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West Virginia Legislature's  
Office of Reference & Information

# Interim Highlights



House Chamber

## Chamber Chandeliers

*Having taken significant strides in the past few years to enhance the Legislative chambers, from total renovation to upgrades in technology, the job now entails ongoing maintenance.*

*Two years ago, the identical chandeliers, which hang from the skylights in the center of the Senate and House of Delegates' chambers, were completely renovated. This extensive work included replacing missing pieces of crystal*



House Chandelier



Senate Chamber

*from the original company in the Czech Republic.*

*Presently, both have been lowered so that their 10,000 pieces of rock crystal can be carefully cleaned and light bulbs replaced.*

photos: Martin Valent

## Agriculture and Agri-business Committee

### Farmers Market Nutrition Program

Committee members heard from the Deputy Commissioner of the West Virginia Department of Agriculture regarding farmer's market funding, federal dollars used on senior citizen vouchers, and what constitutes an approved farmer's market when distributing vouchers.

In 2001, the Senior Farmers Market Nutrition began as a grant program of the USDA. That first year, West Virginia

targeted 13 counties in order to see how the program would be received. A total of 36 states took part in the program. This year, there are 50 states and Indian nations receiving the grant money for the program.

West Virginia receives \$544,630 each year in federal funding for the farmer's market voucher program in which a total of \$500,000 in vouchers was dispersed to qualifying senior citizens. The remaining funding is allocated for WVDA printing, supplies, bank fees, travel and advertising.



Those eligible for the farmers market vouchers must:

- Be 60 years of age or older
- Meet the Federal Poverty Income Guidelines
- Go to senior centers in their county to sign- up

When qualifying applicants go to a senior center, they must complete an application form and must also present some form of ID for proof of age. Income eligibility is on the honor system. Participants then receive one booklet of 10, \$2 vouchers. They are also given a list of the eligible food items available and a listing of the participating farmers' markets.

Currently, West Virginia has 300 farmers and farmers' markets participating in the program. In order to be certified farmers must meet a few guidelines including:

- Must be a bona fide farmer, meaning an individual authorized to sell eligible produce at participating farmers' marts or farm stands
- Must be a bona fide farm stand, meaning the structure should not be moveable and is used primarily for the sale of fresh, locally grown fruits and vegetables.
- Must home grow 25 percent of what they sell
- Must meet county and city rules

Right now most items that can be bought with the vouchers are fruits and vegetables. Honey was recently added this year and it is hoped that jams and jellies will be added soon.

Since this program uses Federal funding, the WVDA must conduct random monitoring in order to determine if farmers are following proper rules and procedures.

The program runs from July 1st to October 31st.

### 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.

### Children, Juveniles & Other Issues, Select Comm.

#### Drug Use During Pregnancy

The committee heard a presentation by Dr. Stefan Maxwell, Maternal Fetal Medicine Specialist, Charleston Area Medical Center and Women and Children's Hospital, discussing Perinatal Partnership relating to drug use during pregnancy.

In 2006, the West Virginia Perinatal Partnership conducted and published a Key Informant Survey of Perinatal providers. The purpose of the survey was to identify perinatal provider's perceptions and experiences regarding the major factors affecting the state's poor newborn outcomes. The increased use of illicit and legal drugs and alcohol among pregnant women was reported as a major factor by 50 percent of the providers responding.

The WV Bureau for Behavioral Health reported that in 2006, there were 373 pregnant women treated for substance abuse, representing 1.6-2 percent of all births that year. They found that drug use among pregnant women does not appear to be isolated geographically, but indeed is found across the state.

The WV Health Care Authority found that 26 of 31 birthing hospitals in West Virginia reported at least one case of drug/alcohol treatment of a pregnant woman coming in for birth.

Because so many of the addicted newborns are referred to and treated within the NICUs, the Perinatal Partnership commissioned the Center for Business and Economic Research at Marshall University to identify the cost savings we might experience if we are able to reduce the number of babies born addicted. They found that the mean charge for hospital treatment for newborn drug withdrawal syndrome is \$26,075 per infant.

The West Virginia Birth Score Office at the WVU School of Medicine added a question to the Birth Score Tool in 2007-2008 asking new mothers in the hospital whether they had used any illicit or legal drugs or alcohol during pregnancy. Of the total West Virginia resident births during that time period, 800 women or five percent said they had used during pregnancy.

### Economic Development , Joint Commission on

#### **Alternative Fuels & Biofuels**

Following the direction of Senate Concurrent Resolution 51 (SCR 51) regarding the use of alternative fuels and biofuels, committee members heard a presentation from the Executive Vice President of AC&S, Inc. The company is in the business of manufacturing biodiesel fuel.

According to the AC&S website, the company “initially began operations in 1986 with the opening of a rail tank car cleaning and repair facility on a small tract of leased property. Recognizing the need for growth and expansion, the company acquired 11 acres within Par Industrial Park in Nitro, West Virginia. Shortly after that, the company began construction of new facilities, which included expanded rail tank car cleaning and repair capacity, initial chemical manufacturing units, and a waste water treatment system...A state of the art environmental laboratory was established and staffed with professionals having substantial environmental experience. The environmental laboratory allowed the company to meet its internal needs and also offer services on a commercial basis. So in 1990, the Analytical Services Department was conceived.

Its business model called for the maximization of the existing manufacturing equipment onsite using in-house resources for construction. It then designed the biodiesel manufacturing process for future chemical manufacturing.

Chemical equations aside, biodiesel fuel, in this case consist of soybean oil and petroleum diesel fuel. It is used in diesel burning vehicles (school buses throughout 31 of West Virginia’s 55 counties) without any conversions of fuel tanks or other mechanical changes.

The fuel has the highest energy balance of any fuel, is biodegradable and non-toxic and emits less than 78 percent carbon dioxide than petroleum diesel on a lifecycle basis, according to a United States Department of Agriculture/Department of Energy (USDA/DOE) study.

Coupled with federal tax credits and an allowance for county schools’ transportation costs if they apply for the 10 percent credit, the biodiesel fuel manufacturer and

alternative energy entrepreneur told committee members he was hoping to capture the remaining school bus market and ultimately the state vehicle fleet. He also envisions retail outlets.

AC&S became the first renewable transportation fuel producer in West Virginia last year. The company has a production capacity of three million gallons a year. One of the fuel’s greatest features is its lubricity. This quality greatly reduces engine maintenance.

Overall, as part of West Virginia’s energy plan, which promotes increased energy efficiency, fossil energy, and renewable energy and biodiesel, the fuel also reduces imports of foreign oil, reduces greenhouse gases and provides economic growth to America, the company spokesman said.

### Education Accountability, Legis. Oversight Comm. on

#### **State Level Financial Aid**

During the first of two scheduled LOCEA meetings, the Chancellor of the Higher Education Policy Commission (HEPC) spoke to the commission regarding state level financial aid.

The goals of state level financial aid are to increase access, to make college accessible for all qualified and interested West Virginians and to address cost and affordability, protecting and promoting affordability of higher education for all West Virginians.

The Chancellor also highlighted several changes adopted during the 2009 Legislative Session relating to the Grant Program Rules.

The changes eliminated the application for State-Level Financial Aid and provides that the filing of the FAFSA by an individual indicating West Virginia as their state of legal residence will be considered an application for the Higher Education Grant as well as eliminated the point formula ( $GPA \times 12.5 + ACT$  composite or SAT equivalent = 45 or higher) for high school graduates within five years of enrollment and replaces it with requirements that a





student meet institutional admission standards and have a cumulative high school GPA of 2.0 or higher.

Also, the changes eliminated the March 1 priority date for awards. This provides greater flexibility to adjust priority dates and deadlines and to make awards based on the amount of funds available and state policy priorities, while ensuring accountability through Commission and Council review and eliminated the provision that awards at non-for-profit private institutions and for-profit private institutions shall not exceed the prior year average award at comparable institutions. This will allow for flat awards across all types of institutions for students with the same amount of financial need.

**Curriculum Standards Program**

During its second meeting, LOCEA members were updated by the state Superintendent of Schools on the state led Curriculum Standards program. One change is the integration of performance skills in classrooms as well as a more rigorous and challenging Standard 9 test. The Standard tests under No Child Left Behind tended to be more simple and less challenging.

Another issue that is being looked into is teacher quality, which the Superintendent told the committee that his office and the teachers are working close together. He told the committee that it is time to look at policies across the country that are working.

The state Superintendent also told the committee that his office would be applying for the “Race to the Top” grant, which is a part of the American Recovery and Reinvestment Act (ARRA). The fund will reward innovation and change, by awarding incentive grants to states that show progress in the following four areas:

- Boosting teacher effectiveness and getting more good teachers into high-poverty, high-minority schools
- Setting up data systems to track how much a student has learned from one year to the next
- Improving academic standards and tests
- Supporting struggling schools

The Higher Education Commission has been working more with schools in order to provide more AP and

baccalaureate courses for those high school students planning on going to a four-year college. High schools are also creating a collaborative pathway to vocation school to community college.

**CTC & Host Institution Separation**

The committee also heard from the Chancellor of the Community and Technical and College System of WV (CTCS) regarding the implementation of House Bill 3215, which called for the removal of the administrative link between various universities and community and technical colleges.

Three of the five colleges specified in the bill made the decision to change the college name with the other two retaining existing names prior to the deadline of July 1, 2009. Those new names include:

- The Community and Technical College of WVU Institute of Technology is now Bridgemont Community and Technical College.
- WV State Community and Technical College became Kanawha Valley Community and Technical College
- Marshall Community and Technical College will change the college name effective no later than July 1, 2010
- Pierpont Community and Technical College as well as WVU-P will retain existing college names.

The Chancellor also told the committee that separation of assets and liabilities have already been completed and signed.

Some of the community and technical colleges separated the Banner databases in order to provide more tailored services to CTC students, faculty, and staff. Projected cost for the change is expected to be less than \$246,000.

Some of the community and technical colleges have hired new personnel with the goal of providing more targeted services to CTC students at a cost less than previously paid to the host institution.

**Interim Meeting Schedule & Agendas**

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



## Education Subcommittee A - Public Education

### Professional Development

Karen Huffman and Nathan Estel gave a joint presentation to the committee on behalf of the West Virginia Dept. of Education. The presentation was based on approximately four years of research on teacher quality issues. It outlined the Department's initiatives in the areas of teaching standards, evaluation, professional development, advancement, recruitment and retention in shortage areas.

They outlined a mechanism that allows the state's 20 institutions of higher learning that prepare teachers to assess their programs against the state standards to see how they measure up.

They also discussed professional development and the need to improve the abilities of current working teachers and not just new teachers coming into the system. Professional development is a huge undertaking, given the time constraints and demands already placed on teachers. To accommodate this, an E-Learning professional development program will be available to the state's teachers by the fall of 2010.

After conducting this research over four years, the Department of Education offered three recommendations to improve the current system. They want to re-visit the salary structure to add incentives for the state's best and brightest to become teachers. They also want to provide an advanced credential for teachers that have logged many professional development hours as well as reward individual educators and schools that participate in professional development.

They also discussed a program they had developed called West Virginia Teachers First Class. The program markets the profession to a wide variety of people including, high school and college students as well as West Virginia natives that teach in other states and are looking to return home. They outline the increase in salary, low crime, low cost of living and many recreational opportunities in the state as reasons to come back.

They also addressed giving non-traditional teachers the proper training they need and ensuring that the traditional

style teachers they work with receive them in a positive manner.

## Education Subcommittee B - Higher Education

### RHEP/AHEC

The committee heard an overview of the Rural Health Education Partnerships (RHEP) and Area Health Education Centers (AHEC) programs from Dr. Robert Walker, Vice Chancellor for Health Sciences with the Higher Education Policy Commission (HEPC).

WVRHEP/AHEC is a large community based health professions training system throughout West Virginia funded by both state and federal funds. The students and medical residents learn to become highly qualified rural health professionals while they serve rural communities. These programs are a partnership of rural community leaders, practicing health professionals, higher education schools and programs and state policy leaders.

The mission of the program is to exercise social responsibility to the state's citizens by increasing the number of West Virginia trained health professionals in practice in rural under served communities in the state. This is the only statewide publicly funded system of higher education to create degree required rural health rotations for all state supported health sciences students.

The local rural health agencies, organizations, and community leaders with compatible missions, goals and objectives, who, with the health sciences centers, are willing to provide faculty/preceptors, learning resources and technical support for the students and trainees are critical to this program. Also, RHEP enters into contracts and affiliation agreements with community providers and organizations to support student and resident training.

The evaluation system of RHEP/AHEC includes three basic areas of assessment: 1) the influence that RHEP/AHEC training has on students' attitudes and career plans, 2) the students' experiences in RHEP/AHEC as a means to improve the curriculum and management of the program, and 3) the tracking of practice locations of



graduates to gauge the numbers recruited to rural and/or under served areas of the state. The database is also used to record the types of community service learning activities of students and the number of people impacted by these student provided services.

The committee also heard a brief summary of the RHEP audit.

## Equal Pay Commission

### Commission's Charge

Members of the Equal Pay Commission were briefed by their chairman and legislative counsel regarding the responsibilities of their charge. The commission was established 10 years ago by the Legislature to address inequities in pay among men and women in the public sector.

Each year, the state provides \$250,000 to make salary adjustments when it is determined that females on the payroll are getting paid less for the same work assigned to males. Federal dollars add to that amount in a 2 to 1 ratio.

During these interim meetings, the Equal Pay Commission is expected to hear from speakers who address pay inequity situations around the state and throughout the nation. In addition, the committee reviews a variety of public jobs and pay grades to determine out the greatest inequities in pay scales.

## Finance Subcommittee A

### State Trooper Compensation

Committee members were presented with one of their study assignments HCR 77 by counsel during July's meeting. HCR 77 calls for the study of compensating state troopers for off-duty time when required to be on standby to be called back to work.

The Director of the Department of Administration spoke

briefly to the committee regarding the unemployment status in West Virginia. Actions being taken include a hold on filing positions unless completely necessary and hiring restrictions.

The Department of Administration has also hired HAY Group, a consulting firm, in order to help with the classification and compensation of West Virginia employees. This group will solely focus on compensation not benefits.

HAY will look at job classifications that don't exist anymore as well as the inappropriate salary mixes in the state. In summary, the Director told the committee that West Virginia's current system is out-of-date and must be updated.

## Finance Subcommittee B

### Energy Stimulus & Efficiency

Kelly Bragg, Energy Development Specialist for the West Virginia Division of Energy briefed the committee on energy stimulus and efficiency in government facilities.

The Division of Energy received the authority to spend 50 percent of the \$32 million awarded in stimulus funds for use in energy efficiency and investment in new energy technologies. These monies will go to fund projects across various state agencies including the Department of Corrections, Higher Education and Health and Human Resources.

To date, \$13.1 million has been allocated as the first payment of stimulus funding to the Division of Energy. The Division submitted projects to the federal government all the way up to the full \$32 million level, and expect to receive that full amount. The state agencies benefiting from these funds, applied for them by submitting their unfunded energy projects to the Division of Energy.

The projects applied for were grouped into three categories: save energy plans, block grants, and weatherization.



Committee members discussed the need for investing in newer, state of the art energy saving technologies with this money rather than focusing solely on efficient building and weatherization techniques. Many lawmakers believe this, and not the more simple projects, is what the money was intended for.

However, it was discussed that there are currently no jobs using these technologies in the state and very few experts to teach people how to use them. Given that, some lawmakers said it was pointless to spend the money for training in these technologies when there are currently no jobs in the state using them or even a certification of proficiency in these skills. The committee is going to explore establishing a certification in the use of newer, state-of-the-art energy saving technologies.

### Finance Subcommittee C

#### Post Employment Benefits (OPEB)

The director of the Public Employees Insurance Agency (PEIA) provided an update on the status of Other Post Employment Benefits (OPEBs) to the Finance Subcommittee. Presently, PEIA has a \$7 billion outstanding liability regarding these benefits provided to retired public employees. The debt has developed over the years because of retiree health care insurance coverage and conversion of unused sick leave for additional days of coverage upon an employee retirement.

The Legislature, in 2001, passed into law, a bill that prohibits workers hired after 2001 from receiving additional health care coverage by converting their sick leave. Still, people employed today and who have worked for the state for 30 years retain that benefit.

If left unchecked, the debt is expected to grow to \$18 billion by 2023. Today's workers put in approximately, depending on pay grades, \$140 a month to subsidize existing retirees. To clear the board for one year, that amount would have to be as much as \$760 a month. The director acknowledged that type of increase is clearly not an option. Lawmakers are continuing to look at the ways and means to reduce the \$7 billion liability.

### Forest Management Review Commission

#### Silviculture

With timber the only industry practiced in all of the state's 55 counties and affecting the overall economy, lawmakers are seeking an update on the development of a strategic plan for WV forests. Providing an overview was the Director of the Division of Forestry who explained the fundamentals of silviculture to the committee.

"Silviculture" is tending the forest, using scientific guidelines to procure the commodities the landowner desires, according to the director's presentation. Silviculture employs both intermediate and regenerating treatments.

Intermediate involves thinning stands, sometimes termed crop tree release, to allow sunlight to reach all sides of the trees.

Regeneration is the planned removal of the existing stand that will insure the reestablishment of the forest. Among various treatments are the seed tree or shelterwood method, the clearcut method, single tree selection method and group selection. While maintaining "certification", demanded by foreign markets, it is necessary to consider trees in all four of the forests' crown classes: dominant, co-dominant, intermediate and suppressed. Four size classes (seedling, sapling, pole timber and saw timber) are also evaluated.

The Director of the Division of Forestry told lawmakers that it may be tempting for landowners who have recently purchased or inherited their property to see trees as a good mine, particularly since there has been little investment of time or capital. He told lawmakers "trees may be cut with impunity without contract language which specifies cutting care. The residual stand may be greatly injured by falling trees and cutting of all the larger trees and the wounding of others destroy any attempt of sustainability, which is very important in these days of "certification".

The director further provided insight into a variety of harmful cutting methods and asked them to consider the question, "Are we practicing forestry or just harvesting timber?"





During its next meeting, lawmakers will be seeking an overall perspective of the timber industry, from severance tax updates and possible changes in the tax system that would make it more attractive to keep industry entrepreneurs (furniture companies, woody biomass, pellet fuel, paper, mulch, charcoal, boiler fuel, etc.) interested in investing in this state.

## Gov't Organization/ Gov't Operations - Joint Meeting

### Report on Department of Education & the Arts

Members attending this joint meeting heard subcommittee reports from the various Government Organization subcommittees.

Next, a representative from the Legislature's Performance Evaluation and Research Division presented a report on the Department of Education and the Arts' Boards, Commissions, Committees and Councils.

The report included five major recommendations.

First, the Department of Education and the Arts should coordinate with the Office of the Governor to appoint appropriate persons to each of the expired and vacant positions that exist on the various boards, commissions, councils, and committees.

Second, the Legislature should consider abolishing the Advisory Committee on Journalistic and Editorial Integrity, stating that it had never met.

Third, the Legislature should consider abolishing the Distance Learning Coordinating Council, stating that, on information from the Cabinet Secretary, that "the council had completed its mission of coordinating distance learning and thus was no longer needed".

Fourth, the Legislature should remove the sunset date references in the West Virginia Code for the Capitol Building Commission, Center for Professional Development, Commission for National and Community Service, Division of Culture and History, Division of Rehabilitative Services, Educational Broadcasting

Authority Board, and the Records Management Preservation Board.

And fifth, the Legislature should consider amending the minimum meeting requirement of the Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities Board from four times per fiscal year to "as needed."

A representative from the Department of Education and the Arts spoke briefly to the Joint Committee stating that the Department agreed with what was contained within the report.

## Government Organization - Subcommittee A

### Optometry

Members of this subcommittee heard presentations from speakers representing the field of optometry regarding proposed changes to the laws governing their practice. Members were told that the last major change in the definitions in state code relating to optometry were made back in 1976 and since then there has been major advances in the technologies and techniques used by practitioners.

The speakers stated that the law has not kept pace with science and education and is restrictive to the detriment of their constituency. The people they serve, therefore, are not receiving the treatment that their required level of education prepares them for, thus possibly costing money and resources. Also, the current law and scope of practice in West Virginia is not up to current curriculum for optometry students.

The committee was told that bringing the law up to date would improve access, affordability and availability of eye care in West Virginia, particularly in rural areas. In doing so, the Board of Optometry would provide oversight for any new changes permitted within a narrow scope and any expanded authority would only be granted to physicians with proper qualifications.

In closing, the speakers stated that no profession should





ever be satisfied with the status quo and that growth is required to expand upon the knowledge base.

**Government Organization - Subcommittee B**

**Mixed Martial Arts**

A member of the West Virginia State Athletic Commission spoke to committee members this month on the commission’s desire not to permit or regulate Mixed Martial Arts in West Virginia.

The discussion was brought forth after the passage of HCR 84 during this year’s regular session, which calls for the study on the Athletic Commission and the regulation of Mixed Martial Arts.

Reasoning for the Commission’s disapproval of the sport was due to its no hold barred style that will see long-term consequences or long-term physical damage to young athletes.

The Commission member presented the committee with emails from the United States Amateur Boxing association asking the athletic commission to not support, endorse, or authorize MMA in their territory because, in the association’s opinion, it is the most violent and unsafe of all organized sports in the United States.

Mixed Martial Arts, as presented to the committee members, is a form of sport that combines most of the martial arts such as boxing, wrestling, jiu jitsu and tai kwon do. In its 10- year span the sport has evolved from stages fights with almost no rules to fights with established rules.

The Commission member also provided information on New York’s progress in continuing to ban MMA. In the report, it is stated that “while there exist injuries in virtually every sport, only in ultimate fighting injury to an opponent is an objective of a contestant.”

A study conducted by National Geographic indicates the dangers of serious injury in ultimate fighting by finding that ultimate fight blows are much more severe.

According to the report given to the committee, one of the strongest arguments against the legalization of ultimate fighting are the rules themselves. According to a MMA franchise, judges consider six criteria in determining a winner by priority:

1. Effort made to finish the fight via knockout or submission
2. Damage done to the opponent
3. Standing combinations and ground control
4. Takedown and takedown defense
5. Aggressiveness
6. Weight (in the case of weight differences)

There are currently 12 states that prohibit MMA fighting including West Virginia.

**Government Organization - Subcommittee C**

**Reclassifying Counties**

Committee members were presented with information pertaining to SCR 21 which requests the studying of reclassifying West Virginia’s counties.

West Virginia’s current classification system uses total assessed property value as the only criteria in determining salaries of county employees. West Virginia first had seven classifications but in 1996 was changed to 10.

The most recent example of “breaking out” a certain group of counties occurred with the ATV regulation legislation.

A representative with the West Virginia Association of Counties told the committee if the legislature is considering reclassification, they need to know what the classifications would be used for. Once that is determined, consideration for criteria could be decided.

Information given to committee members included what other states had classifications and what they used them for such as New Jersey which uses population to determine classification criteria in order to enact state legislation. Washington much resembled the system of

New Jersey but in 1991 abandoned the classification system and began using population census information.

### Health, Select Committee on

#### **Substance Abuse & Public Assistance**

Committee members have begun hearings and discussions on HCR 58, which would establish a Joint Legislative Committee on Substance Abuse and Public Assistance.

One of the speakers during the meeting is the Delegate who was the lead sponsor on House Bill 3007, which would implement random drug testing for recipients of federal-state assistance, state assistance and unemployment compensation. Although the bill did not pass, the Health committee was assigned HCR 58

The Delegate stated that there are a number of questions lawmakers will have to address in the coming months including the following:

- How many businesses are doing drug testing currently?
- How many businesses are actually required by state or federal law to do drug testing?
- What is the true cost of the drug testing both in the private sector and in state government?

“If they’re truly going to study this and want to know what’s going on, then there’s some real questions that need to be asked and this committee needs to drill into it,” he said.

The Delegate also stated that this proposal would bring many types of savings that cannot be ignored.

Speaking against the proposed legislation was the West Virginia ACLU as well as the Program Manager of the Family Support Unit for the Bureau for Children and Families.

A study by the West Virginia Center on Budget Policy showed that:

1. Random drug testing of public assistance recipients will face legal obstacles
2. Family Independence Assistance (TANF) recipients are not more likely to be substance users than the general population.
3. Random drug testing of public assistance recipients is costly and not efficient.

Approximate costs to test all West Virginians on public assistance would be \$3,881,480. Each drug test costs \$54 per person. This figure is based on existing caseloads and does not include any amount for new applicants.

Executive Directive of the West Virginia ACLU told the committee that random drug testing of recipients of public assistance is costly, inefficient, and likely unconstitutional.

### Infrastructure - Select Committee on

#### **Real ID Act**

Christy Morris, Homeland Security Director for the Department of Military Affairs and Public Safety, updated the committee on the Real ID Act, as well as the new federal legislation Providing for Additional Security in States’ Identification Act (PASS ID) that would repeal it.

Morris explained that backers of a proposed program to make driver’s licenses and identity cards more secure say their plan should replace the existing Real ID Act of 2005 that many states have resisted partially due to expensive investments in information technology.

States have complained about provisions of the Real ID law that require them to upgrade their driver’s license programs with new technology at their own expense. Real ID requires states to store data electronically and make it accessible to other states.

The Real ID Act created many regulations that states would have to comply with, giving little thought to what it would cost or how it would be financed. The Real ID Act also did not provide a realistic time line for states to become compliant. Although the Real Act was originally proposed in 2005, it took Congress an additional two



years to come up with specific regulations for the new identification cards. Therefore, the law did not pass until the end of 2007 and states had to be compliant by June of 2008, a task that was impossible for most states.

While states couldn't be fully compliant due to the cost and a tight time line, they could become "substantially compliant" by signing a set of documents to show they were working to be compliant as quickly as possible. West Virginia is currently "substantially compliant" and well ahead of many other states in this matter.

Advocates of the PASS ID Act say this alternative repealing the Real ID would be cheaper and more workable for the states, but would still improve security. Costs would be reduced by killing requirements that states use systems for verifying vital records, passport information and sharing identification information with each other.

Cost estimates say the PASS ID would cost a total of about \$2 billion, compared to about a total \$3.9 billion for Real ID under the current requirements.

The PASS ID is currently still being debated in Congress but if it passes, a set of regulations would be established for the ID and then a realistic time line would be set up for the states to become compliant. Under current Real ID law, states must now be compliant by December of 2009, but according to Morris, that doesn't seem like a realistic goal for most states.

Morris recommended to the committee that the Legislature wait and see what happens in Congress with the PASS ID before taking any action at the state level regarding the Real ID.

Judiciary Subcommittee A

**Satellite Voting and Vote by Mail**

David Nichols, Elections Manager, for the Secretary of State gave a presentation to the committee on satellite voting and voting by mail.

Nichols explained that all satellite voting areas would have the same security measures and hours as early voting precincts and there would be stringent rules with regard to where these precincts would be placed to ensure that there is no advantage to any party or candidate.

During the 2009 session, lawmakers were mindful of the long distances many West Virginians must travel to vote at a county courthouse. As a result, we passed a law allowing counties to establish early voting at locations throughout counties.

However, due the tightening of purse strings within the budget the state was unable to offer any money to help counties set up those satellite locations. As you might expect, in the midst of an economic downturn with falling revenues, few counties are enthusiastic about shouldering the burden alone.

While it will add some expense to elections, an expense that must be considered heavily in budgets on a county to county basis, Nichols believes the idea of giving more flexibility to voters is a good one, even if these satellite locations cannot be implemented by next year. By passing this law, the legislature made this possible, even if counties have to wait a few years until there is extra money in their budgets.

The West Virginia Association of Counties has surveyed counties on satellite voting and while the results are still coming in, it looks like about a dozen of the 55 are interested in adding early voting locations in time for the May 2010 primary.

Early voting has steadily grown in popularity in West Virginia. Last year, with interest in the presidential election spurring a large turnout, nearly 154,000 voters cast their ballots in early voting, surpassing the old record by about 22 percent.

With regard to vote by mail, Nichols explained that Class 4 municipalities could now do voting by mail for municipal elections. These municipalities are very small and do not even have full-time clerk staff so it would put an undue burden on them to have 20 days of early voting. This can be a useful alternative for them.





The vote by mail program has been adopted in Washington and Oregon, where voter participation has increased by as much as 10-30 percent due to the program. Voter fraud is also down in these states since this implementation.

It took Washington and Oregon 10 years to get from their voting by mail pilot program to full implementation.

**Same Sex Marriages**

Lawmakers conducted an informational meeting regarding the issue of a constitutional amendment to prohibit the state from recognizing same sex marriages in line with House Concurrent Resolution 88 (HCR 88) adopted during the 2009 Regular Session.

Initiating the proceeding, a West Virginia University College of Law constitutional law professor provided the history of the state’s constitution. According to the constitutional expert, West Virginia’s voters have addressed changes to the constitution 122 times, with 49 options being rejected and 15 dealing with the issuance of bonds. Overall, none of the amendments dealt with individuals’ Bill of Rights.

Following the constitutional background presentation, the President of the Family Policy Council provided insight into a variety of states that have acted upon the issue of same-sex marriages. Some states have clarified the definition of “marriage” through legislation and others have clarified it through the ballot. The Family Council president asked lawmakers to put the issue on the ballot to either be accepted as a change to the Constitution or rejected by voters.

A spokesperson from West Virginia’s American Civil Liberties Union (ACLU) requested lawmakers to consider the multiple layers of statutory protections the state already has regarding the definition of marriage “a loving and lifelong union between a woman and a man” and “to reaffirm via a constitutional amendment is redundant.” He asked lawmakers to reject recommending any constitutional amendment to the full Legislature.

Senior Counsel of the Alliance Defense Fund told lawmakers West Virginia’s definition of marriage is

ambiguous and calls for clarity. He also said children need to be funneled toward a family consisting of a man and a woman.

In closing statements, a spokesperson for Fairness West Virginia told the committee that his organization opposed placing the definition of same sex marriage on the ballot as a constitutional change. The West Virginia native believes the option discriminates against a small group of people. “Tyranny of the majority” was not to be a part of a democratic nation, he said.

The committee queried all of the speakers following the presentation ultimately expending their allotted meeting time.

Judiciary Subcommittee B

**Pregnancy & Childbirth Health Coverage**

Committee members heard from various speakers this month regarding HCR 104 and HCR 105. HCR 104 relates to whether a dependent child of an insurance policyholder should have the same insurance coverage for contraceptive health services as the policyholder. HCR 105 relates to the study of mandatory coverage by health insurers all expenses associated with pregnancy and childbirth.

First to address the committee was a member of the West Virginia Perinatal Partnership Committee on Unplanned and Teen Pregnancy and who is also the professor of Pediatrics at Marshall University School of Medicine. In her presentation, the professor told the committee that the West Virginia Perinatal Partnership has been conducting various studies since 2006 in order to identify why the state has poor health outcomes for our mothers and infants. One of the findings in the study is that women

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in West Virginia under the age of 20 have the worst pregnancy outcomes. The Partnership believes that most of the poor outcomes in this age group are preventable and are related to poor health habits.

According to the results of the study, adolescent pregnancies are high risk because:

- Most are unplanned leading to smoking, poor nutrition, anemia and STDs
- Lack of prenatal care and entering maternity care late
- Increased risk of certain pregnancy complications
- Unwanted— 65 to 70 percent of moms under 20 said their pregnancy was not wanted at the time or at all
- Up to 42 percent will have repeat pregnancy within 24 months

The Deputy Director of Operations for PEIA spoke briefly to the committee saying that the board has considered this and the main reason changes have not been made is because the board does not want to raise premiums more than they currently have.

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Last to speak was a senior research associate from the Marshall University Center for Business and Economic Research who told the committee that Marshall will be conducting a study that will look into the economic costs of mandatory contraceptive and pregnancy care coverage for dependent minors by health insurers in West Virginia.

The proposed areas of study will include:

- Social and economic costs associated with uninsured teen pregnancy such as contraception, societal costs and prenatal/perinatal care
- Baseline of the current availability of family planning facilities in the state as well as funding for these programs
- Estimate potential number of PEIA dependent minors needing contraceptive care and the associated cost to PEIA

- Estimate cost savings of providing contraceptive care in contrast to the associated costs of related pregnancies using behavioral risk factors.

The study, according to the research associate, should be completed this fall.

## Judiciary Subcommittee C

### National Sex Offender Registry Compliance

West Virginia officials and lawmakers are trying to determine if the state is in compliance with a federal act that would result in more stringent listings in the national sex offender registry and whether it's really worth trying to comply.

House Judiciary counsel explained that the Adam Walsh Child Protection and Safety Act of 2006 requires sex offenders to be grouped into three tiers for a national registry.

Tier 1 includes a 15-year registration for a "catchall" of misdemeanors and felonies; Tier 2 includes a 25-year registration for sexual offense cases involving minors and child pornography; Tier 3 is a lifetime registration for cases involving force, threat, children under 12 and kidnapping. Grouping into these tiers is retroactive.

One lawmaker, who has pushed for public access to registered sex offenders' Internet aliases, such as screen names, asked if the federal law requires this information in the registry as well. Counsel said the federal law would require screen names and pseudonyms, along with the sex offender's real name, Social Security, home and school address, license plate number, a description of the vehicle, nicknames, real and purported birth dates and passport number.

States that fail to comply could lose 10 percent of their U.S. Justice Department's Edward Byrne Memorial State and Local Law Enforcement Assistance Program grants. West Virginia's projected share for 2009 was about \$2 million, so the state could be out \$200,000 if it isn't in compliance.



The federal government had initially required states to be in compliance this month for the act, which includes the Sex Offender Registration and Notification Act, or SORNA, however the state and lawmakers will have more time now that the U.S. Department of Justice authorized a year long extension in May.

Lawmakers will address the differences between state and federal law in future meetings and will as a subcommittee make recommendations on whether it is good public policy to comply with the Adam Walsh Act. The goal is to have a recommendation ready by December.

Legislators also planned to look at practical problems stemming from current law, based on comments by a Putnam County Circuit Court Judge.

The judge told lawmakers that current state laws have unintended consequences and legislators should consider fine-tuning the system so more concentration is placed on targeting pedophiles as opposed to just cases involving minors.

The judge mentioned a litigant who, as a 32-year-old married father and active church member, was retroactively ordered to register as a sex offender for a consensual sexual act that occurred when he was 18. At the time, he had been “making out” with a 14-year-old girl and was caught by her father and charged with a crime. After the man registered as a sex offender, no one would allow their children to come over to his house and his children were shunned.

The judge also gave several examples of situations where sex offenders registered themselves but failed to meet the technicalities of making changes to the registration:

- A registered sex offender who lived in Kanawha County and worked in Putnam County registered with both counties. When he changed jobs to Kanawha County, he reported it to that county but not Putnam County and was indicted on a felony charge of failure to make a registration change.
- A registered sex offender’s job required him to travel to different sites in Kanawha and Putnam counties, and so under current laws he must go to the police detachment in that county each day before going to

work to tell them where he will be that day. He failed to report one day and was charged.

- A registered sex offender’s wife took out a loan and bought a new car for herself but both names were on the title. He was indicted for not registering her vehicle.

The committee also heard presentations and had brief discussions on the interlock program and enrollment in safety and substance abuse programs as well as recommendations issued by the Governor’s Commission on Prison Overcrowding.

Minority Issues, Select Committee on

**Racial Profiling Data Collection Act**

This select committee met briefly to take up procedural motions and to organize and review prior topics for upcoming meetings.

Staff discussed Senate Concurrent Resolution 61, a study assigned to the committee this interim session.

Senate Concurrent Resolution 61 requests a study on the results of the Racial Profiling Data Collection Act. The West Virginia Legislature adopted the Racial Profiling Data Collection Act during its 2004 regular session and legislative rules governing the study were adopted in 200. The study itself was conducted between April 2007, and September 2008.

Information based on over 300,000 traffic stops by city police, sheriff’s deputies and state troopers throughout West Virginia has shown that African-American and Hispanic motorists on West Virginia highways are proportionately more likely to be stopped and searched than Caucasian drivers, the study concluded.

The resolution states that this matter should be studied from several different perspectives, including, but not limited to:

1. The negative impact racial profiling has on the credibility of law enforcement within minority



- communities; and
2. Further investigation with the results of the study to determine why a disproportionate percentage of roadside searches conducted produced no incriminating contraband; and
  3. The negative impact racial profiling has on the image of West Virginia and that of its political subdivisions; and
  4. The position of the Legislature to raise awareness about racial profiling and the rights of motorists in regard to being stopped and searched on West Virginia highways.

The findings, conclusions and recommendations relating to this study, together with drafts of any legislation necessary to effectuate its recommendations should be reported to the full legislature in 2010.

### Parks, Recreation & Natural Resources Subcommittee

#### **Alcohol Ban at Sutton Lake**

Lawmakers heard from the Deputy Commander, Huntington District, U.S. Army Corps of Engineers regarding the alcohol ban at Sutton Lake on the grounds that it was the cause of 8 citation-related incidences. Given the fact that Sutton Lake has recorded the visitation of 1,800,000 people in the past three years, several members on the committee said the numbers don't substantiate the ban and are seeking further information from the U.S. Corps.

With the exception of East Lynn Lake and R.D. Bailey Lake, no total ban exists at any other West Virginia water retreats. At Burnsville Lake, just 15 miles from the Sutton reservoir, and at Stonewall Jackson Lake, 35 miles away, beer and liquor are allowed.

Entrepreneurs, who also appeared before the committee, said they invested "six figures" to building all-new boat slips and a large new store on the lake shore. The newly-enacted ban was implemented days before the grand opening of that new marina, much to the dismay of the developers.

The publisher of the local newspaper told the legislative interim committee that this loss of normal amenities - available nearly everywhere else in West Virginia - has hindered the economic development venture and also noted that emergency service personnel experienced no increase in their services regarding the lake and its adjoining campsites.

Lawmakers are inquiring how can one West Virginia site, with no record of excess danger, be singled out for a complete ban?

During its next meeting, committee members expect to receive data from the U.S. Corps of Engineers and from the Department of Natural Resources which would provide further insight into the decision.

### Regional Jail & Correctional Facility Authority

#### **Prison Overcrowding**

This month, committee members heard from the Cabinet Secretary of Military Affairs regarding prison overcrowding and what is being done to fix the problem including a commission made up of all three branches of government that met to make recommendations.

Overcrowding in the state's prisons is not a new issue. However, in January of this year, the Governor signed Executive Order 1-09, which created a commission to study the overcrowding issues and possible remedies to the problem. Those assigned to the commission included members from all three branches of government as well as department heads because it is going to take the cooperation of everyone in order to control the prison population in the state.

The report lists an action agenda of 14 items both immediate as well as long term actions. Topping the list was "alternative sanction", which would identify those offenders whose crimes may not have been too serious and sentence them to an appropriate level of community supervision of corrections.

The Cabinet Secretary told the committee that currently



three quarters of prison admission in West Virginia are for non-violent, property and drug crimes. Knowing this, the Commission believes that it is important to rehabilitate these offenders. West Virginia has used community and institutional services the least in the country and the Commission feels that this would be an effective step to cut down on the prison population. It is an important tool that is currently not being utilized. Widespread community corrections program, it has been found, increase the tools available to sentencing judges.

The Commission also feels that it is important to utilize an even more complete set of tools in the rehabilitation of offenders to include services in behavioral health, substance abuse treatment and intervention, and social, educational and job skills in a cohesive fashion in order to reduce recidivism and prevent additional crime.

Another recommendation made by the Commission includes the building of a new prison providing 1,200 new prison cells, other new prison beds that are already in the planning stage, additional work release units to assist offenders in the re-entry to their communities and other transitional housing options to assist offenders who have no other home plan. While it is the hope that the state will not have to build many more prisons, the Cabinet Secretary said that it is not feasible with the prison populations growing by three a day in the Division of Corrections alone.

While the commission listed various recommendations, their first priority was to make sure that any changes would not affect the well-being or safety of West Virginia's citizens.

Veterans' Affairs, Select Committee on

**Statewide Veterans' Survey Results**

A scheduled West Virginia University professor, who was to provide a presentation and final analysis of the statewide veterans' survey, was rescheduled to appear before the committee in August. The survey commissioned entailed partnering the Division of Veterans' Affairs and WVU to gain insight regarding

veterans' opinions on existing services. This survey has received national attention in many mental healthcare circles throughout the nation and has inspired other states to follow suit. According to committee staff, the outcome does not "spell doom and gloom...but it does show there is much room for improvement."

To update members new to the interim committee, legislative staff detailed the committee's actions for the past two years.

The veteran committee, created in 2007, has been charged with studying the current state of affairs of veteran services and identifying solutions to what the state can do to increase their effectiveness. Unfortunately, the committee is limited in a variety of ways since it is guided by federal guidelines.

However, the committee did ask the Higher Education Policy Commission's (HEPC) chancellor to declare social workers and psychologists "shortage areas" to be eligible for the Health Sciences Scholarship Program. This change was made to increase the numbers of students entering into these studies. The idea is to require graduating mental health care providers to work in rural areas.

In addition, the committee requested the governor to add \$50,000 to the budget of the Division of Veterans so that evacusleds could be purchased. These devices are used to quickly move patients from a veteran health care facility should an emergency arise.

Continuing to look at ways to assist veterans, the legislative staffer told lawmakers veterans oftentimes do not take advantage of services the state provides. He said four reasons have been identified for the lack of interest:


- service facilities are too far away for veterans living in rural areas
- numbers of staff on hand at the centers are limited
- veterans want to mask their problems to keep their military careers
- veterans prefer to talk with other veterans

Lawmakers were asked to review the possibility of



keeping a veteran on site to assist his or her comrades in seeking services.

Other issues undertaken by the committee in the past two years include a reviewing the affects of traumatic brain injuries, possibly creating an advertising campaign to help promote knowledge of available services, investigating the roles the schools and universities play in helping veterans, creating additional state sponsored services and the use of service animals in assisting vets during a variety of rehabilitation services.

The committee has also visited the state's VA medical center and nursing homes and has entertained comments from the state's Adjutant General. 



Capitol flowers continue to bloom through the summer months.

**Interim  
Committee  
Meetings  
2009**

August 10-12  
September 14-16  
October 13-15  
November 17-19  
December 7-9

*Dates subject to change.*

January 10-12 2010

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