \$100,000 of the excess refund in any tax year, with a total of \$1 million in refunds awarded by the Tax Commissioner each fiscal year.

**Senate Bill 556** clarifies that any person whose primary business is retail sales of tangible consumer products, such as automobiles and trucks, is exempt from regulations under the Consumer Credit Protection Act applicable to credit service organizations.

**Senate Bill 573** provides a procedure for the Economic Development Authority to address some business problems faced by state minorities. The bill also provides for the formation of a public economic development authority to promote, assist, encourage and, in conjunction with banking institutions, to develop and advance the business prosperity and economic welfare of the state.

**Senate Bill 675** raises the outdoor advertising licensing fee from \$100 to \$125 for up to 20 annual permits and \$1,000 for 21 or more permits. The application fee for a permit is \$1. This bill will raise the fee to \$20, except for changeable message signs which are \$500. A \$75 inspection fee was added for proposed locations along interstates and federal aid primary highways. The fee for other locations along a public highway is \$25. The permit renewal fee may not exceed \$25, except for the renewal fee for changeable signs which may not exceed \$60. This bill also will charge a \$5 fee for each label or marker issued that identifies the permit number of the user.

**House Bill 4131** requires certain reporting to the Legislative Oversight Commission on Workforce Investment for Economic Development. The bill changes the name of the Council for Community and Technical College Education to the Joint Commission for Vocational Technical Occupational Education and the West Virginia Workforce Investment Council to the Human Resource Investment Council. The bill also calls for these entities to report to the Legislative Oversight Commission on Workforce Investment for Economic Development and not the Legislative Oversight Commission on Education Accountability (LOCEA).

**House Bill 4132** relates to the West Virginia Guaranteed Workforce Program. The bill updates several terms already established in the State Code by replacing the Governor's Office of Community and Industrial Development with the West Virginia Development Office; the Job Training Partnership Act with the Workforce Investment Act; and, the Joint Commission on Vocational, Technical and Occupational Education with the WV Workforce Investment Council.

Also, the bill increases the maximum amount of money authorized for training and retraining of employees from its current \$1,000 to \$2,000 per employee.

In addition, the legislation establishes funding may be provided to the program by the Legislature and deletes language that provides for a transfer of funds from the WV Economic Development Authority.

**House Bill 4411** changes some reporting requirements in the West Virginia Workforce Investment Act. It requires the West Virginia Workforce Investment Council to create an overall workforce investment public agenda with goals and benchmarks of success for any state agencies, local workforce investment boards and the state within a projected five-year state workforce investment plan.

The bill also creates the Workforce Investment Interagency Collaborative Team as the only state interagency that will address any issues and concerns relating to workforce development in the state.

**House Bill 4451** relates to the West Virginia Capital Company Act and clarifies that the Economic Development Authority and Tax Commissioner are authorized to require certain examination and compliance actions. The Authority may examine, under oath, any of the officers, directors, agents, employees or investors of a West Virginia capital company or center regarding the affairs and business of the company or center.

### Child Welfare

**House Bill 4055** authorizes the Governor to enter into a new interstate compact for the supervision and return of juvenile offenders and runaways. Under this measure, West Virginia will become part of a new interstate compact to be known as the Interstate Compact for Juveniles that will replace the current compact present in all 50 states.

If adopted by at least 35 states, the measure will allow for the establishment of uniform rules and standards for the tracking, supervision, movement and return of the juvenile runaways and offenders who move across state borders. Each state involved will be required to have a state council with representatives from the legislative, executive and judicial branches. The Compact administrators and other stakeholders also will be on each council.

**House Bill 4250** provides good faith protection for licensed psychologists and psychiatrists acting upon appointment by a court in child custody cases. Under this legislation, if an appointed psychologist or psychiatrist adheres to the American Psychological Association's recommended guidelines for custody evaluations, then he or she is considered to be acting in good faith. Additionally, the bill outlines that administrative complaints cannot be filed anonymously. A psychologist or psychiatrist found liable will be responsible for all costs.

**House Bill 4259** continues the Governor's Cabinet on Children and Families. The Cabinet was originally formed to bring state and local groups together to promote the well being of the state's citizens with an emphasis on children and families. Not only will the measure continue the existing program, but also it will revise and clarify the current composition of the Cabinet. It will refocus their efforts on providing programs and services to support children and families while avoiding human and financial costs to the state. It also will have a reorganized membership and a Citizens' Advisory Council to assist the Cabinet with the implementation of its mission and policy objectives.

**House Bill 4598** restricts courts from requiring conditions on the out-of-home placement of children that are inconsistent with existing licensing regulations. This bill clarifies that a court may not place a child in an out-of-home facility if it has reached licensed capacity or is unable to meet the needs of the child.

**House Bill 4649** provides greater efforts for in-state placement of children in the custody of the Department of Health and Human Services. The measure also establishes a child

welfare oversight panel to monitor, study and review the state's child welfare system.

### Claims

**Senate Bill 536** declares certain claims against the state and its agencies to be moral obligations of the state. The Court of Claims determined the state should assume the costs of these suits through various state funds. Specific amounts are drawn from state General, Special, Road and non-general funds - equaling approximately \$3.3 million.

**House Bill 4517** finds and declares certain claims against the state and its agencies to be moral obligations of the state. If the agencies were to pay these claims, then they would unlawfully spend more than their authorized appropriations; therefore, these claims, which are listed in the legislation, will be paid from the State General Revenue Fund.

### Code Repealed

**Senate Bill 722** repeals the section of the Code that prohibits giving away or selling liquor in buildings where boxing events are held.

**House Bill 4286** repeals a section of the State Code regarding group accident and sickness insurance coverage for alcoholic treatment is repealed because provisions contained in the Mental Health Parity legislation supersedes this section.

**House Bill 4403** repeals the portion of the State Code that required each county official, assistant, deputy and employee to sign and submit an affidavit certifying he or she received compensation to the county court clerk. The modification makes this article consistent with other current Code specifications relating to payment of wages in West Virginia.

**House Bill 4622** repeals the section of the Code relating to the exemption of lottery prizes from state and local taxation.

**House Bill 4623** (VETOED) would have repealed the section of the State Code allowing spending units to place any excess collections in a special surplus fund. The repealed section also provided a method for expenditure from the fund that included the Governor's approval.



### Communications

**Senate Bill 700** requires each state spending unit to budget for telecommunications expenses and remit its share of State telecommunications invoices to the Information Services and Communications (IS&C) Division. The division is to make consolidated payment of vendor invoices within 90 days of invoice receipt. In the event a spending unit fails to make payment to IS&C, the law requires the Secretary of Administration to transfer the spending unit's statement amount plus a three percent penalty from the spending unit's funds. The bill also provides for the Director of IS&C to direct the termination of services in the event a spending unit fails to comply with the provisions of the new law. The bill was adopted to help the state stay current on these liabilities and to eliminate mainstream use of the Court of Claims as a vehicle for payment of telecommunications services.

### Contracts / Contractors

**Senate Bill 100** prohibits any state or political subdivision from contracting with a vendor who owes a debt. Prior to this legislation, the state was prohibited from contracting with vendors who owe debts exceeding the amount of \$1,000 to the state.

**Senate Bill 209** requires a review of certain state leases and purchases by the Joint Committee on Government and Finance. Under this legislation, the Secretary of Administration is required to provide the Joint Committee with copies of contracts or agreements for real property surpassing \$1 million at least 30 days before the sale. Upon receipt, members of the Committee have 30 days to review the contract or agreement.

**Senate Bill 637** creates procedures for the termination of leases of factory-built homes. The West Virginia Code now requires written agreements for factory-built homes comprised of one section to terminate the tenancy during the first 12 months except for good cause. It also prohibits the termination of the tenancy for a factory-built home comprised of more than one section during the first five years except for good cause.

**Senate Bill 694** (VETOED) would have established the West Virginia Fairness in Competitive Bidding Act, which requires government construction projects be awarded to the lowest qualified responsible bidder. It also would have established procedures and requirements to be followed in awarding contracts, while providing criminal penalties for those who violate the procedures.

### Corrections

**Senate Bill 316** requires the Regional Jail and Correctional Facility Authority to develop and approve a schedule of anticipated operational expenditures for each regional jail on an annual basis. The operational expenditure schedule shall include all direct and indirect costs for operating and maintaining each jail. If these costs exceed the approved schedule of the operational expenditures by more than 10 percent in a line item, then the Executive Director must add a temporary surcharge to the cost per inmate day to cover the actual expenditures. It also provides that the counties, municipalities, the Division of Corrections and other entities are responsible for paying the actual costs incurred.

**Senate Bill 317** increases the parolee supervision fee. The amount of the fee is based on the parolee's ability to pay and is not to exceed \$40 per month. Money from the fees will be deposited in the "Parolee's Supervision Fee Fund."

**Senate Bill 319** relates to young adult offenders who are found unfit to remain at a center for young adult offenders and specifies the entitlement to a hearing before the committing court. The bill also provides a standard of review and allows a reliance on records established at the center under specified circumstances. The standard for review is whether the warden, considering the offender's overall record at the center and the offender's compliance with the center's rules, regulations, programs and services, abused his or her discretion in determining that the offender is unfit to remain in the center.

**Senate Bill 482** reclassifies juvenile detention and corrections facility employees as classified service rather than classified-exempt service personnel.

**Senate Bill 533** authorizes the Division of Corrections to charge a fee of up to \$100 to adult offenders applying for a transfer under the Interstate Compact for the Supervision of Adult Offenders. The bill also establishes a special revenue account in the State Treasury designated the "Interstate Compact for Adult Offenders Fund."

**House Bill 4156** authorizes the West Virginia State Police to draw DNA samples from convicted felons in order to maintain a DNA database. Felons who currently are incarcerated also will be required to provide a DNA sample.

**House Bill 4634** requires persons convicted of misdemeanor offenses to pay for the costs of up to 30 days of their own incarceration in county and regional jails if they meet certain financial qualifications. The court must take in account finan-

cial resources and the burden of the costs to the defendant. If the defendant can no longer pay the costs sentenced to him or her, then they have the ability to petition the court for remission of the payment of costs.

### County, Municipality & Local Bills

**Senate Bill 454** modernizes the laws governing land use planning by authorizing the creation of land use planning commissions on several levels, including municipal, county, multi-county, regional and joint. Municipalities and counties may share planning commissions and existing commissions are validated. The measure outlines the necessary actions needed to develop a planning commission, including the creation of a comprehensive plan, as well as their capabilities and procedures, such as approval of land developments and plats.

**Senate Bill 672** relates to municipalities' rights to collect public utility fees. The measure allows municipalities to charge a sewer fee to any business or residence that abuts a city sewer and has refused to connect to the public sewer line, regardless of whether or not the entity is within the city limits. Also, the bill permits a municipality to collect a deposit from all new applicants for water or sewer services by billing the entity an amount based on actual water consumption where there is a meter. In the case where there is no meter, an amount based on the municipality's good faith estimate of consumption.

**Senate Bill 701** authorizes qualifying municipalities to impose a municipal occupational tax, an alternative municipal sales and service tax, a use tax and a pension relief municipal sales and service tax.

**Senate Bill 734** extends the time for the town council of Smithers, WV to meet as a levying body for the election of an additional levy. Originally the election was to be held between March 7-28, 2004, but now is extended to April 20 - May 31, 2004.

**House Bill 4119** (VETOED) would have phased in a transfer of the hotel taxing authority when a municipality annexes a hotel to allow for the withdrawal of any debt incurred by the county or to otherwise phase in the transfer of the taxing authority to the municipality. This bill would have required a municipality to hold a public hearing upon receipt of an annexation petition to allow for public comment and notice of this hearing would have been given to each member of the County Commission.

**House Bill 4464** extends the time for the Cabell County Commission to meet as a levying body for the purposes of certifying its actions in proposing an excess levy. The date was extended from Tuesday, April 3, 2004 to Tuesday, May 2, 2004.

**House Bill 4456** extends the time the Harrison County Commission can submit a proposed levy to the Harrison County voters that is intended to finance vital public services. The Commission will move the date to set the levy rate and certify its actions to the State Tax Commissioner from between March 7 and March 28 to the first Thursday in June, 2004.

**House Bill 4559** relates generally to the procurement of supplies, equipment, materials and contracts for the construction of facilities by urban mass transportation systems. This bill provides urban mass transportation authorities expanded competitive procurement procedures for the purchase of supplies, equipment and materials, when the sum exceeds \$10,000.

**House Bill 4763** extends the time for the City Council of Dunbar to meet as a levying body for the purpose of allowing voters to consider continuing an additional city levy. This levy would maintain present salaries of all paid fire and police department employees. Additionally, it would provide for the repair and service of these departments and their equipment and would allow for the purchase of necessary equipment.

### Courts

**Senate Bill 645** authorizes the Speaker of the House and the President of the Senate to appoint one or two interim Court of Claims judges to serve temporarily. The bill also specifies that interim judges may not serve for more than three months unless reappointed.

**House Bill 4097** identifies those persons or entities responsible for paying certain fees assessed by circuit court clerks regarding the processing of criminal bonds and bailpieces. This measure sets the fees for certain bonds and bailpieces depending on the type of bond established.

**House Bill 4123** authorizes the West Virginia Supreme Court of Appeals to create a panel of senior magistrate court clerks who would serve as substitutes for magistrate court clerks who are on authorized leave or not available, or if there is a vacancy in a magistrate court clerk's office. The Supreme Court also will establish rules for administering the program and provide for compensation. If the compensation is added to the senior clerk's retirement compensation, then the com-

pensation will not exceed the salary of the magistrate court clerk he or she will be replacing.

**House Bill 4273** gives circuit and family courts the authority to appoint guardians of minors. This authority currently is held by the county commissions. Within five days of filing a petition for appointment of a guardian, the circuit clerk must notify the court and the court shall hear the petition within 10 days of filing.

### Crimes

**Senate Bill 166** (DUI Bill) - see "Areas of Specific Interest" on page 4.

**Senate Bill 258**, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, allows law enforcement officers to enforce out-of-state protection orders if they have probable cause that a valid order exists and has been violated. This measure is similar to those adopted in other states and is intended to further facilitate the enforcement of these protection orders.

**Senate Bill 566** (VETOED) would have created the Unborn Victims of Violence Act. It would have established an embryo or fetus in the womb as a separate, unborn victim in the some cases of violent crimes against a pregnant woman. The bill gives exemptions for medical personnel and research purposes. This bill had been modeled after a bill on the federal level, nicknamed the "Laci Petterson Bill."

**Senate Bill 558** provides that any individual who holds a fiduciary relationship or power of attorney with a person and unlawfully deprives the person of assets or property, or misuses or misappropriates funds from that person, is guilty of embezzlement.

**House Bill 2200** creates the felony offense of destruction of property. The bill states that any person who unlawfully, willfully and intentionally destroys, injures or defaces the real or personal property of another person, causing a loss in the value of the property in an amount of \$2,500 or more, is guilty of a felony offense. Upon conviction, those found guilty of a felony would be fined up to \$2,500 and/or imprisoned for one to three years in a state correctional facility.

**House Bill 4104** makes it a misdemeanor to obtain a consumer's account information from a credit card or debit-type card through a computer scanner device. Repeat offenders will face a felony charge that carries a one-to three-year prison term.

**House Bill 4364** adds the Division of Forestry employees, which include an officer, agent employee, or servant, whether full-time or not, to the list of state officers and employees to which the enhanced assault and battery statute applies. This statute implies that any person who commits malicious assault, unlawful assault, battery and recidivism battery to a state officer or employee is guilty of a felony and upon conviction, shall be confined to a correctional facility for not less than three nor more than 15 years.

**House Bill 4373** targets motorists who zap the infrared sensors increasingly found on traffic lights. Police, fire and ambulance vehicles trigger these devices to clear intersections while en route to an emergency. Misuse of these devices will lead to up to six days in jail. Should the action result in injuries, the offense then will be treated as a felony, punishable by a one- to three-year prison term.

**House Bill 4388** creates new misdemeanor and felony offenses, as well as associated penalties, related to the possession, creation and use of original, duplicated, altered or counterfeit retail sales receipts and universal product code labels with the intent to defraud. The bill establishes a misdemeanor offense with a fine between \$50 and \$500 and/or jail time up to six months for any person who violates the provisions of this bill. If any person possesses 15 or more fraudulent sales receipts or universal product codes, or possesses a device which purpose is to manufacture fraudulent retail sales receipts or universal product code labels, is guilty of a felony and would be, upon conviction, fined between \$500 and \$5,000 and/or subject to a jail sentence between one and three years.

**House Bill 4433** makes abuse and neglect of an elderly person age 65 years or older, a crime. It also makes it a crime to misuse or misappropriate funds or assets of an elderly person through deception, intimidation, coercion, the infliction of bodily injury or the threat of bodily injury. Penalties for these acts include felony charges. Upon conviction, he or she shall be fined not more than \$5,000 and incarcerated in a correctional facility for five to 15 years.

**House Bill 4492** makes soliciting a minor via computer a criminal offense. The bill makes using a computer to solicit or lure a minor to commit any illegal act a felony punishable by a fine of up to \$5,000 or two to 10 years in a state correctional facility.

**House Bill 4605** relates to domestic violence offenses and related protective orders. The bill makes West Virginia Code consistent with federal laws regarding gun licensing when the person has been convicted of a domestic violence offense. The bill requires prior domestic battery and assault offenses

to be used to determine penalties for repeat offenses, and makes violating emergency or final protective orders issued by injunctive relief or protective orders in divorce proceedings a misdemeanor. The court is authorized to enter a protective order as part of the final relief granted in a divorce action. Abuse against the party who filed for the protective orders or knowingly violated a protective order can be punishable by one day to one year in jail and a fine of \$250 to \$2,000. The bill also prescribes punishment for first, second and third domestic assault and battery offenses.

## Education

**Senate Bill 408** defines a “Growth County” as “any county that has experienced an increase in second month net enrollment, excluding kindergarten students under five years of age without an individualized education program, of 50 or more during any three of the last five years, determined by the Department of Education.” Growth counties may choose to use the proceeds from their levy on certain new property values for school facilities and exclude the proceeds from the local share calculation in the school aid formula.

**Senate Bill 448** relates to Higher Education Advisory Boards. This bill established the WV Council for Community and Technical College Education as a separate governing board and promotes it to a policy-making entity. The Council will focus mainly on the Community and Technical College (CTC) education and will work with the Public School System to provide a quality non-duplicated CTC and Vocational- Technical - Occupational education. The Council membership is extended to additional business and workforce development representation. The Higher Education Policy Commission (HEPC) and the Council will operate as separate, independent entities, while maintaining the WV Goals for Education, and ensuring that the Public Policy Agenda is being achieved by each of the institutions under its respective commission or council. They also provide joint functions, such as establishing certain joint rules for higher education, and employing joint staff at the Higher Education Central Office. Among other provisions, all state institutions must meet the standards established by the HEPC for obtaining university status. Concord College, Fairmont State College, Shepherd College and West Virginia State College will become universities on the effective date of this bill.

**Senate Bill 512** authorizes rules for the Higher Education Policy Commission relating to the Higher Education Adult Part-Time Student Grant Program (HEAPS) and the Higher Education Purchasing Efficiencies. The rules affecting the HEAPS grant program will conform to policy changes, while

the rules affecting the Higher Education Purchasing will conform to newly established purchasing provisions.

**Senate Bill 524** relates to the Council for Community and Technical College Education and the PROMISE Scholarship Board of Control. The bill was a direct result of the State Supreme Court’s ruling in the economic development grants case regarding the Governor’s appointment of board members who have been selected by the Speaker of the House of Delegates and the President of the Senate.

**House Bill 2268** relates to teachers and substitute teachers regarding areas of critical need and shortage. Among other provisions, the bill defines “area of critical need and shortage” as an area of certification and training in which the number of un-retired, certified substitute teachers who are available, is insufficient to meet a county’s demand for these educators. The legislation also requires that county boards continue to post the vacant position currently being filled by a retired teacher serving as a substitute until a regularly employed teacher is hired. In addition, this measure gives selection priority to qualified applicants for the Underwood-Smith Teacher Scholarship Program who have high academic abilities and intend to teach in shortage areas.

**House Bill 4001** brings state accountability measures in line with the No Child Left Behind (NCLB) program. It allows local school curriculum teams’ input on deciding which assessments to use in grade levels not monitored for accountability purposes. The bill makes it illegal for teachers to change grades, which has become a problem since high school graduates with a 3.0 grade average can get free tuition with the PROMISE scholarship. In addition, it will cut down on paperwork for instructors and administrators.

**HB 4037** relates to providing certain juvenile justice records to public school officials and limiting disclosure of certain records. A copy of a juvenile’s records shall automatically be disclosed to certain school officials (principals, teachers, bus drivers) subject to the following terms and conditions: The juvenile has been charged and convicted of an offense which involves violence against another person; possession of a dangerous or deadly weapon; or, possession or delivery of a controlled substance. It also allows a school psychologist to review students’ mental evaluations and pass them on to teachers if they believe it to be necessary.

**House Bill 4040** relates to criteria for making decisions affecting the filling of vacancies if one or more permanently employed instructional personnel apply for a classroom teaching position. Current law requires that consideration be given to a satisfactory rating over the previous two years. This bill requires that consideration be given to a satisfactory rating over the previous two evaluations.

**House Bill 4043** establishes the priority for early childhood education in the basic skills of reading, mathematics and English language arts. The State Board of Education will develop rules to implement the intent and purpose of the new provisions. Under this legislation, reading, math and English are the only subjects required to be taught daily in kindergarten through the second grade. All other teachings should be oriented to strengthen these subjects. Also, the Board will establish rules to require strategies to correct early education students' deficiencies in these fundamental skills.

**House Bill 4072** provides for a unified approach to the long-term planning and implementation of technology in public higher education by creating an Education Technology Strategic Plan Advisory Committee, consisting of 16 members. The committee will hold no less than four meetings annually. Voting members will serve staggered terms of three years, without compensation, but will be reimbursed for their reasonable and necessary expenses. The committee is required to develop a continuing education technology strategic plan, covering three to five years, and updated annually.

**House Bill 4085** clarifies terms related to the Ron Yost Personal Assistance Services Act. Eligibility requirements for participation in the Ron Yost Personal Assistance Program include physical, mental or sensory impairment, and requirement of assistance to complete daily functions and self-care. Persons who applied for but were denied Medicaid also are eligible. The bill also creates the Ron Yost Personal Assistance Services Fund, which will be an appropriated account within the Division of Rehabilitation Services.

**House Bill 4111** allows, as an additional power of the State Board of Education when it takes control of a county school system, the disposal of County Board real property included in a federal flood control project. This bill was quickly passed by both bodies in an effort to claim money offered to the McDowell County School Board to rebuild schools currently located in a flood plain.

**House Bill 4271** allows students with asthma in public and private schools to self-administer medication while in school, at school sponsored activities and at before and after school sponsored activities, under the supervision of school employees.

**House Bill 4291** requires doctors, physician assistants, pharmacists, nurses and osteopaths to complete a one-time requirement of two hours of continuing education coursework in end-of-life care including pain management. Currently they are required to complete these hours during each continuing education reporting period.

**House Bill 4297** clarifies that a County Board of Education and its Superintendent may designate the places where competency testing for service personnel, other than bus drivers, will be held.

**House Bill 4478** extends the length of time the law requires every County Board of Education to prepare and publish a Class 1-0 legal advertisement from 60 days to 90 days. This financial statement must include receipts and expenditures of the Board during the previous fiscal year along with the name of each firm, corporation and person who received more than \$250 from all funds and the purpose for which it was paid.

**House Bill 4552** relates to grounds for the revocation of teacher certificates and provides additional specification of grounds and limitations. The State Superintendent may revoke certificates of any teacher for causes such as intemperance, untruthfulness, cruelty, immorality, the conviction or plea for a felony, or to any charge involving sexual misconduct with a minor or a student. It is the duty of any County Superintendent to report all the facts and evidence to the State Superintendent regarding the acts.

**House Bill 4553** requires applicants for a teaching certificate - who have graduated from a teacher preparation program at a regionally accredited institution of higher education and who hold a valid teaching certificate issued by another state, - be awarded a teaching certificate for the same grade level and subject area.

**House Bill 4554** relates to the rights, privileges and benefits of substitute service personnel employed to fill vacancies created by leaves of absence, workers' compensation and suspensions for more than 30 working days. If the absence is for more than 30 working days, then the County School Board shall post the position of the suspended employee under the procedures set forth in State Code. If a substitute service employee is employed to fill the position, then the substitute service personnel will have regular employment status and be given all rights, privileges and benefits pertaining to the position until the employee returns or ceases to be employed.

**House Bill 4601** relates to public education generally. For the school year beginning July 1, 2004 there will be no foundation allowance for school bus replacement. For the same school year, transportation allowances are to include an allocation for trips involved with academics in the same amount as the school year beginning July 1, 2003. The bill also diverts excess lottery funds for the School Building Authority (SBA) to General Revenue for FY 2005 only.

**House Bill 4669** establishes a special five-year demonstration professional development school project, which will start at the beginning of the 2004 - 05 school year, to enhance students' scholastic achievements. The State Superintendent will choose three participating elementary or middle schools from each county in which the number of African American students is five percent or more of the total second month enrollment. The selected schools will be those with significant enrollments of disadvantaged, minority and underachieving students.

### Elections

**Senate Bill 125** permits the solicitation of state government employees for a contribution in a campaign for or against ballot issues in local or county elections. It also removes the cap on campaign contributions in national elections which is adverse to federal law.

**Senate Bill 190** places a cap on the dollar amount set for the filing fee for presidential and vice presidential candidates in West Virginia to \$2,500. This bill places West Virginia into compliance with federal filing laws.

**Senate Bill 208** allows State Police to engage in certain political activities while off duty and out of uniform. These activities include campaigning for and holding office in political clubs and organizations; actively campaigning for candidates for public office in partisan and nonpartisan elections; contributing money to political organizations; and, attending political fund-raising functions.

**Senate Bill 449** cleans up inconsistencies in state election law. One of the new provisions allows county commissions to discontinue the use of voting machines and replace them with a voting system that meets the requirements of "The Help America Vote Act of 2002" six months prior to a primary or general election.

### Environmental Protection

**Senate Bill 616** (VETOED) related to the Environmental Protection Advisory Council. This legislation targeted enhancing the Council's meetings and increasing participation. Among other modifications, this bill would have increased the membership of the Council; required that a Council meeting will be called upon the written request of the majority of the

members; mandated that members were to receive all materials for the meeting in a timely manner; and, allowed members to submit rule-making suggestions. The bill also would have established a new five-member Quality Assurance and Compliance Advisory Committee to review permitting procedures and improve the permitting process.

**House Bill 4027** establishes a voluntary environmental excellence program. The purpose of this bill is to authorize the Department of Environmental Protection to establish and administer an environmental excellence program to promote, reward, and encourage superior environmental performance in the state. The Secretary of the Department of Environmental Protection shall devise rules and regulations to establish and implement the program.

**House Bill 4455** extends the term of the waste tire remediation funds. This legislation provides that any balances remaining in the A. James Manchin Fund at the end of any fiscal year are to be transferred to the State Road Fund. Additionally, infrastructure not issued by the Water Development Authority to subsidize projects for waste tire processing facilities before the end of 2006 will be transferred to the State Road Fund at the end of each fiscal year. The bill also continues the Waste Higher Remediation Program until July 1, 2006.

**House Bill 4521** increases the current annual registration fee for underground storage tanks and requires the Department of Environmental Protection (DEP) to annually report on the status of the fund and the underground storage tank program.

Past law stated that registration fees for underground storage tanks may not exceed \$25. This bill raises the maximum to \$65 and also authorizes the Secretary of the DEP to generate emergency rules implementing the increase of registration fees. The rule states that the maximum fee will be effective for the fiscal year ending June 30, 2004.

### Estates / Trusts

**Senate Bill 569** clarifies and preserves that irrevocable trusts do not become revocable by the grantor or settlor because they are the sole beneficiary of the trust. This applies to all executed or created trusts.

**House Bill 2991** prohibits the Fiduciary Commissioner from charging an estate settlement fee of more than \$300 unless the County Commission determines the fee is based on time spent and services rendered for the estate.

### Ethics

**House Bill 2801** requires copies of all advisory opinions issued by the Ethics Commissioner to be sent to the archives and history section of the Division of Culture and History, the offices of the clerk in the House of Delegates and Senate and the West Virginia Supreme Court of Appeals law library.

**House Bill 4140** establishes a code of conduct by the Ethics Commission for state administrative law judges. The West Virginia Ethics Commission, created in 1989, implements and enforces a code of ethical conduct in West Virginia that was enacted by the Legislature for public servants.

### Gaming

**Senate Bill 197** See “Other Funding Projects” on page 2.

**House Bill 4107** allows licensees of charitable bingo and raffle games to transfer game proceeds between their bingo and raffle operations. The bill also allows non-residents who live in a contiguous county of a contiguous state or those persons living within a 35 mile radius of the bingo game to participate in any function related to the game. In addition, the measure limits the pay a worker of a bingo game could be paid to a minimum of \$5.15 and a maximum of \$6.50.

**House Bill 4257** increases the amount of prizes that may be given in the conduct of charitable raffles without a license. The bill will raise the amount that can be awarded for a single raffle to \$4,000 and the annual cumulative amount to \$15,000.

**House Bill 4523** allows certain racing associations or licensees to increase their number of races in a calendar day from 10 to 13 before having to pay both the daily license tax and the alternative tax. The measure also clarifies that a registered greyhound owner is defined to mean an owner of a greyhound that is registered with the National Greyhound Association and a regular purse will mean both regular purses and stakes purses.

### Governmental Agencies

**Senate Bill 149** changes the name of the Department of Tax and Revenue to the Department of Revenue and changes the name of the Office of the Secretary of Tax and Revenue to the Office of the Secretary of Revenue. Additionally, the bill transfers the budget section from the Finance Division to

the Department of Revenue and designates the Secretary of Revenue as the State Budget Director. The bill also outlines the membership of the new Department of Revenue.

**Senate Bill 456** requires that a state agency providing funds or grants to notify the grantee of the reporting requirements. A grantee who fails to file the required audit for a two year time period is barred from obtaining state funds or grants until an audit has been filed.

**House Bill 4020** protects personal information maintained by state agencies within the legislative, executive and judicial branches of state government from inappropriate disclosure. The personal information protected under this legislation includes an individual’s home address, social security number, credit or debit card numbers, driver’s license identification number, marital status and maiden name.

**House Bill 4266** requires regulatory agencies to study, review and develop a plan for expediting the issuance and renewal of permits, licenses and certificates for businesses in good standing. These agencies shall file a report on or before the first day of December 2004 to the Joint Standing Committee on Government Organization. The report will include the findings of their studies along with their plans to expedite the issuance and renewal of these permits, licenses and certificates.

**House Bill 4415** gives the responsibility of the State Auditor for auditing local governmental offices from every three years to the chief inspector’s discretion.

**House Bill 4746** relates generally to the State Treasurer’s Office and designates financial institutions as the depositories for state funds. This bill adds state and federal savings and loan associations as candidates for depository banks and allows only the Treasurer to enter into contracts for banking goods and services.

Furthermore, this bill requires financial institutions outside the state with state funds to meet the same collateral requirements for other depositories and clarifies that the Treasurer may pay for banking goods and services by maintaining a compensating balance in an account other than only non-interest earning accounts.

The legislation also requires the State Treasurer to issue legislative rules to authorize spending units to assess and collect fees for electronic commerce receipts. The bill creates a fund in the state treasury to allow for the deposit of cash into safekeeping and allows the Treasurer to invest the money and to prescribe forms and procedures for processing the moneys.

### Health Care

**Senate Bill 404** clarifies some terminology of this section of the WV Code for purposes of imposing a severance tax upon providers of those services. The current law states that some terms have similar meanings as two other separate sections of the West Virginia Code, but neither of those sections specifically defines the terms. The bill also removes from the section the definition of the term “community care services” since those services have not arisen since 2002.

**Senate Bill 719** increases the tax on providers of nursing facility services. The bill increases the health care provider tax on gross receipts of providers of nursing facility services from 5.5 percent to 5.95 percent. The bill also has provisions that act as a “safety valve” to assist the state in responding to possible federal changes in the Medicaid program.

**House Bill 2755** authorizes the Secretary of the Department of Health and Human Resources to communicate emergency rules for the regulation of opioid treatment centers. The measure also will cease the licensure of new treatment facilities that do not possess a certificate of need until emergency rules are filed, and sets a time period for the compliance of the facility.

**House Bill 4084** (Pharmaceutical Bill) - see “Areas of Specific Interest” on page 2.

**House Bill 4330** affects the Bureau for Public Health by revising the laws that govern vital records. This bill authorizes any certificate filed following the passage of this measure to be filed electronically.

**House Bill 4377** (VETOED) would have created a fine of \$250 to be assessed on physicians who have not paid the special one-time assessment fee of \$1,000. The special assessment fee was originally imposed on July 1, 2003 for every physician licensed by the Board of Medicine or the Board of Osteopathy for the privilege of practicing medicine in West Virginia. The penalty will affect those physicians who have failed to pay the fee before or on June 13, 2004. Additionally, the measure called for the suspension of any medical license until both the special assessment and civil penalty are paid.

**House Bill 4484** allows the Board of Medicine to issue a limited license to practice medicine and surgery without examination. Individuals authorized to receive this license will be anyone appointed to a state medical school who holds a license from another country. The Board will determine if the license has the equivalent requirements as those in other states, the District of Columbia, Puerto Rico or Canada.

**House Bill 4587** includes individuals who participate as members of or as consultants to a review organization in the definition of “Health Care Professionals.” The term “peer review” is broadened to include patient safety review and the term “review organization” is broadened to include any entity established pursuant to the Joint Commission on Accreditation of Health Care Organizations. Currently, the peer review statute is limited to licensed health care professionals. This bill will expand peer review and quality of care.

**House Bill 4641** establishes a credentialing program for dialysis technicians by the Board of Registered Professional Nurses. A registered professional nurse may delegate dialysis care to a dialysis technician if the technician has completed the requirements established by the board. The bill also provides that care is to be under direct supervision of the nurse, and he or she must consider the dialysis technician to be competent. The board also will prescribe standards for a dialysis technician training program.

**House Bill 4740** establishes the Patient Injury Compensation Fund for the purpose of providing fair and reasonable compensation to claimants in medical malpractice actions. In each of the fiscal years 2005 through 2007, \$2.2 million each year transferred to the tobacco account shall be instead transferred to the Patient Injury Compensation Fund. This additional resource is available for those who have not been adequately compensated due to the cap. Future funding will be studied after the first two years of the transfer is established.

### Insurance

**Senate Bill 143** repeals the WV Health Care Insurance Act which required the Public Employees Insurance Agency (PEIA) to provide an insurance plan for small businesses.

The measure contains specific conditions which include employer stipulations, time frames, federal regulations and reimbursement rates, among other provisions.

**Senate Bill 160** (VETOED) would have extended for three years the ability to appropriate funds from the Public Employees Insurance Agency Reserve Fund to the Bureau for Medical Services.

**Senate Bill 161** creates the Model Health Plan for Uninsurable Individuals Act. The plan will consist of a governing body that is supervised by a board of directors appointed by the Governor. The Board’s plan of operation will have to be



approved by the Insurance Commissioner and it will be required to operate in a manner that qualifies it as an acceptable alternative method to provide health insurance coverage for individuals eligible for the Federal Health Care Tax Credit under the Federal Health Insurance Portability and Accountability Act. This new insurance plan is available to those who cannot find insurance in the open market. It limits premiums to no greater than 150 percent of the cost in the regular market.

**Senate Bill 176** updates laws which govern types of investments made by West Virginia insurance companies and increases the amount of an insurer's admitted assets that is allowed to be invested in the shares of any one corporation to three percent for life and health insurers and five percent for property and casualty insurers per the NAIC model, rather than the two percent limitation in the existing West Virginia Code.

**Senate Bill 230** relates to definitions of casualty insurance and federal insurance. The purpose of this bill is to reposition premium taxes from federal flood insurance policy premiums to the Department of Emergency Services (EMS). The bill also provides that any monetary amounts directed to the EMS may only be spent for activities promoting and enhancing flood plain management issues and for grants to local units of government and other eligible divisions.

**Senate Bill 428** relates to captive insurance companies and authorizes the establishment of and regulates branch captive insurance companies and sponsored cell captives. The bill also generally modernizes the captive insurance law. The bill defines captive insurance company as any pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company or risk retention group formed or licensed under this bill.

Also under this legislation, a branch captive insurance company will be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the Insurance Commissioner.

**Senate Bill 431** establishes an Interstate Insurance Product Regulation Compact for a centralized process for review and approval of insurance products. This compact is intended to protect insurance consumers through the development of uniform standards and by providing a joint process for the approval of insurance forms, advertisements and any other filings. The bill also requires the Insurance Commissioner to file any rules or uniform standards adopted by the compact in the State Register.

**Senate Bill 450** amends an existing section of the West Virginia Code for long-term care insurance policies. The bill clarifies some of the terminology listed in the Code and defines types of policies. The bill eliminates the requirement that certain group policies must be filed with the Insurance Commissioner in this state for informational purposes.

**Senate Bill 479** authorizes the Insurance Commissioner to issue a license to an insurer allowing it to conduct business in West Virginia. The bill also allows foreign insurers to obtain a license to sell insurance in the state without obtaining the certificate of authority from the Secretary of State.

**Senate Bill 517** requires the Insurance Commissioner to annually value the reserve liabilities for all outstanding life insurance policies, annuity and pure endowment contracts of every life insurance company in the state. The bill also updates the minimum nonforfeiture standards for any paid-up annuity, cash surrender or death benefits.

**Senate Bill 596** clarifies the Board of Risk and Insurance Management (BRIM) may refuse to issue insurance coverage to political subdivisions, charitable or public service organizations or EMS agencies. A recent Supreme Court ruling created a statutory duty for BRIM to provide coverage for all aspects of the Department of Health and Human Resource's activities and responsibilities and this measure allows BRIM to deny coverage to the entities stated above.

**House Bill 2914** relates to the rehabilitation and liquidation of insurers subject to the regulatory authority of the West Virginia Insurance Commissioner. This bill revises delinquency proceedings and clarifies that hospital and medical service corporations and other parties will be affected by the revisions and be subject to the same general process as other insurers. It also adds a new section for any delinquency proceedings that govern against hospital, medical, dental and health service corporations.

**House Bill 4004** (Insurance Fraud Unit Bill) - see "Areas of Specific Interest" on page 3.

**House Bill 4008** eliminates the Insurance and Retirement Division of the Department of Administration and in its place creates the Employee and Insurance Services Division (EISD) of the Department of Administration and the Office of the Commissioner. The Division will consist of the Consolidated Public Retirement Boards, the Public Employees Insurance Agency and the Division of Personnel. The Division also includes the Board of Risk and Insurance Management, the Children's Health Insurance Agency and its associated boards, as well as the Education and State Employees Grievance Board.

**House Bill 4303** relates to insurance and brings a portion of the WV Code into conformity with the Gramm-Leach-Bliley Act of 1999. Additionally, the bill allows insurance agencies to be licensed as managing general agents - a licensed title that, prior to this legislation, only was given to individuals. Among other provisions, the bill repeals the portion of the Code that provided for insurance vending machines; allows nonresidents to obtain a limited license for automobile rental coverage; and, amends and enhances the continuing education requirements for agents.

**House Bill 4371** extends the pilot program for the uninsured and underinsured to June 13, 2006. The program is authorized to enter into agreements with health care providers to coordinate and provide services to enrollees. The agreements are contingent on the health care provider agreeing to accept payment from the pilot program.

**House Bill 4412** directs the Children's Health Insurance Board to conduct a study to find all available means for the creation of a modified plan to extend coverage to uninsured children of families with an income between 200 and 300 percent of the federal poverty level with no additional expense to state government. The Board will report its findings to the Legislature for further review.

**House Bill 4655** relates to subrogation rights of the Children's Health Insurance Plan. This bill provides that the submission of an application for benefits through the Children's Health Insurance Agency constitutes an assignment of rights to the agency to recover benefits paid by the agency and requires that a jury is not to be informed of the interest of the agency. The bill also provides for the deduction of attorney fees from the amount paid to the agency and requires a person with notice of the interests of the agency to withhold the amount of settlement proceeds necessary to reimburse the agency.

### Labor, Occupations & Salaries

**Senate Bill 71** makes technical corrections to existing Code that verifies the legal employment status of workers and define unauthorized workers. These changes are necessary to bring state law into compliance with federal law.

**Senate Bill 444** requires county litter control officers to enforce litter laws by issuing citations for violations. Under this legislation, the county officers are required to complete a training course offered by the West Virginia Division of Natural Resources.

**House Bill 4287** removes certain provisions of current law that limit seniority rights pertaining to salaries for certified employees when subsidizing the annual salary increments causes employee layoffs.

**House Bill 4299** revises the West Virginia Contractor Licensing Act by increasing the amount a project must cost before a contractor is required to be licensed by the West Virginia Contractor Licensing Board from \$1,000 to \$2,500. The measure also will compensate the board members with an amount not to exceed the amount paid to members of the Legislature for their interim duties.

**House Bill 4491** relates to mine inspectors and instructors employed by the Office of Miners' Health, Safety and Training. In this bill, the Director of this office has the discretion to divide the state into regions and districts to equalize the work of the inspectors. The Office of Miners' Health, Safety and Training is authorized to hire the number of mine safety instructors, electrical inspectors, underground mine inspectors and surface mine inspectors as the Director determines is necessary to carry out the duties of the office.

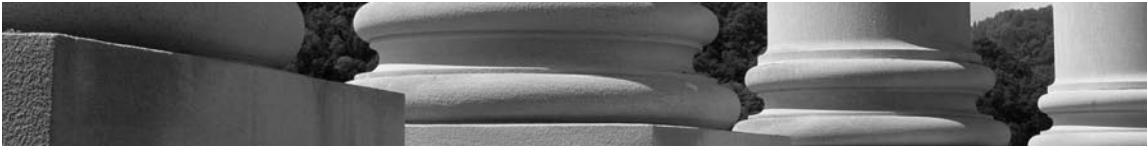
**House Bill 4560** requires firefighters and security guards employed by the Adjutant General of the National Guard be members of the National Guard. This bill also allows firefighters who are employed, but not members of the National Guard on the effective date of this bill, to continue to be employed as firefighters.

**House Bill 4582** limits the Division of Labor's Elevator Inspectors to the inspection of elevators in state owned buildings, while creating the position of Division Inspector within the Division of Labor. The holder of the position must first be examined and then issued a certificate of competency. He or she will only inspect state owned elevators. The measure also requires any person who is hired as a private inspector by a county or municipality to possess the Division's certificate of competency.

### Motor Vehicles

**Senate Bill 52** allows motorcycle registration plates to be fastened in vertical position. The bill also requires those obtaining a registration plate to be fastened in vertical position to pay a one-time fee of \$25 to cover the additional cost and services necessary to issue the special registration plate.

**Senate Bill 320** provides that modular homes are not subject to the same procedure for application for certificate of title as other vehicles. The purpose of the legislation is to provide a



procedure to permit owners of mobile or manufactured homes that are affixed to the real property of the home owner to obtain cancellation of certificates of title. The bill also permits the filing of canceled certificates of title in the office of the clerk of the county commission. In addition, the measure provides that those mobile homes permanently attached to real estate of the owner may not be classified as “personal” property but instead, real property.

**Senate Bill 505** creates the motor vehicle classification of “low-speed vehicle,” which is defined as a four-wheeled motor vehicle with an attainable speed of more than 20 miles per hour, but not greater than 25 miles per hour, in one mile on a paved, level surface.

**Senate Bill 638** provides for license plates for the Davis & Elkins centennial and survivors of breast cancer. It also will add license plates for Fairmont State College; honoring West Virginia farmers; native Americans; promoting education; members of the 82nd Airborne Association; survivors wounded in the line of duty; law enforcement officers; the Knights of Pythias; and, whitewater rafting enthusiasts to the bill. The bill sets fees for the plates and also extends for one year time period for Knights of Columbus, Nemesis Shrine and Democrat Committee members to obtain plates.

**Senate Bill 697** delegates the duties of motor carrier inspectors to weight enforcement officers. Weight inspectors enforce state and federal laws and Division of Transportation rules that regulate the weight, size and registration of vehicles operating on West Virginia highways.

**House Bill 4019** prohibits the Department of Motor Vehicles (DMV) from selling or distributing personal information of drivers unless that information meets specific requirements. The DMV may not disclose fingerprints, images, photographs, social security numbers, and medical or disability information. Legal dissemination scenarios include: government agencies, law-enforcement or private individual working on their behalf to carry out defined functions; for driver safety and theft; vehicle product alterations; recalls; legitimate business verifying accuracy of personal information; correcting incorrect personal information to prevent fraud or pursuing legal remedies; for civil, criminal, administrative or arbitration proceedings in any court, governmental agency, or regulatory body; for anticipated litigation; or, for any purpose authorized by law. These particular changes are in compliance with federal standards.

**House Bill 4022** (ATV Bill) - see “Areas of Specific Interest” on page 3.

**House Bill 4745** relates to the administration of repairs to vehicles and equipment by the Division of Highways and provides for the decertification of certified vendors in certain circumstances. Any vendor who fails to guarantee his or her work for at least one year, fails to guarantee work for a longer period if the longer period is comparable to that offered by local repair shops; fails to complete any work order in the time specified within the work order; or, fails to complete any work order to the specifications of the work order will be decertified for one year.

### Natural Resources

**Senate Bill 163** establishes the Water Resources Protection Act and claims West Virginia’s waters for the use and benefit of the state’s citizens. Under this legislation, the Department of Environmental Protection will conduct a survey of surface water and groundwater withdrawal. Individuals using more than 750,000 a month are required to participate in this survey, which will cover water usage in 2003, 2004 and 2005. Persons exempt from this survey are those who purchase water from a public or private water utility or service and are currently reporting total water withdrawal. Additionally, there is a provision that guarantees confidentiality for those involved in the survey. The information collected will be communicated and discussed by the newly-created Joint Legislative Oversight Commission on Water Resources. This interim commission will assist the Legislature in managing the water survey and in determining the possible need for a future statewide water plan.

**Senate Bill 500** relates to fees for agents selling hunting and fishing licenses. The bill designates the clerk of each county commission also to issue hunting and fishing licenses. It requires anyone applying for a license to pay, in addition to the license fee, \$3 to the county official issuing the license. The money from these fees will create the “License Fund–Wildlife Resources.”

**House Bill 4068** allows the hunting of coyotes by the use of amber colored artificial light which makes it possible to hunt coyotes at night. The amber color was selected because the lens is readily available and inexpensive and its color was selected to differentiate its lawful use from illegal spotlighting.

**House Bill 4449** allows both residents and nonresidents to apply for and obtain a Class Q hunting permit, which authorizes an individual permanently disabled in the lower extremities to hunt from a motor vehicle during designated hunting seasons. Prior to this legislation, only disabled residents of West Virginia were allowed to secure the permit.

**House Bill 4450** permits the Director of the Division of Natural Resources to sell timber that has been severed in a state park due to the construction of park facilities. The proceeds from the timber will go into the operating budget of the park from which the timber was harvested.

**House Bill 4536** allows for the re-employment of retired county and municipal law-enforcement officers and Division of Natural Resources conservation officers who meet certification requirements.

**House Bill 4561** authorizes the Director of the Division of Natural Resources to allow nonresidents to train dogs for coon hunting provided that the nonresidents' home states allows West Virginians to do the same. The dog training season for nonresidents will be from August 15 of each year through the legal small game hunting season.

### Nursing / Nursing Homes

**Senate Bill 251** (Nurse Overtime Bill) - see "Areas of Specific Interest" on page 3.

**Senate Bill 480** relates to exempting nonprofit licensed nursing homes from registration under the Solicitation of Charitable Funds Act. This bill adds nonprofit or charitable licensed nursing homes to the list of organizations which are exempted from this Act.

**House Bill 4143** establishes a West Virginia Center for Nursing to organize a statewide strategy in the state. This center will promote the recruitment and retention of nurses. Also under this legislation, licensed registered and practical nurses will pay an annual licensure renewal fee of \$10 which will be used to subsidize the center, provide loan repayment and fund scholarship programs.

### Promulgation of Legislative Rules

**Senate Bill 327** authorizes the Department of Administration to promulgate legislative rules.

**Senate Bill 350** authorizes the Bureau of Commerce to promulgate legislative rules.

**Senate Bill 399** authorizes miscellaneous boards and agencies to promulgate legislative rules.

**Senate Bill 402** authorizes the Board of Risk and Insurance Management to promulgate certain legislative rules.

**House Bill 4193** authorizes the Department of Environmental Protection to promulgate legislative rules.

**House Bill 4200** authorizes the Department of Military Affairs and Public Safety to promulgate legislative rules.

**House Bill 4205** authorizes the Department of Health and Human Resources to promulgate legislative rules.

**House Bill 4211** authorizes the Department of Transportation to promulgate legislative rules.

**House Bill 4217** authorizes the Department of Tax and Revenue to promulgate legislative rules.

### Public Safety & Law Enforcement

**Senate Bill 181** permits a retired member of the State Police to carry a concealed weapon for life members of the State Police. Upon retirement or medical discharge, life members may carry a handgun with the Superintendent's letter of consent. The Superintendent may not issue a letter of consent to any member believed to be mentally disabled. If the member wishes to continue carrying the handgun, then he or she must request and obtain a renewal of the Superintendent's written permission once every five years. The privilege is automatically revoked should the member be convicted of a felony or a misdemeanor involving the use of a firearm.

**Senate Bill 200** relates to requiring the Superintendent of the State Police to report annually to the Legislature about the effectiveness of its efforts in recruiting minorities. The Superintendent will adhere to the principles of equal employment opportunity set forth in Code and will take positive steps to encourage applications for division membership from females and minority groups within the state. An annual report will be filed with the Legislature on or before the first day of January of each year by the Superintendent. The report will include a summary of the efforts and the effectiveness of those efforts intended to recruit females, African-Americans and other minorities into the ranks of the State Police.

**Senate Bill 271** requires all state law-enforcement officers to collect specific data during traffic stops, including their visual observations and perceptions of the stop. This information includes the racial characteristics of each individual involved such as ethnicity or national origin, age and gender, as well as the nature, duration and outcome of the stop. This report then will be provided to the West Virginia law-enforcement agency that employs the officer.

**Senate Bill 406** requires the prosecuting attorney to provide notice, in writing or by telephone, to the victim or family member of a victim of certain crimes. The notice includes crimes of murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson, any sexual offense against a minor or any violent crime against a person. The victim, or family of the victim may request they be notified at the time of sentencing if the convicted person is being released, placed on work release, home confinement or probation.

**Senate Bill 418** authorizes civil process servers to carry firearms. The sheriff may authorize an employee whose sole duties involve service of civil process and the service of subpoenas to carry a deadly weapon. The employee must complete all training requirements otherwise applicable for the use of such weapons and maintain yearly weapons qualifications that are bonded through the office of the sheriff.

**Senate Bill 518** relates to the compensation of police and firefighters who are required to work during holidays. The bill states that if any municipal police officer or paid firefighter is required to work during a legal holiday, or if a legal holiday falls on the police officer's or firefighter's regularly scheduled day off, then he or she is allowed equal time off at a time as may be approved by the chief of police or fire chief under whom he or she serves. However, the worker will be paid at a rate not less than one and one-half times his or her regular rate of pay.

**Senate Bill 554** provides that a guardian or conservator will continue to have the authority to make decisions regarding the body of a deceased individual in terms of authorizing an autopsy, making funeral arrangements, providing for cremation and authorizing tissue and organ donation. This will take place if there is an absence of an advanced directive, advanced burial arrangements or cremation contract.

**House Bill 2088** relates to authorizing local law-enforcement officers who are members of drug task forces to have access to prescription drug monitoring data. Data obtained under the provisions of this legislation may be used for compiling educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential.

**House Bill 3096** authorizes the cooperation of campus police and rangers employed by the Hatfield-McCoy Regional Recreation Authority with other law-enforcement agencies. The cooperation may include entering into a multi-jurisdictional task force agreement to integrate federal, state, county and municipal law-enforcement agencies or other groups of state or local law-enforcement officers. The purpose of the task force agreement will be to enhance interagency coordination, gather intelligence, facilitate multi-jurisdictional

investigations and allow criminal justice enforcement personnel of an law-enforcement agency to work temporarily with personnel of another agency.

**House Bill 4108** allows law-enforcement vehicles, such as K-9 units and other emergency vehicles that carry animals, to have window tinting in excess of the requirements contained in current law. Windows with darker tinting could provide greater comfort to the animals while making them less visible.

**House Bill 4148** allows a bail bondsperson to deliver offenders to county and regional jails without a bailpiece due to the unavailability of the circuit clerk or magistrate clerk under certain terms. The offender must appear on the registered list maintained at the jail and approved by the court.

Additionally, the bondsperson also must sign an agreement provided by the jail indicating that the offender has been booked without a bailpiece. Any bail bondsperson who willingly fails to obtain the bailpiece will be found guilty of a misdemeanor. This person will be prohibited from continuing business and could face a fine of up to \$1,000 and up to one year in the regional or county jail.

**House Bill 4354 (VETOED)** would have allowed any county to enact an ordinance for the reduction and elimination of false alarms. The bill will require all ordinances to be consistent with similar alarms such as burglar, security and fire alarms, which are established by the National Burglar and Fire Alarm Association and the National Alarm Reduction Association.

**House Bill 4671** relates to the disposal of law enforcement weapons when they are replaced due to routine wear. The bill allows the Superintendent of the West Virginia State Police and the Chief Conservation Officer to offer any surplus weapons that are for sale to any active or retired member of the State Police or Division of Natural Resources law enforcement officer, at fair market value, with proceeds from the sale to offset the cost of new weapons. The bill also states that any disposal of weapons due to routine wear and tear does not fall under the authority of surplus property within the Department of Administration.

### Property & Housing

**House Bill 4166** removes the description requirements in deeds for easements and rights-of-way for mineral leases. Oil and gas storage and mineral leases shall not be required to describe the easement, but instead, must describe the land

on which the easement or right-of-way will be situated by source of title or reference to a tax map and parcel, recorded deed, recorded lease, plat or survey sufficient to reasonably identify and locate the property on which the easement or right-of-way is situated. This legislation does not apply to the construction of a service extension from a main distribution system of a public utility when the service extension is located entirely on, below or above the property to which the utility service is to be provided.

**House Bill 4468** enables housing authorities to pay costs of preparation of any title, title instrument, deed of trust, note or security instrument; costs of recording any title instrument, deed of trust, note or security instrument; and, any impact fee levied with the condition that if the property is sold within five years of purchase, then the seller will be required to reimburse the authority for the costs that were provided.

### Retirement

**Senate Bill 321** provides for the continuance of a personal income tax adjustment to gross income of certain retirees receiving pensions from defined plans that terminated and are being paid a reduced maximum benefit guarantee.

**Senate Bill 563** (VETOED) relates to the Public Employees Retirement Act. The bill would have required the certification of disability and a copy of tax returns from people receiving disability retirement payments. It also would have provided that interest will be included in the calculation of terminal benefits payable as the result of the death of retired participants.

**Senate Bill 636** (VETOED) concerned the employment of members of the Teachers Benefit Retirement System by institutions of higher education following the retirement of the member. The measure included certain compensation of members in determination of benefits if certain conditions are met.

**House Bill 4453** relates to the Deputy Sheriff's Retirement System. The bill states that each person hired as a deputy sheriff prior to the start of the Deputy Sheriff Retirement System (DSRS), but was not employed when the DSRS was commissioned, becomes a member of the DSRS when rehired as a deputy sheriff. The bill also changes the method for determining the county commission's monthly contribution to the DSRS. Currently, the contribution is 9.5 percent per deputy but the legislation will allow the Consolidated Public Retirement Board (CPRB) to determine the monthly amount, with a maximum not to exceed 10.5 percent. In addition, the bill modifies current language that provides for the calculation

of a deputy's disability benefits. The amount to be calculated for disability benefits would be the full monthly pay the deputy received in the 12 month contributory period preceding the disability award.

**House Bill 4737** relates to providing options for members of the Teachers' Retirement Program to make contributions for periods of temporary total disability as a result of a job related injury. This bill enables members to purchase credited service for the time period that he or she was absent from work to receive temporary total disability benefits. The member must purchase this service by lump sum payment from personal funds within two years of the disability period.

### Roads & Highways

**Senate Bill 516** establishes the West Virginia Eastern Panhandle Transportation Authority to promote economic development, tourism and advance the construction of a modern highway through Berkeley, Jefferson and Morgan Counties. The Authority consists of nine voting members, three ex-officio nonvoting members, and three members appointed by each of the county commissions of Berkeley, Jefferson and Morgan. The three ex-officio nonvoting members are the Commissioner of Highways, the Director of the Parkways, Economic Development, and Tourism and the Executive Director of the West Virginia Development Office or their designees. The Authority shall meet annually and special meetings may be called by officers or by members.

**Senate Bill 673** regulates the weight of vehicles on West Virginia's roads and highways. The bill contains a provision that the maximum gross vehicle weight on existing state roads and public highways designated for a load of 65,000 and 73,500 pounds will have a 10 percent tolerance. Prior to this legislation, only those vehicles designated for a load of 80,000 pounds had this tolerance. Among other provisions, this legislation also requires compliance with weight load limits on the national system of interstate and defense highways; adds roads and highways eligible for the coal resource transportation road system; and, limits specific reporting requirements regarding coal hauled on coal resource transportation roads.

### Sunset Laws

**Senate Bill 268** continues the Division of Motor Vehicles.

**Senate Bill 269** continues the Division of Purchasing within the Department of Administration.

**Senate Bill 296** continues the Center for Professional Development Board.

**Senate Bill 323** continues the Office of Explosives and Blasting.

**Senate Bill 324** continues the Division of Personnel.

**Senate Bill 469** continues the Interstate Commission on Uniform State Laws.

**Senate Bill 470** continues the Real Estate Appraiser Licensing and Certification Board.

**Senate Bill 471** continues the State Board of Risk and Insurance Management.

**Senate Bill 575** continues the Motor Vehicle Dealers Advisory Board.

**Senate Bill 576** continues the State Rail Authority.

**Senate Bill 577** continues the Board of Registration for Foresters.

**Senate Bill 578** continues the Design-Build Board.

**Senate Bill 717** changes agency termination dates pursuant to the West Virginia Sunset Law. Continuation legislation voted on this session is incorporated into this article of the Code, which directs the Legislative Auditor's Performance Evaluation and Research Division reviews for the next several years. The bill also brings Department of Environmental Protection under a full performance review in 2005; advances the sunset date for the State Rail Authority consistent with the authority's continuation bill; and makes technical corrections to two agencies which were inadvertently duplicated in the bill.

**Senate Bill 726** continues the Steel Advisory Commission and Steel Futures Program.

**Senate Bill 4083** continues the Veterans Council.

**House Bill 4157** continues the Rural Health Advisory Panel.

**House Bill 4248** continues the Office of the Environmental Advocate.

**House Bill 4304** continues the Children's Health Insurance Board.

**House Bill 4350** continues the West Virginia State Police.

**House Bill 4418** continues the Board of Architects.

**House Bill 4419** continues the Board of Landscape Architects.

**House Bill 4479** continues the Department of Health and Human Resources.

**House Bill 4480** continues West Virginia's participation in the Interstate Commission on the Potomac River Basin.

**House Bill 4530** continues the Meat and Poultry Inspection Program.

**House Bill 4531** continues the Public Employees Insurance Agency's Finance Board.

**House Bill 4532** continues the Fire Commission.

**House Bill 4581** continues the Division of Protective Services.

### Supplemental Appropriations

**Senate Bill 526** makes a supplementary appropriation of public moneys from unappropriated surplus balance in general revenue to Division of Rehabilitation Services.

**Senate Bill 713** expires funds to an unappropriated balance of general revenue from the Board of Risk and Insurance Management's Premium Tax Savings Fund.

**Senate Bill 714** expires funds to an unappropriated balance of general revenue from the Insurance Commission Fund.

**Senate Bill 715** expires funds to an unappropriated balance of general revenue from the Public Service Commission.

**House Bill 4348** expires funds to the Treasurer's Office Banking Services from the Treasurer's Office Unclaimed Property Trust Fund.

**House Bill 4546** makes a supplemental appropriation to the Department of Health and Human Resources Family Protection Services Board's Domestic Violence Legal Services Fund.

**House Bill 4547** makes a supplemental appropriation to the Bureau of Commerce's Division of Miners' Health, Safety and Training.

**House Bill 4548** makes a supplemental appropriation to the Department of Transportation's Division of Motor Vehicles Section 1 Driver's License Reinstatement Fund.

**House Bill 4549** makes a supplemental appropriation to the Bureau of Commerce's Division of Labor's Elevator Safety Act.

**House Bill 4550** makes a supplemental appropriation to the Department of Health and Human Resources Division of Health's Central Office.

**House Bill 4551** makes a supplemental appropriation to the Department of Health and Human Resources Division of Human Services.

**House Bill 4748** makes a supplemental appropriation in the State Excess Lottery Revenue Fund to the Lottery Commission.

**House Bill 4749** supplements, amends and increases items of the existing appropriations from the State Road Fund to the Department of Transportation's Division of Highways.

**House Bill 4750** makes a supplemental appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated to the Department of Education's State Department of Education.

**House Bill 4751** makes a supplemental appropriation to the Department of Military Affairs and Public Safety's Adjutant General's State Militia.

**House Bill 4752** makes a supplemental appropriation to the Department of Tax and Revenue's Division of Banking.

**House Bill 4754** makes a supplemental appropriation to the Department of Transportation's Division of Motor Vehicles.

**House Bill 4755** makes a supplemental appropriation to a new item of appropriation designated the Coal Heritage Highway Authority.

**House Bill 4756** makes a supplemental appropriation to the West Virginia State Board of Examiners for Licensed Practical Nurses.

**House Bill 4757** makes a supplemental appropriation to the Department of Military Affairs and Public Safety's Division of Criminal Justice Services.

**House Bill 4758** makes a supplemental appropriation to the Department of Military Affairs and Public Safety's Division of Criminal Justice Services Juvenile Accountability Incentive.

**House Bill 4760** makes a supplemental appropriation to the Governor's Office of Economic Opportunity.

**House Bill 4761** makes a supplemental appropriation to the Department of Agriculture's Donated Food Fund.

**House Bill 4762** makes a supplemental appropriation to the Department of Military Affairs and Public Safety's Office of Emergency Services.

## Taxation

**Senate Bill 28** provides increases in categories of personal property since, under current law, property not exceeding the value of \$1,000 is exempt from levy, forced sale, attachment or execution. The categories include \$5,000 for one motor vehicle; \$8,000 in household goods; \$3,000 in implements; and, any funds on deposit in an IRA.

**Senate Bill 148** creates the West Virginia Tax Amnesty Program of 2004. Administered by the Tax Commissioner, the program will provide amnesty for a two month period during 2004 and would apply to most taxes, except ad valorem taxes, that arose between 1986 and January 1, 2004. The bill authorizes the State Tax Department to waive any civil or criminal penalties or additions to tax, as well as 50 percent of any interest, for taxpayers who are awarded amnesty, unless there is an ongoing criminal investigation or if court proceedings are pending. Those who do not apply for amnesty and who owe tax payments to the state will be subject to a 10 percent penalty. The bill also provides for the suspension of a business registration certificate for those who fail to pay personal property taxes. The measure also requires the Tax Commissioner to make a report to the Legislature and the Governor on the program by July 1, 2005.

**Senate Bill 420** makes changes to the West Virginia Motor Fuels Excise Tax Act. Among other provisions, the bill removes the requirement for government entities to purchase motor fuel in bulk quantities of 500 gallons or more before qualifying for a refundable tax credit. The bill also repeals the requirement for suppliers to report motor fuel sold to tax-exempt government entities.

**House Bill 3189** reduces the total tax credits available under the Capital Company Act to zero during the Fiscal Year beginning July 1, 2004.



**House Bill 4011** brings terminology in the West Virginia Personal Income Tax Act into conformity with their meanings for federal income tax purposes.

**House Bill 4012** updates the meaning of “federal taxable income” and other terms used in the state’s Corporation Net Income Tax Act. Terminology addressed in this legislation will adhere to the definitions used for federal income tax purposes.

**House Bill 4047** creates a high growth business investment tax credit to encourage investment by state citizens and businesses in certain companies started by fellow West Virginians. The credit is in the amount of 50 percent of the angel or seed investment made by an individual or business in another unrelated business, certified by the Tax Department as eligible for the Strategic Research & Development Tax Credit. It also will require the Tax Commissioner to annually publish in the State Register the name of every eligible taxpayer and the amount of the tax credit claimed. It calls for the Tax Commissioner to report every three years on the cost effectiveness of the credit. No more than \$1 million of the tax credits shall be allocated by the Economic Development Authority during any fiscal year. The Economic Development Authority shall allocate the tax credits in the order the applications are received.

**House Bill 4318** imposes personal income tax on funds withdrawn from a prepaid college tuition contract or other college savings plan. Any money will be added to federal adjusted gross income for amounts previously deducted for money deposited into a prepaid tuition contract or other college savings plans managed by the Board of Trustees of the College Prepaid Tuition and Savings Program and withdrawn from a prepaid tuition contract or other College Savings Plan, that was used for purposes other than those expenses authorized by Internal Revenue Code. The conditions in this bill are effective for taxable years beginning after December 31, 2003.

**House Bill 4349** makes technical corrections to sales tax law and updates the current law relating to the Streamlined Sales and Use Tax Agreement among the states to continue the state’s role as a decision-maker in executing the agreement.

**House Bill 4501** relates to the sales tax holiday on back-to-school purchases. This legislation provides an exemption from consumers sales tax for sales of computer hardware and software directly incorporated into manufactured products and creates exemptions for payment of certain licensing fees; computer hardware and software directly used in communication; electronic data processing services; certain educational software to be used in certain educational or nonprofit institutions; Internet advertising of goods and services; and, for certain sales of high technology business services.

**House Bill 4567** provides extensive changes to the Motor Carrier Road Tax and the provisions of West Virginia Code created to comply with the state’s tax laws to the International Fuel Tax Agreement. The bill also will provide new or revise existing definitions of terms, establish responsibility for payment of the Motor Carrier Road Tax between the lessors and the lessees of motor carriers, household goods carriers, and independent contractors that use a motor carrier. The bill revises existing provisions of law which relate to the use of small tax credits, extends the period of time any tax credits can be used and limits the period of time during which they can be claimed.

**House Bill 4624** relates generally to tax increment financing. This bill makes technical changes and clarifications to the West Virginia Tax Increment Financing (TIF) Act. Among other provisions, this bill allows county commissions or municipalities to issue and secure additional bonds payable out of the TIF fund created for the district which bonds may rank on equality with or secondary or superior to other bonds from the TIF fund.

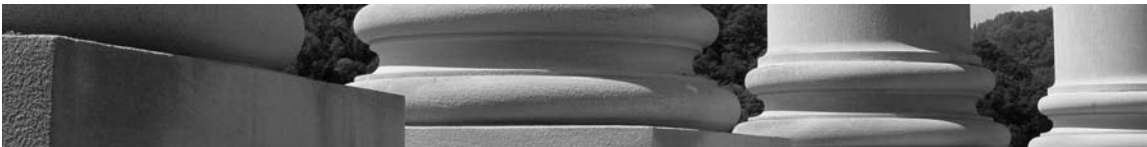
### Tourism

**House Bill 4625** authorizes the Tourism Commission the use of \$750,000 from the Tourism Promotion Fund to support the 2004 Pete Dye West Virginia Classic that will take place in Harrison County during July 2004.

### Veterans

**House Bill 2423** allows veterans from the Korean Conflict and the Vietnam Conflict who were enrolled in high school at the time they were called to service in the Armed Forces to be awarded their diploma if leaving school prior to graduation. The diploma would be granted in either the veteran’s home county or the county in which the veteran attended high school. The veteran must have served in either the Korean Conflict, Vietnam Conflict, World War I or World War II. Under the current law, any veteran from World War I or II, the Korean Conflict, or Vietnam Conflict could be eligible for a diploma if they left high school prior to graduation. The wording as it stands now could be misconstrued to mean even those individuals who may have dropped out of school prior to graduation. The wording in HB 2423 clarifies who could be eligible for diplomas.

**House Bill 4086** relates to the Veterans’ Council and adds Gulf War veterans and Afghanistan conflict or Iraqi Conflict



veterans to the Veterans' Council. The bill continues the Veterans' Council, which now consists of nine members who must be citizens and residents of this state and who have served in and been honorably discharged or left service under honorable conditions from the Armed Forces of the United States and whose service was within a time of war as defined by the laws of the United States. The bill requires that at least one member must be a veteran of the first Gulf War and at least one member must be a veteran of the Afghanistan or Iraqi Conflicts.

**House Bill 4627** allows the Veterans' Council to annually give recognition to the West Virginian with the highest grade point average graduating from one of the four U.S. military academies by bestowing upon him or her the "West Augusta Award."

**Workers Compensation**

**House Bill 4672** provides that the calculation of workers' compensation of premiums for members of limited liability company will be the same as provided for partners of the partnerships. The measure clarifies that if a member is only an investor and does not participate in the direction, administration or control of a company, and is not employed for service of the company, then the company workers' compensation coverage is not required for that person.

The Reference and Information Center would like to thank all counsel, political analysts and legislative staff who assisted in reviewing its content.

<b>April 4-6</b>	2004 - 2005 Interim Committee Meeting Dates
<b>May 16-18</b>	
<b>June 13-15</b>	
<b>July 25-27</b>	
<b>August 22-24 - Beckley</b>	
<b>September 19-21</b>	
<b>October 10-12 - Shepherdstown</b>	
<b>November 7-9</b>	
<b>December 5-7</b>	
<b>January (2005) 9-11</b>	
<b>February (2005) 6-8</b>	

**Interims - 2004 Study Assignments**

**Agriculture and Agri-business Committee**  
HCR 55 - Requesting a study whether wild ginseng and cultivated ginseng should be regulated in the same manner

**Joint Commission on Economic Development**  
HCR 39 - Requesting a study of the economic feasibility and beneficial effect of establishing a state-wide thoroughbred racing breeders program at the state's two horse racing facilities  
HCR 69 - Requesting a study on the development of intellectual properties and other mechanisms to encourage the film industry to conduct business in West Virginia  
SCR 69 - Requesting Joint Committee on Government and Finance study creating Film Commission

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SCR 81 - Requesting Joint Committee on Government and Finance study economic development funding

#### **Joint Standing Committee on Education**

SCR 100 - Requesting Joint Committee on Government and Finance study public school dress codes

#### **Joint Standing Committee on Finance**

SCR 99 - Requesting Joint Committee on Government and Finance study sources of revenue to pay for cost of clean-up of sites insured by Underground Storage Tank Insurance Fund

SCR 43 - Requesting Joint Committee on Government and Finance study repealing current corporate license tax

SCR 59 - Requesting Joint Committee on Government and Finance study property tax laws

SCR 92 - Requesting Joint Committee on Government and Finance study ways to reduce and eliminate sales tax on food

#### **Joint Standing Committee on Government Organization**

HCR 47 - Requesting a study on providing limitations on nurse overtime policies in hospitals operated by state agencies within West Virginia

SCR 68 - Requesting Joint Committee on Government and Finance study grievance boards and administrative law judge systems

SCR 56 - Requesting Joint Committee on Government and Finance study current administrative structure of Division of Personnel

SCR 61 - Requesting Joint Committee on Government and Finance study local health departments

SCR 70 - Requesting Joint Committee on Government and Finance study financial operations of senior centers

SCR 89 - Requesting Joint Committee on Government and Finance study nonprofit entities that receive state and federal funds

#### **Legislative Oversight Commission on Health & Human Resources Accountability (LOCHHRA)**

HCR 8A - Requesting a study on the childhood obesity epidemic in West Virginia in regards to chronic disease, poor nutrition and inadequate exercise

HCR 37 - Requesting a study to determine the most appropriate mechanisms to reach the goal of providing all citizens of the State of West Virginia with comprehensive, quality and affordable health care

SCR 48 - Requesting Joint Committee on Government and Finance study training and educational needs related to Alzheimer's disease and related dementia

SCR 57 - Requesting Joint Committee on Government and Finance study need for adult day care, congregate respite and in-home services for persons with Alzheimer's

HCR 88 - Requesting a study on methods of improving access to physical therapy services in rural areas of West Virginia

SCR 86 - Requesting Joint Committee on Government and Finance study providing services and support for disabled persons

#### **Joint Standing Committee on the Judiciary**

SCR 55 - Requesting Joint Committee on Government and Finance study state fire code rules applying to bed and breakfasts

SCR 78 - Requesting Joint Committee on Government and Finance study Wage Payment and Collection Act

SCR 91 - Requesting Joint Committee on Government and Finance study fraudulent credit card transactions

#### **Juvenile Foster Care, Detention & Placement Task Force**

HCR 71 - Requesting a study on the current statistical trends in juvenile delinquency

SCR 62 - Requesting Joint Committee on Government and Finance study epidemic of youth suicide in state

#### **Joint Standing Committee on Pensions and Retirement**

SCR 9 - Requesting Joint Committee on Government and Finance study converting Teachers Defined Contribution Retirement System to Defined Benefit Retirement System

#### **Legislative Rule-Making Review Committee**

HCR 52 - Requesting a study on the State's water quality standards

SCR 39 - Requesting Joint Committee on Government and Finance study state's water quality standards

#### **Select Committee A - Flooding; Railroads**

HCR 11 - Requesting a study on the causes of the devastating flooding in southern West Virginia

HCR 24 - Requesting the prohibition of remote control locomotive technology in switching operations until such time as a thorough, risk assessment study of remote control locomotive operations can be completed

SCR 47 - Requesting Joint Committee on Government and Finance study governmental agencies involved in resolving problem of flooding of streams

SCR 67 - Requesting Joint Committee on Government and Finance study criminal penalties for interference with medical treatment of railroad employees

**Select Committee B - Insurance**

HCR 31 - Requesting a study on the use of credit scoring being used as a factor in determining the amount of a premium charged for issuance of an insurance policy

SCR 65 - Requesting Joint Committee on Government and Finance study commercial property and casualty insurance

SCR 63 - Requesting Joint Committee on Government and Finance study use of credit scoring in insurance underwriting and rate-making process

SCR 66 - Requesting Joint Committee on Government and Finance study homeowners' insurance

**Select Committee C - Pharmaceutical Availability and Affordability**

HB 4084 - Implementation of Pharmaceutical Availability and Affordability Act

HCR 54 - Requesting a study of the efficacy of collaborative pharmacy practice agreements between pharmacists and physicians

SCR 26 - Requesting Joint Committee on Government and Finance study certain medicaid program preferred drug list

**Select Committee D - Water Resources Protection**

SB 163 - Implementation of Water Resources Protection Act

**Select Committee E - Racial Profiling**

SB271 - Implementation of SB271 relating to racial profiling data collection

**Select Committee F - Campaign Finance Reform**

HCR 87 - Requesting a study on the projected costs and potential sources of revenue which may be made available to support a plan to provide public campaign finances for designated elected offices

Interim Committee meeting dates and schedule provided by Legislative Services. Please call 347-4800 if you have any questions.

