



# INTERIM HIGHLIGHTS

CITIZEN'S GUIDE TO INTERIM COMMITTEE  
MEETINGS OF THE WEST VIRGINIA LEGISLATURE

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**Volume XXIV, Issue 2**

**July 5, 2012**

## **Agriculture and Agri-business Committee**

The Vice President of Operations of Aviagen Turkeys, Inc. met with lawmakers to discuss the concerns with using chicken litter in the proximity of poultry facilities. The genetic turkey breeding company is seeking assurance that its flock is not infected with various poultry diseases by seeking an emergency rule that prohibits the distribution of chicken fertilizer within a three-mile area of its company flocks located in Greenbrier, Monroe and soon-to-be Fayette County.

Aviagen, the company, has operated in Lewisburg for six years. While it is a small company, it specializes in genetic development of turkeys. Not a commercial industry, it serves as a primary breeder whose mission is to develop healthy and bigger turkeys. The company is one of two primary breeders in the world (another in Canada) and provides 70 percent of its stock domestically and 30 percent for exportation. Overall, it provides 75 percent of the world's turkey genetic base.

Of primary significance is to keep its birds free of 10 to 15 different disease agents and meet health certifications, the Aviagen VP told lawmakers. An avian influenza would bring about an immediate quarantine ultimately putting the company out of business.

The VP said the Commissioner insured the company protection in Greenbrier Co, but one way to breach health is to bring in chicken litter from other companies to be used on farms near Aviagen. The company is not

asking for an out-right ban in the three counties and calls the idea unreasonable. It believes the three-mile rule would be sufficient and covers turkey, chicken and swine manure.

The company shared the meeting with the Agricultural Commission and the Deputy Commissioner who will work with area farmers and other interested parties to come up with an emergency rule.

## **Children, Juveniles and Other Issues**

### **Foster Care**

Neglect and drug abuse by parents are the leading forces behind a growing number of children being placed in foster care in West Virginia, according to the new commissioner for the Bureau of Children and Families.

The commissioner, who took over in March, told a legislative panel that the number of in-state clients as of last month totaled 3,900 — an increase of 127 since a year ago. Over the same time, out-of-state clients in foster care have fallen by four to 346.

Although the commissioner did not break down in precise numbers the factors that lead to taking children out of homes and placing them in foster care, he did explain that neglect and drug abuse are the two chief causes. He cited other reasons, such as additional issues within the family unit and truancy by those of school age.



The commissioner cited his agency’s main problem in coping with these cases to be the inability to keep Child Protective Services adequately staffed. He noted that while he realizes it is a stressful job, it is also a very rewarding one.

He discussed the agency’s problems with retaining workers and how when those employees leave the job, it increases the case load on other workers, creating a damaging cycle in which employees are often overworked. Post-traumatic stress after viewing horrible situations in some homes has also been a problem for case workers. Of the 426 current employees, he noted, 114 have been on the job only for a year and one lawmaker told the committee that case workers have told him the stress level is terrible.

The commissioner vowed to bring all parties involved in the care for these children together to look at solutions for handling staffing and truancy issues with the end goal being to provide the best possible outcomes for the state’s foster care children.

**Joint Commission on  
Economic Development**

**Save West Virginia Call Center Jobs Act**

During June’s meeting, A CWA representative discussed House Bill 4373, which was introduced during this year’s regular legislative session.

House Bill 4373 would have created the Save West Virginia Call Center Jobs Act. This bill would have

discouraged employers from closing call centers and other customer service operations in West Virginia and relocating the call centers overseas. A call center was defined in the bill as being one or more locations that utilize telecommunications services in one or more of the following activities: Customer service, soliciting sales, reactivating dormant accounts, conducting surveys or research, fund raising, collection of receivables, receiving reservations, receiving order or taking orders.

During the regular session, House Bill 4373 was considered for movement during the committee process. However, concerns were raised by various stakeholders as to the implications of the bill that it died in committee. Maryland has just passed a similar bill to that of House Bill 4373. The main difference between Maryland’s bill and West Virginia’s bill is that Maryland penalties were not as strong as those found in House Bill 4373. However, both state bills do require the reporting of these call centers. Florida and New York are currently considering similar legislation as well.

The CWA representative told the committee that the biggest concern with this type of legislation is that businesses think that it would violate the Commerce Clause of the U.S. Constitution and that it discriminates against individuals in other states as a result.

However, the CWA representative told the committee that these jobs should be here and not contracted out of state.

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



## **Legislative Oversight Committee on Education Accountability**

The West Virginia Regional Technology Park in South Charleston is on track to be self-sustaining by late 2015, according to the Chancellor of the Higher Education Policy Commission. Presently, \$3 million has been provided by the Legislature to assist the techpark this year and next.

The state-owned tech park is slashing costs by shutting down a central steam energy plant, while increasing revenues by leasing space in on-site laboratory buildings. The Chancellor predicts the tech park will no longer be reliant on state subsidies by Dec. 15, 2015.

The tech park is using a \$1.5 million loan from the West Virginia Economic Development Authority to pay for the installation of boilers in each building at the techpark which is expected to pay for the loan through savings in utility costs.

To bolster revenues, the tech park plans to lease additional space at Building 740 and Building 2000. The state has 31,400 square feet of rentable space at Building 740 and 46,000 square feet of space at Building 2000. The state expects to generate an additional \$750,000 in annual revenue from Building 740's available space, according to Monday's report. The document did not estimate the additional revenue from Building 2000's extra space. The four-story building is undergoing a \$24 million renovation.

The Senate Education Chairman urged the Chancellor to work with the tech to keep lease payments low so the community college doesn't have to raise student tuition.

The report provided details about the tech park's operating costs. Overall among utilities, maintenance, repairs and payroll the state spends approximately \$6 million annually on the park.

In other interim business, the Chancellor of the Community and Technical Council provided reports on CTC's tuition and fees for 2012-2013, the Developmental Education Task Force Update, a Summary of System Initiatives for Fiscal Year 2013 and Gateway to Gainful Employment and College Degree Certificates.

Lawmakers also heard from the Director of Policy and Strategic Initiatives regarding "Educating West Virginia is Everyone's Business: Report from the West Virginia College Completion Task Force"

A copy of "Educating West Virginia is Everyone's Business: Report from the West Virginia College Completion Task Force" is attached and available on the Commission's website at [www.hepc.wvnet.edu](http://www.hepc.wvnet.edu) and on the Council's website at [www.wvctcs.org](http://www.wvctcs.org)

Of particular note, the state is currently reviewing its educational systems and is seeking insight from the public. To gather input on the Education Efficiency Audit of the state's primary and secondary education system, Vision Shared, Inc. has and will conduct a total of eight community public forums throughout West Virginia. The forums are built on the recommendations of the audit initiated in 2010. Parents, educators, business and community leaders as well as any other interested party are invited to attend.

According to the audit, state students score below the



national average on 21 of 24 indicators of student performance assessed by the National Assessment of Educational Program, despite relatively high rankings in educational spending. According to a report provided to lawmakers during the June interim meetings, the audit was aimed to help the state achieve the best possible outcomes for its students and to receive the highest return on education dollars spent.

Recommendations provided by the audit include enhancing connections between the workforce and education, supporting and improving school building leadership and classroom teaching and making the state a leader in remote technology and distance learning.

Thus far, forums have been conducted in June at Elkins, Martinsburg, Parkersburg and Charleston. Others scheduled include July 10 in Wheeling, July 11 in Morgantown, July 24 in Welch and July 25 in Beckley. If readers would like to submit ideas or comments Vision Shared has opened its website for public opinion. For more information, see:

*<http://www.visionshared.com/edu2012/>*

## **Education Subcommittee A**

### **Student Wellness**

West Virginia University professor Eloise Elliott gave the committee an overview of WVU’s CARDIAC program, aimed at improving the physical fitness and wellness of the state’s children. The program has been conducting statewide health screenings of kindergarten, second-, fifth-, and eighth-grade students statewide since 1998,

and the 2012 results found that 46.5 percent of all fifth-graders in the state are overweight or obese.

Elliott told the committee that by fifth grade, about 50 percent of the state’s kids are overweight or obese and have at least one risk factor for heart disease. She said the causes are not surprising: Lack of physical activity, too much sedentary time in front of television or computer screens, and an unhealthy diet including too many sugary soft drinks. She believes eliminating children’s intake of full-flavored soft drinks alone would go a long way towards reducing childhood obesity.

While the numbers are discouraging, Elliott said there are some encouraging signs, noting that the percentages of overweight and obese fifth-graders have leveled off after peaking at 49.6 percent in 2009.

There has also been increased emphasis on physical activity and physical education in public schools, spurred in part by passage of the West Virginia Healthy Lifestyles Act in 2005. However, a WVU evaluation of the impact of the law found that 31 percent of elementary schools and 8 percent of middle schools were unable to comply with PE requirements in the act, either because they lacked adequate staff, or lacked adequate facilities, or both.

Lawmakers agreed that the Legislature needs to look into ways to change the culture of child fitness by continuing an educational approach in schools while also educating parents as to the affordable steps they can take to improve their children’s health at home. One lawmaker noted that the choice is to invest in ways to make kids healthy now or pay for obesity related health care problems later.

## Education Subcommittee B

### **Eight Community Forums/Education Audit**

To gather input on the Education Efficiency Audit of the state's primary and secondary education system, Vision Shared, Inc. has and will conduct a total of eight community public forums throughout West Virginia. The forums are built on the recommendations of the audit initiated in 2010. Parents, educators, business and community leaders as well as any other interested party are invited to attend.

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*July 10, 2012 - 6:30 PM*  
*Wheeling Park High School*  
*1976 Park View Rd*

*Wheeling, WV 26003*

*July 11, 2012 - 6:00 PM*  
*Location TBD (to be determined)*  
*Morgantown, WV*

*July 24, 2012 - 6:00 PM*  
*McDowell Public Library*  
*90 Howard Street*  
*Welch, WV 24801*

*July 25, 2012 - 6:00 PM*  
*Location TBD*  
*Beckley, WV*

For more information, please review Vision Shared's website: <http://www.visionshared.com/edu2012/>

Other study resolutions to be taken up by Education Subcom. B include SCR 57, requesting a study on the state's cooperative purchasing process and Senate Bill 371, providing school systems under a declared state of emergency to participate as collaborative innovation zones.

## **PEIA , Seniors and Long Term Care**

According to the Chief Executive Officer of the West Virginia Health Care Association, nursing homes are evolving in services and clientele - all of which will continue to see the costs of health care rising higher and higher.



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Advanced Nurse Practitioners step in for physicians in some facilities to enhance the level of medical care in health care duties, such as prescribing drugs. In some instances, upscale breakfast cafes and buffet meals as well as meals prepared upon request by trained chefs appeal to advancing baby boomers. Assisted living populations are not all aged but many of the new clients are suffering from serious ailments.

Numbers for people in long term care including assisted living are 18,000. Since a moratorium on beds has been in place for the last 20 years, home health care has taken the lead.

With pressure on hospitals to release patients, individuals going into assisted living include patients with chronic conditions who require a lot of medications. Younger people are also being admitted with brain injuries or drug addicted and chronic disease conditions such as heart and liver disease. A large bariatric population is also entering the facilities suffering from diabetic ailments. The CEO told lawmakers projections of costs is difficult to surmise. An average of 40 to 60 patients move out of the facilities each year while, in the past, an aged population primarily filled the beds. Today, levels of care is advanced with medical professionals and Hospice services are also used a lot in nursing homes.

Rising costs also include a growing legal environment. Advertisements in newspapers seek class action parties is significantly affecting insurance coverage for the homes. The CEO of the health association said that West Virginia's claims are four times higher than surrounding states. Most of the claims deal with paperwork which still gets clumped together with malpractice. He is

asking the Legislature to clarify that nursing homes/ assisted living facilities are covered under the Medical Malpractice Act. He did note that patient satisfaction surveys indicate West Virginia is above average with its care. For the time being, Medicaid is not being affected yet undoubtedly will be with the increase of population and services rendered.

Also addressing the legislative committee were spokespersons for the Bureau of Senior Services Alzheimer's Programs and the Executive Director of the West Virginia Chapter of the Alzheimer's Association.

The Center for End of Life Care under the direction of the Bureau of Senior Services is putting together its eDirective Registry which was funded by the Legislature. According to the Center's website, "The West Virginia Center for End-of-Life Care through the WV Health Information Network (WVHIN) is currently entering advance directive forms, do not resuscitate cards, and POST forms into the WV e-Directive Registry. This electronic registry will house and make available to treating health care providers West Virginians' advance directive forms, Physicians Orders for Scope of Treatment (POST) forms and do not resuscitate cards. This is a password-protected – HIPAA compliant Registry that will make accurate, relevant information available in a medical crisis, be accessible 24/7 to health care providers through the WVHIN, and ensure that patients' wishes will be respected throughout the continuum of health care settings."

The website also notes, "For access to the WV Health Information Network - the portal for the e-Directive Registry - visit their website at [www.wvhin.org](http://www.wvhin.org), call 304-558-



4503, or email [info@wvhin.org](mailto:info@wvhin.org). The staff will be happy to work with your facility to be credentialed, verified and trained as a WVHIN user.”

Another program designed to help Alzheimer’s victims and their caregivers is the FAIR program also under the Bureau of Senior Services.

*<http://www.wvseniorservices.gov/HelpatHome/FAIRFamilyAlzheimersInHomeRespite/tabid/75/Default.aspx>*

This program operations through senior centers but 70 percent of people seeking this help are on waiting lists. Training for competent, in-home direct care for FAIR is offered at community colleges and some secondary schools.

Also at the meeting the Alzheimers’s state plan was recommended. This Make a Plan (MAP) initiative seeks to bring together stakeholders to study the issues, draft a state plan for Alzheimer’s, and then advocate for its statewide adoption. This initiative is chaired by the Alzheimer’s Association, West Virginia Chapter and facilitated by the West Virginia Partnership for Elder Living. This report (the MAP) constitutes the achievement of an important phase of the initiative: the presentation of a unifying set of ambitious, but achievable recommendations for beginning to address the burden of Alzheimer’s in West Virginia, according to its website. The complete plan can be located online at:

*[http://www.alz.org/national/documents/wv\\_stateplanmap.pdf](http://www.alz.org/national/documents/wv_stateplanmap.pdf)*

**Interim Committee Information**  
For information on all Interim Committees, please visit West Virginia Legislature’s Web site: <http://www.legis.state.wv.us> and select the “Joint” link.

## **Education Subcommittee C - Judicial Issues**

### **Dropout Prevention**

Committee members heard from the Assistant Superintendent of the West Virginia Department of Education regarding dropout prevention in the state.

Dropout prevention has been focused on the past two years. In that time, three issues were key findings into why students are dropping out; attendance, behavior, and/or core failure/success.

The West Virginia Department of Education has implemented a number of initiatives to keep students in school such as the school justice partnerships.

Another program is the Local Solutions Dropout Prevention and Recovery Innovation zones. Nine school/districts have been designated as test grounds for dropout prevention strategies.

The Assistant Superintendent told the committee that one tool that the Department of Education thinks will be beneficial is the Early Warning System pilot initiative. This student management system will be able to identify students at risk of dropping out of school as early as the 6th grade. Principals, counselors and teachers will be notified of which students are most at risk and need additional interventions.

One problem the Department of Education is running in to are transient students, which are those that move from one school to another. West Virginia has around 280,000 students enrolled. However, the number enrolled on the



system shows 330,000 because the transient students are being counted in each school they attended that year. The Executive Director of Information Systems told the committee that the issue is pinning down where the absences from the transient students should be counted and within what school system should they be counted in order to get more accurate and thorough data.

**New GED Test**

The West Virginia GED Test Administrator talked about the new GED test that will be used beginning January 2, 2014.

The new test will be computer based and will have four content areas instead of the current five. Content areas are: literacy, math, science, and social studies. The new test will also have measures of each test takers weaknesses and strengths. It will also provide a report on a test taker's career readiness, high school equivalency, and college readiness. Additional features include an immediate score report after the test is completed with the exception of the essay section, 24/7 online registration and a hotline, and score reports that will detect a test taker's strengths and areas of developmental needs.

Changing the GED was necessary in order to better prepare those taking the test in the computer age. The current test was developed in 2002 in the age of still mainly using pens and pencils. Requiring test takers to use the computer for the test will better prepare them and help them keep up with the changing times in technology and education.

With all of the added features in the new GED, costs will increase. West Virginia currently provides the GED

test for free. The cost of the total test will be \$120 and \$38 will be reimbursed to the testing centers. However, the current cost is \$50 generated by Free GED Testing.

The Legislature is currently providing \$360,000 in funding per fiscal year for free GED testing. However, this amount will fall short with the new test. Funding necessary for fiscal year 2014 will be approximately \$752,280. That is the cost of 6,269 individuals taking the test at \$120 a test.

The impact on the fee increase will affect future test takers since many could not afford to pay the \$50 fee now. After the Legislature passed legislation in 2008 that provided free GED testing, 23,464 people opted to take it. Of those that took the test, 17,087 obtained their GED diploma.

**Finance Subcommittee A**

**WVU Marcellus Shale Research Program**

Committee members heard from both House and Senate Counsel regarding HB 4511, which was introduced and taken up for consideration during this year's regular session.

House Bill 4511 would have created a Marcellus Shale Research Program at WVU. The center would foster scientific research and encourage partnerships among WVU, government, and industry in an effort to develop best practices relating to shale resources in West Virginia. The new program would be run by WVU's Board of Governors.





The Senate had a similar bill, SB 522, but the main difference between the two bills is who would oversee the program. While the Board of Governor would be in control under the House bill, the Senate bill would call for the creation of a director in charge who would be appointed by the Board of Governors.

Finance Subcommittee A has been given the charge of considering the impacts, advantages and disadvantages of such a program at WVU. Their goal will be resolve issues and create a bill before the 2013 regular session.

**Finance Subcommittee B**

**Homestead Exemption**

West Virginia’s deputy secretary of revenue told the committee that further increases in the homestead exemption for senior West Virginians could hurt the state’s ability to compete for economic-development projects.

The exemption saves about 188,000 West Virginia homeowners age 65 and older \$47 mi He noted the state’s eligible senior population is expected to grow 37 percent in the next decade.

Increasing the exemption -- which applies to the first \$20,000 of assessed value for the residential property -- would require increasing other taxes to make up for the revenue loss to already cash-strapped counties.

He noted that even without the exemption, West Virginia has some of the lowest residential property tax rates in the country. Property taxes are twice as high in Ohio

and Virginia, and three times higher in Maryland and Pennsylvania.

The three states that have comparable property tax rates - Alabama, Arkansas and Louisiana - provide for local sales taxes to allow counties to make up the lost revenue. That results in 10 percent sales tax rates in places such as Birmingham and Montgomery, with no tax exemption for groceries, according to the secretary.

He explained that West Virginia adjusts for its low real property tax rates in part by imposing comparatively high personal property tax rates.

A factory located in West Virginia pays an average personal property tax rate of 1.404 percent -- two to three times the tax burden on similar facilities located in neighboring states, he noted. High personal property and inventory taxes are frequently cited as an obstacle to attracting new businesses to West Virginia.

The secretary noted that even at its current level, the homestead exemption is a significant tax break.

He used a \$300,000 home in Shepherdstown as an example. The owner of that house, if he were younger than 65, would have property taxes of \$2,334 this year. However, a homeowner eligible for the homestead exemption and related tax credits would have a tax bill of \$764 for that property.

Unlike most states, West Virginia property taxes are not in state code but in the state constitution. That means voters would have to approve an amendment to the constitution to increase the exemption.



## **Finance Subcommittee C**

The Executive Director of the West Virginia Courthouse Facility Improvement Authority appeared before the committee to seek further assistance in the passage of Senate Bill 468, passed by the Senate but remained in the House Finance Committee at the close of the 2012 Regular 60-Day Session. The bill would have provided the Improvement Authority the authority to issue bonds to raise funds for paying the costs of approved modifications or construction of courthouse facilities.

Presently, the Authority is a fee-driven agency deriving most of its funding from county dollars. Ten years ago the Legislature allowed the Authority to use fees, private endowments, and private funds to raise money for courthouse repairs and maintenance, but was provided no bonding authority.

According to the executive director, the Authority is presently operating as a band-aid fix. Since 2003, \$16 million has been distributed through grant funds. Ninety-two to 95 percent of the money goes back to the county of fees. Representing 55 counties, the authority spokesperson said the funding stream which comes from Code which designates what costs are dedicated or what portion of the costs to whom, is not enough to meet today's skyrocketing construction costs. Fees come from a variety of county services, such as marriage fees, map fees, various filings, magistrate filings, concealed weapon permits, etc. Some counties have trouble matching 20 percent so some courthouses don't participate. If a courthouse doesn't have the money to finish, it may not try to initiate a project. Grants may or may not cover phase-in projects.

Senate Bill 468 added language to existing Code to allow for the bonding authority. All other provisions in law remained in place.

A legal representative of the Authority told lawmakers the added language does not affect the current structure of the Authority but adds language to allow it to issue bonds off of the revenue streams, which was determined to be approximately \$2 million per year. If the Courthouse Facility Improvement Authority were allowed to take \$1 million for 30-year bonds then more dollars could be found to fund more projects and also allow for future savings, according to the representative. In all, the Authority would like to use as debt service on the issuance of bonds similar to the authority provided to the School Board Authority.

Lawmakers were provided a listing of needs assessments of courthouse projects. These projects mostly covered roof repairs, electrical work, leaking water pipes and crumbling structures such as turrets, stairs and walkways.

## **Forest Management Review Commission**

### **West Virginia State Forest Inventory**

This commission heard in June a report from the State Forester about the Forest Inventory and Analysis of West Virginia.

The report mentioned that starting in about 1907, the percentage of forest land has steadily increased to its present level of approximately 78 percent, which makes



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West Virginia the third most heavily forested state in the nation, trailing only Maine and New Hampshire. In terms of standing hardwood volume, West Virginia ranks second in the nation, slightly below Pennsylvania. This indicates an abundant hardwood resource for the state's forest products industry.

The percentage of forest land in West Virginia was as high as 94 percent prior to the agricultural and timber booms of the mid to late 1800s and was as low as 58 percent in 1907. It has remained at the 78-80 percent level (about 12 million acres) for the past 20 years. The vast majority of forest lands in the state are owned by the private sector, including 60 percent by non-industrial "family" ownerships.

The state's forests have been increasing in tree-size class since at least the early 1960s. Currently, 73 percent of the state's forests are in the sawtimber tree-size class, up from less than 50 percent prior to 1975. The sapling/seedling size class has decreased significantly since 1961, which could have some implications for future forest management and regeneration activities.

The state's forests are maturing.

- Forests in West Virginia are becoming more unevenly aged.
- Species composition of small diameter trees is much different than that of large diameter trees.
- The proportions of maples and other shade tolerant tree species are increasing.
- Present numbers of large oaks and yellow-poplar are unlikely to be sustainable. Other species will likely take their place in the large size classes over time.

While the increases in forested acres and growing stock volume are very encouraging, several issues must be considered in the future. These include, but are not limited to:

Some of these increases are in areas that are inaccessible for timber harvesting for a variety of environmental and social reasons. This can have both positive and negative connotations, depending upon one's perspective. Also, the 2006 Woodland Owners Survey revealed that only 27.5 percent of family forest owners plan to harvest wood products in the next five years. In addition, only 11 percent of these landowners consider timber production to be an important reason for owning their land.

Finally, West Virginia has approximately 243,000 family forest land owners. While some invest in property for traditional, commercial forestry reasons, there are a growing number of individuals who own property for other reasons, such as environmental protection, recreation, aesthetics, privacy, and wildlife viewing. Historically, government forestry programs have been geared toward traditional timber management. While the economic opportunity should never be discounted or neglected, forestry must embrace these newer concepts. To ensure the relevance of forestry programs, resource professionals and programs must be re-tooled to meet the needs of these new landowners.

### View Legislation Online

For complete bill history information, roll call votes, amendments, sponsor, veto messages and the full bill text of all legislation from the 2010 Regular Session, please visit Bill Statutus online at:

[www.legis.state.wv.us/Bill\\_Status/bill\\_status.cfm](http://www.legis.state.wv.us/Bill_Status/bill_status.cfm)

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

### **Certified Behavior Analysts Sunrise Report**

This committee heard a Sunrise Report on the regulation of Certified Behavior Analysts. The legislative audit found that the national Behavior Analyst Certification Board “provides adequate and sufficient protection to the public.”

The findings come after the West Virginia Board of Examiners of Psychologists sought to claim jurisdiction over behavior analysts last year. The board dropped that attempt following a lawsuit and an outcry among parents of children diagnosed with these neurological conditions.

These specialists provide applied behavioral analysis, a treatment considered crucial by experts for many children with an autism spectrum disorder. These conditions are marked by problems with communication, behavior and social skills. The range includes a severe form called autistic disorder and the much milder Asperger’s syndrome. The report said the number of West Virginia schoolchildren diagnosed within the spectrum increased to 1,474 during the just-completed school year from 372 during 2001-2002.

West Virginia is among 35 states that require insurers to cover this treatment. The auditors found that 27 of those coverage states don’t directly oversee behavior analysts, including neighboring Maryland. Those that do include border states Kentucky, Pennsylvania and Virginia. The latter two assign this duty to their boards that license

physicians, while Kentucky has a board specifically for these specialists.

West Virginia is also among 21 states where insurance coverage hinges on a nationally certified analyst developing the child’s treatment plan. The report cited how the national board requires basic qualifications, certification exams and continuing education, and also has both professional standards and a complaint process for the public.

## **Government Organization Subcommittee B**

### **Licensure of Sonographers**

This committee held a discussion of Senate Concurrent Resolution 62 which requests a study of the licensure of sonographers.

The Performance Evaluation Research Division presented a Sunrise Report following the second application in five years to the Joint Committee on Government Organization requesting licensure for the profession of sonography. The Board presented three arguments to justify licensure:

First, the lack of any state laws regulating the profession allows anyone to perform ultrasound procedures; Second, licensure would prevent the inappropriate use of ultrasound devices in the form of keepsake ultrasound businesses; and, third, rampant Medicaid fraud associated with ultrasound is occurring in West Virginia, and licensure would be an adequate deterrent in



the future. Overall, the Board believes that the public is at risk when inexperienced or poorly trained individuals fail to adequately identify pathology or other medical conditions needing medical intervention.

In its report, the Legislative Auditor agrees that the risk of harm comes from misdiagnosis of ultrasound images; however, sonographers do not have the authority to make diagnoses nor would they gain that authority through licensure. The authority to make medical diagnoses is limited to the practice of medicine.

The Legislative Auditor concludes that the risk of harm from an ultrasound procedure is primarily dependent on the level of physician supervision of the sonographer and the physician's diagnoses. This conclusion is also supported by relevant legal evidence from three court cases in West Virginia. The Applicant's concern over entertainment ultrasound procedures is justified; however, it can be addressed through legislation without the need for licensure. The Applicant's concern regarding Medicaid fraud has insufficient evidence and licensure would likely not solve that issue if it does exist.

In conclusion, it's the Legislative Auditor's opinion that physician oversight is the primary safeguard against the risk of harm, and the costs associated with licensure would likely outweigh any benefits to the public.

Report online at [http://www.legis.state.wv.us/Joint/PERD/perdrep/Sono\\_1\\_2012.pdf](http://www.legis.state.wv.us/Joint/PERD/perdrep/Sono_1_2012.pdf)

## **Health Subcommittee A**

### **Improved Health Care for Chronic Conditions**

The Medical Director Bureau of Medical Services discussed the Medical Home State Plan Amendment during June's meeting.

Chronic illnesses are the focus of this amendment because those diagnosed with such illnesses have a shorter life expectancy and their treatment costs are much more.

The West Virginia Health Improvement Institute's website ([www.wvhealthimprovement.org](http://www.wvhealthimprovement.org)), states the following; "Under the Affordable Care Action Section 2703, the Centers for Medicare and Medicaid Services (CMS) is offering states an option to provide health homes for members with chronic conditions, with enhanced federal support. This option covers the enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness."

With the enhanced federal support, work needed to be done to create a plan for those with chronic illnesses in order to take advantage of the enhanced federal match.

In August of 2011, a kickoff meeting was held to work on this plan. Since that first meeting, the work group has worked steadily. States with a state plan amendment in place was contacted for feedback on how they are making their program work. Conversations with other states considering a similar amendment have also taken place. Stakeholders have been continuously engaged in the process as well as various health professionals. This includes those professionals in the behavioral field.



It was previously thought that one comprehensive amendment would work best for the state. However, during the process, further discussions have led to the realization that more amendments were necessary in order to take full advantage of the match.

A number of chronic illnesses have been listed for the amendment including:

- Alzheimer’s Disease
- Asthma
- Substance Abuse
- Heart Disease
- Obesity
- Diabetes

The goals in the state amendment are to:

- Improve better care through coordination
- Improve experience in care
- Reduce costs

Six areas that has been focused on are:

- Comprehensive care management
- Health promotion
- Transitional care
- Individual and family support
- Concentrate other services that aren’t typically seen as medical
- Integrate behavioral health and primary care together

The goal of the work group is to have the comprehensive amendment available by the Fall. They hoped to have it out this Spring but they want to make sure everything is covered before it is submitted. Only four states have had home health amendments approved, so West Virginia’s plan is must be sound and to get approved.

## **Health Subcommittee B**

### **Teen Pregnancy**

A member of the West Virginia Perinatal Partnership Central Advisory Council spoke to the Health subcommittee on the problem of teen pregnancy in the state during June’s meeting.

In recent data released by the Centers for Disease Control, teen pregnancy rates decreased nationally between 2007 and 2009. The only state to see an increase was West Virginia, which saw a 17 percent increase in births to teenagers ages 15-17.

With an increase in teen pregnancy, West Virginia also has a high teen infant mortality rate of 13.9 per 1,000 teen pregnancies. The national teen infant mortality rate is 9.8 infant deaths per 1,000 teen pregnancies.

In 2009, 50.6 percent of teen girls giving birth were Caucasian and 46.5 percent were African American.

The highest teen birth rate counties are Calhoun, Clay, Mingo, McDowell, and Tyler. The lowest birth rate counties in the state are Brooke, Monongalia, Pleasants, Tucker and Putnam.

West Virginia has a higher rate than the nation when it comes to teenagers engaging in sexual activity. The national percentage is 46 percent while West Virginia’s percentage is 54 percent. Sexually active teens using condoms has also decreased in the state.

Sex education is taught in schools throughout West Virginia. However, implementation of the education



is not, at times, comprehensive or consistent. Some schools maybe have one or two classes while others may make it a more extensive, year long course. The Perinatal Partnership suggests that the state Board of Education should include a uniform and comprehensive approach to health and sexuality education.

Teenage pregnancy hinders the education of the teenage parents. Pregnancy or parenting is cited by 30 percent of teen girls as the main reason for dropping out of school. Fewer than four in ten mothers who have a child before they turn 18 have a high school diploma. Fewer than 2 percent of young mothers receive a college degree by the age of 30.

Smoking while pregnant is a health concern for many of West Virginia’s teen pregnancies. The smoking rate in the state is 2.5 times more than the national average. Babies born to mothers who smoke during pregnancy are at an increased risk for premature birth, low birth weight, and sudden infant death syndrome.

Aside from the smoking concern, expectant teen mothers receive little to no prenatal care. Receiving no prenatal care can cause many risks. Babies born to teenagers are more likely to have under developed organs, breathing problems, bleeding in the brain, vision loss, intestinal problems, and low birth weight. Costs associated with newborns with these problems are substantial. Care for a low birth weight infant can cost anywhere between \$14,000 to \$100,000.

The member of the Perinatal Partnership told the committee that the potential savings of insurance providers offering contraceptive and pregnancy care coverage for dependent minors could be \$980,991. Right

now, many dependents are many times not covered under their parents’ insurance plan for contraceptives and prenatal care. They must then go to a publicly funded family planning clinic for services.

Recommendations brought forth by the Perinatal Partnership to address the problem of teen pregnancy in the state include:

- Requiring insurance providers to provide coverage of the full range of FDA-approved contraceptive drugs and devices as well as emergency contraception.
- Requiring insurers to extend contraceptive and pregnancy care to all females covered by the policy to include all dependents.
- Amend state Medicaid plan to expand Medicaid coverage for contraceptives from the current two months post-partum to 24 months postpartum
- Support implementation and enforcement of uniform and comprehensive health and sexuality education throughout all schools in West Virginia

Further information about the Perinatal Partnership can be found at [www.wvperinatal.org](http://www.wvperinatal.org).

## **Select Committee on Infrastructure**

### **Complete Streets Presentation**

Two Morgantown area officials spoke to this select committee regarding “Complete Streets” policies which are under consideration in this state.

Complete Streets, as they relate to urban planning and highway engineering, are roadways designed and operated



to enable safe, attractive, and comfortable access and travel for all users, including pedestrians, bicyclists, motorists and public transport users of all ages and abilities. Official policies that encourage or require such accommodation are known as complete streets policies, lawmakers were informed.

Lawmakers introduced a bill last session which would have required “complete streets” designs to be implemented in the maintenance, planning and construction of state roads. This could have included expanded sidewalks, bicycle lanes, or raised medians.

Proponents of complete streets policies claim that they improve safety, lower transportation costs, provide alternatives to private cars, encourage health through walking and biking, create a sense of place, improve social interaction, and generally improve adjacent property values.

Opponents may consider automobile-only infrastructure to be a better use of public funds, or consider efforts to encourage other forms of transportation to be coercive. Individual projects and policies have sometimes faced specific local opposition, typically based on concerns over traffic flow and automobile access.

Some state officials with the WV Department of Transportation stated that the Department is already doing a lot of things outlined in the bill and would need to learn more about the idea before commenting on the feasibility of this policy.

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

## **Judiciary Subcommittee A**

Lawmakers heard from officials of the Secretary of State regarding election issues stemming from the recent primary election in West Virginia.

A national expert on ballot access laws who appeared via phone told lawmakers that one way to avoid potential embarrassments like a felon from Texas garnering 40 percent of the vote would be to lower the filing fee required for candidates to appear on the presidential primary ballot.

He stated that if you lower the filing fee, you might eliminate that problem because a lower fee might have encouraged more fringe candidates to run in the primary thus further diluting what was seen as a protest vote against President Obama.

Under current state law, the only requirement to appear on the presidential primary ballot is to pay a \$2,500 filing fee. Of the 12 states that use filing fees for presidential primary ballot access, West Virginia’s \$2,500 fee is among the highest, according to data provided by the official.

Of the 38 states that have presidential primaries, there are three main standards for ballot access, the expert told the committee: Filing fees, a specified number of signatures on petitions, or a level of media coverage that legitimizes the individual’s candidacy. He said that he believes petitions are the least desirable means for ballot access.

For instance, he stated, the Republican presidential primary in Virginia featured only Mitt Romney and Ron





Paul on the ballot, as all other candidates, including major candidates Rick Santorum and Newt Gingrich, failed to collect the required 10,000 verified signatures to appear on the ballot.

Thirteen states use media coverage of candidates as a standard for determining presidential ballot access.

The West Virginia Secretary of State once again reiterated that the U.S. Constitution trumps state law in presidential ballot access. She further stated that the Legislature can only change procedural requirements for presidential primary access, not the qualifications spelled out in the U.S. Constitution.

The expert was later asked whether West Virginia could require presidential candidates to file in person at the secretary of state's office and told the committee that no state currently uses such a standard. At one point, Utah had an in-person filing requirement, but repealed the law in light of numerous complaints.

### **Judiciary Subcommittee B**

An informational meeting regarding the study of forensic science was on Judiciary B's agenda. The program, presented by the Director of Marshall University's Forensic Science Center (MUFSC) and Professor of Forensic Science, provided insight into the science. The committee will use the information to work with the State Police forensic science program participants to determine what needs it may have.

Forensic science is evolving due to technological advancements. It covers crime scene investigations, surveillance and prevention. An accredited Master's Degree Program is available at Marshall University is one of 16 accredited MS programs in the country. Courses include DNA technologies, chemistry, trace evidence and digital forensics, among other crime scene areas such as research in drugs, explosives and arson debris.

According to material provided by the professor, the MUFSC was authorized with the passage of SB 252 in 1994. It has partnered with the State Police in 52 criminal cases and completed 31 body identifications, to name a few instances of its working program. It also has assisted 10 states: WV ,PA, NC, TN, OR, NE, MD, IL, RI and KY with DNA testing completing 240 criminal cases.

### **Select Committee on Outcomes-Based Funding Models in Education**

Lawmakers met with a senior associate of HCM Strategists of Washington DC to continue discussions regarding West Virginia's higher education productivity based on the concept of performance funding. The company works to advance policy by connecting problems to policy by finding common ground, proposing specific solutions and forging strong alliances. The organization is working with membership of the Education and Finance Committees to seek ways to develop a new and innovative methodology to distribute funds to higher education institutions.



In May, the group initiated discussions which have been interactive and facilitative. A collective effort by lawmakers, educators and other officials are determining West Virginia's higher education priorities and seeking to adopt a statewide educational attainment goal.

They will look at the numbers of higher education graduates, their persistence, how affordable the cost of attending an institution is to students and a variety of other factors such as academically at-risk students, PELL grants, research and transfer credits, among others.

While a number of other states have key elements such as a common attainment goal, a simple formula to measure changes over time, definitive needs of each state, differences in institutional missions and stability over time, state lawmakers added lengths of time before graduation and shifting of credit hours when a student changes degrees, and demographics. Overall lawmakers are attempting to make sense of the dollars and the policy of the schools students are trying to get through.

Throughout July and August, HCM strategists will be meeting and working with officials within the Community and Technical colleges as well as officials from the Higher Education Policy Commission. According to the HCM spokesperson, the plan is to go to campuses, conduct regional meetings with educational leadership and report their findings back to the committee.

It plans to formalize the metrics and provide options for various formulas using different types of weights by September and, in October, make recommendations to the legislative committee so it will have November and December of 2012 to work on the funding formulas.

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

An attorney for Bowles, Rice, McDavid, Graff & Love provided a follow up on normal retirement age being reviewed by the federal government. Below is information taken directly from the IRS website regarding the consideration. Online:

*<http://www.irs.gov/retirement/article/0,,id=256684,00.html>*

“Guidance on Normal Retirement Age Rules for Governmental Plans”

The IRS and Department of Treasury recently issued Notice 2012-29 to announce their intent to issue guidance on the applicability of Treas. Reg. section 1.401(a)-1(b) (the 2007 Normal Retirement Age regulations) to Internal Revenue Code section 414(d) governmental plans.

The guidance under consideration would:

- Clarify that governmental plans don't need to have a definition of normal retirement age if they don't provide for in-service distributions before age 62, and
- Expand the age-50 safe harbor rule in the 2007 NRA regulations, which currently applies only for plans in which substantially all of the participants are qualified public safety employees, to also apply to a group substantially all of whom are qualified public safety employees (see Treas. Reg. section 1.401(a)-1(b)(2)(v)). This would mean that a governmental plan could satisfy the normal retirement age requirement by using a NRA as low as 50 for qualified public safety employees, and a later NRA that otherwise satisfies



## Interim Highlights

the requirements in the 2007 NRA regulations for other participants.

The notice also states the IRS and Treasury’s intention to extend the effective date of the 2007 NRA regulations for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of January 1, 2015, or the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register.

Governmental plan sponsors may rely on Notice 2012-29 for the extension until the 2007 NRA regulations are amended.”

The public is being solicited for its opinion on the proposal with July 30th being the last date for comments. State lawmakers have been notified that several states and state organizations are not pleased with the federal proposal and are making comments to the IRS. The federal regulations have been postponed for governmental retirement. However, it should be noted, anybody who commences and takes annuity by July 1, 2015, should not be concerned.

Regarding state retirement plans, a senior policy analyst from Employment Relations at WVU addressed the committee on a proposed WVU Voluntary Separation Incentives Plan. Not presently available nor approved, the open call severance plan would allow Universities to provide voluntary options as to who would be eligible.

According to the spokesperson, the idea would allow universities to forecast the financial needs of themselves. The decision to accept the separation plan would be voluntary. It offers the schools a lot of flexibility and allows university officials to tailor make offers according to the needs of the employees. There would be no unfunded liability in the program and oversights, such as legislative oversight and university human resource managers, would be built in.

When lawmakers made inquiries, the analyst said the rationale for considering the option was without university involvement, a myriad of situations arose with not one size fitting all. The university would like to manage individual circumstances for the betterment of the employees.

Before, severance plans were problematic because they didn’t allow the universities to be involved. Differing employee circumstances showed that one size would not fit all due to the wide variety of university employees. Ultimately, to save money and improve managability - it proved best to to manage individuals on a case by case basis through targeted offerings.

The numbers of the people taking the incentive plan is predicted to be small.

Lawmakers noted they would run it by the Consolidated Public Retirement Board and PEIA before further deliberations.

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## **Regional Jail and Correctional Facility Authority**

### **Justice Fellowship and Parole in West Virginia**

During June’s interim meeting, the Committee on Regional Jail and Correctional Facility Authority heard from a representative with Justice Fellowship and Ambassador Ministries and also the Chairman of the West Virginia Parole Board.

First to address the committee were the representatives with Justice Fellowship on their experiences working with state on criminal justice and prison reform.

Justice Fellowship, based in Virginia, was founded in 1983 by the late Charles Colson who was President Nixon’s political director and, who also served time in federal prison for his role in the Watergate scandal.

The Director of External Affairs for Justice Fellowship, who was unable to attend the meeting, did provide a written testimony to the committee with two recommendations as the state begins to tackle criminal justice reform. The first recommendation is to stress the importance of maintaining the support and participation of the executive branch early on or there is a possibility that change may never occur. The second recommendation brought forth by the Director is to focus on the constitutionality of the changes that will be proposed.

Looking at programs, policies, and curriculum that have been put in place in other states may be useful for prison reform in West Virginia. The Director stated that Prison Fellowship Ministries focuses a great deal of time,

energy, resources and enthusiasm on faith-based dorms, facilities, programs and educational opportunities. This is something that West Virginia has showed interest in as well. However, the Director stated that what works in some states may not work here. Faith based options have in the past been challenged in the courts, so a blend and balance of approaches to reform may be something for the state to consider.

Justice Fellowship has also advocated for reforms such as alternatives to incarceration, sentencing reform, supervised release, drug and alcohol treatment, accountability courts, “swift and sure” sanctioning, and other changes that have increased public safety, respected victims, and reduced recidivism in other states.

The Provisional Licensed Counselor with Ambassador Ministries discussed the problems with recent proposed legislation that calls for additional drug treatment staff and supervised parole specific for inmates with addiction issues. The proposal lacks serious sustenance and also overlaps with current programming and procedures. The Counselor suggested that the state consider other effective programming such as faith and character based communities. Currently 18 states are using such programs. Inmates can focus on developing and enhancing their character and faith through the one year programs. Most of the staffing and programming is done by volunteers of various faith organizations, churches, and colleges. These types of programs, according to the counselor, have proven to be successful and highly praised by Division of Corrections staff.

The counselor also stated that community support is



important. This means expanding work release, halfway houses, and extensive mentoring programs.

The counselor also suggested that the state should look at is the current parole board. One problem is the hindrance of an unbiased parole board because some parole board members have sat on the board so long that they are reviewing some inmates for multiple times. Looking into how long board members serve on the parole board is something to consider. Objective parole consideration should also be given, according to the counselor.

Lastly, the counselor told the committee that another problem is the tobacco use ban. The ban is costly. Reconsideration of the ban could save taxpayers \$100,000 and would also help reduce the population almost immediately.

Next, Committee members heard from the Chairman of the West Virginia Parole Board regarding ways to speed up parole for inmates by possibly providing automatic parole for nonviolent offenders and also enacting a maximum six month sentence for parole violators. Both of these possibilities were mentioned by lawmakers, but the Chairman stated that he didn't object to these two options.

One lawmaker did raise concerns with these two options because current trends show that 15 percent of Division of Corrections inmates are for parole revocations, with more than half resulting from technical violations than criminal acts.

The Chairman of the Board told the committee that each year the Parole Board has more than 4,000 parole

hearings and grants parole to about 50 percent of them. Most of the time, inmates are denied parole because they haven't completed necessary court-mandated counseling, treatment, and training programs.

**Agency Updates**

Committee members were also given agency reports from the Commissioner of the Division of Corrections, the Acting Executive Director of the Regional Jail Authority and the Director of the Division of Juvenile Services.

The report from the Division of Corrections shows that the current population in the state's prisons has crested over the 7,000 mark. Over 1,700 prisoners are being held in regional jails as they wait for bed space in the prisons. The jail backlog will grow to about 3,500 inmates by the end of the year if no more prison beds are added.

The Regional Jail Authority report includes updates and changes since last month's meeting. Two critical issues facing the Regional Jail Authority include:

- 63 pending sexual harassment suits against the Regional Jail Authority
- 1,853 Division of Corrections inmates are being held in the system and 372 convicted felons are awaiting sentencing for a total population 2,225, which is 46 percent of the Regional Jail Authority's total population.

Some of the operations occurring within the Regional Jail Authority include:

- Expand video capability and to add audio capabilities to all intercom boxes at all jails
- Scared Straight Program was pulled from the Southern Regional Jail and there are no plans to re-



instate the program.

- A current total population from all regional jails is 4,807

The Division of Juvenile Services report highlights include:

- The Davis Juvenile Center for female offenders is still under construction
- Responding in a positive manner to a lawsuit which questions many practices that are in place that the Industrial Home for Youth.

There are currently 802 youths assigned to the Division of Juvenile Services.

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

### **Community and Technical College System**

The Chancellor of the West Virginia Community and Technical College System told lawmakers the organization has had significant success in its workforce training programs this year but that challenges remain as they look to the future.

The Chancellor talked about a partnership between Bridgemont Community and Technical College and Toyota that will allow students to attend school two days a week and work three days per week at Toyota's engine and transmission factory in Putnam County to earn credits in an associate degree program. He said Toyota has a similar partnership in Kentucky, and the

first Bridgemont class is scheduled to start this fall.

The Chancellor said Toyota will pay students \$17.50 per hour, and the company went into high schools to help recruit students. He hopes the program can be expanded to other companies.

He said the state's community and technical college system continues to meet with the Independent Oil and Natural Gas Association to finalize plans for a petroleum tech program in Wheeling and in Fairmont along with ways to meet the industry's future needs.

Almost all the courses are occupation-focused so they lead to jobs, something that keeps students optimistic. Many of these programs are certificate programs, where the students can earn these college credits and job training in a year's time, and then perhaps go on to get an associate degree if they so choose. The Chancellor emphasized that his programs are geared toward working adults and disadvantaged individuals that sometimes need a more immediate goal that a one year certificate presents. In this time frame they see a light at the end of the tunnel and stand a much better chance at finishing their program. They can always go back for more education but finishing a certificate program that gives them college credit as well as high level jobs skills puts them in a position to get a good paying job according to the Chancellor.

He also said his system's work force training in the state has experienced tremendous growth, offering more than 100 courses now, up from just 52 courses in 2004 and almost 200 percent more certificates awarded today than in 2004. He tries to focus all his certificate programs on



skills that are in high demand for employers in the area.

The Chancellor is also looking at starting a mining tech program, petroleum tech, instrument tech, and health info tech program. Right now, most of these would involve more than one community college to offer curriculum in two to three places,

He acknowledged that it's "still a struggle," to gain public awareness to the fact that community and technical college training can be just as valuable if not more so than four-year degrees. It is a cultural change that he pledges to continue to work on as he markets these programs to both high school students and adults.

**Interim Committee Meetings  
2012/ 2013**

June	25 - 27, 2012
July	23 - 25, 2012
August	13 - 15, 2012
September	10 - 12, 2012
October	8 - 10, 2012
November	26 - 28, 2012
December	10 - 12, 2012
January	7 - 9, 2013
February	10 - 12, 2013

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