

Interim Highlights



Photo: Betty Caplan

Impact of National Guard Touted

Members of the Select Committee on Veterans Affairs toured the facilities of the 130th Airlift Wing (AW) in Charleston and the 167th AW in Martinsburg during the October Interims. The tour included a flight aboard a C-130 Hercules.

Committee members were given briefings on the history and future development of the facilities, specifications of the planes and the economic impact of the West Virginia National Guard and the West Virginia Air National Guard on the state. **Full Story on Page. 19**

Left: The C-5 Galaxy sitting on the flight line at the 167th Airlift Wing in Martinsburg, WV.

Below: Expansive view from the window of the C-130 Hercules en route to Martinsburg.



Photo: Daniel Osbourne

Agriculture and Agri-business Committee

Beekeeping Industry

During October Interim meetings, lawmakers on the Agriculture & Agri-business Committee were told the number of beekeepers in the state continues to increase. The state now has 1,159 beekeepers, mostly hobbyists, overseeing some 13,928 colonies.

Disease is a constant menace, however, and a representative from the state Agriculture Commission told the committee

a number of disorders can wreak havoc in a colony through a variety of parasites. This past year 14 hives were found infected with colony-killing bacteria. West Virginia has only four inspectors to cover the state, but they are strategically located to reach colonies as rapidly as possible.

The committee was told that beekeepers not only engage in honey production, but they also rent their bees out for pollination of crops from as far away as California.



Interim Highlights

Upwards of 2,000 colonies in the Eastern Panhandle have been farmed out to pollinate crops in Pennsylvania, Maryland and New Jersey. Pollinating crops outside the state can fetch a beekeeper about \$70 per colony, while inside West Virginia apple crops alone can provide \$35 to \$40 per colony. In some cases, pollination is done three times per season.

As for the selling of commercial honey, the state actually offers 14 separate and varied honey flavors. The representative told the committee it is West Virginia's best-kept secret.

There are, however, some problems involved in renting colonies. Incidences have been reported to the state apiarist involving growers who refuse to pay for pollination services or to return bees once the task has been completed. Bees have been taken from beekeepers in West Virginia and never returned. Beekeepers have received empty bee boxes back and have had to go to California to retrieve those bees. The representative told the committee the industry needs to forge a relationship with trustworthy growers before letting bees out for pollination or else they make themselves vulnerable to cheating or even outright thievery.

Children, Juveniles & Other Issues, Select Comm.

Foster Care

A foster care expert from the National Conference of State Legislatures (NCSL) Children and Families Division addressed foster care practices and successful programs nationwide to committee members during this month's interim meeting.

The foster care expert first told the committee that foster care problems are occurring in West Virginia and nationwide. Realizing this, 18 states are coming together for the Foster Care Institute next month to discuss various issues. The goals of the Foster Care Institute are prevention, shortening the stay in care, increasing reunification, subsidized guardianship and adoption.

In West Virginia, foster care issues include placement instabilities, lack of adequate foster parent training/preparation,

lack of information on foster child health/mental health, out of state placement for older youth with behavioral health issues, and confidentiality.

The foster care expert told the committee some states, in order to combat placement instability, focus on placing children with relatives because it means more stability for the child as well as an increased likelihood of placement with siblings. Currently, 37 states have subsidized guardianship. Some states have even expanded the definition of "relative" to place a child with someone they already know.

Some states use independent living services for youth to correct placement instabilities, and help prepare children for self-sufficiency in adulthood. They can receive these services while they are living in any type of out-of-home care placement (such as kinship care, family foster care, or residential/group care). Independent living services generally include assistance with money management skills, educational assistance, household management skills, employment preparation, and other services. Some states allow children who have aged out of foster care to come back into the system.

The number of caseworker visits with a child is another area states are examining when it comes to placement instabilities. In Arkansas, a caseworker visits a child at least weekly. Federal legislation passed in 2006 required states to develop plans that made sure 90 percent of children in foster care were visited at least monthly.

States are also allowing children to participate in their court hearings, 12 of which have some form of "family group."

The foster care expert told the committee that foster parent training/preparation is a problem because many of these parents are unprepared to receive the children. That is why a number of states created some form of "Foster Parents Bill of Rights." Issues that might be included in the bill of rights include non-discrimination, disclosure of information, financial reimbursement and case planning for children.

Another issue facing foster families is the lack of general and mental health information on the children. The Federal



program, “Fostering Connections,” requires health coordination and oversight of each child in foster care.

Confidentiality is another issue facing West Virginia. Under the Child Abuse Prevention and Treatment Act (CAPTA), states are allowed to statutorily mandate who has access to a foster child’s information. Currently, 21 states allow reporters to receive a summary of the outcome of an investigation and five states allow public disclosure when a fatality or near fatality occurs.

The foster care expert provided additional strategies in preventing entry into foster care such as prohibiting the child welfare agency from requiring custody relinquishment in order for parents to obtain mental health services for children. Another strategy is to require expedited court hearings for children who have not been removed from home but may be removed if the provision of services under the court’s protective supervision is absent.

In order to combat the re-entry into foster care, some states provide services and supports to maintain the child safely in the home. Other states have also extended adoption/guardianship subsidies beyond age 18.

“Strengthening the courts is also important,” the foster care expert told the committee. Some states have reduced or eliminated court delays. Other states track the performance of courts through permanency for children and accountability. New court models are also appearing in states. In Arizona, there is the integrated family court pilot program.

The foster care expert told the committee that the state’s strengths regarding foster care are re-entry, placing children close to parents and placing children with siblings. Areas of concern in the state include permanency and stability, families having the capacity to provide for children’s needs, and maintaining children safely in their homes.

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.

Economic Development , Joint Commission on

NGInnovations

Committee members heard from the President of NGInnovations, a company that enables natural gas drillers and producers to manage their produced water, hydraulic fracturing flowback water or gas treatment needs. NGInnovations, according to their website, was created in 2007 as an independent company and is located at the West Virginia Tech Center. NGInnovations has performed work for many national and regional natural gas players. The Company partners closely with industry association groups and regional environmental authorities to design solutions for its customers which manage produced water, frac water and frac flowback water issues.

The President of NGInnovations told the committee that the company has a mechanism that first filters the injection pump water, then separates all of the heavy metals and other materials in the water, and then sent to a recovery unit. The result is water that is pure enough to drink. The President also told the committee that his company could actually separate each material in the water such as salt. NGInnovations have struck a deal with the Division of Highways on purchasing the salt removed from the water and use it this winter for icy roadways. The President told the committee that this would be a cost savings to the state.

However, the President of NGInnovations told the committee that there is not much venture capital in West Virginia which forces the company is forced to go outside of the state looking for work. When asked what oil, gas and mining companies usually do with the water, the President said that the water is normally sent to municipalities or dumped into the Ohio River.

Vision Shared

Committee members were also given a performance report from Vision Shared regarding West Virginia’s progress in achieving goals originally set when Vision Shared was first created in 2001. The report also provided a snapshot of how the state is competing economically with the region as well as the nation.



The President of Vision Shared spoke briefly to the committee and also answered any questions the committee members had regarding the report.

According to the report, success has been found in some areas of West Virginia's competitiveness - such as workers' compensation rates. However, the President said that there are still many red flags in areas where West Virginia continues to struggle - including personal income, poverty rate, little change in real Gross State Product and education. Another area of concern is the number of patents. The President told the committee the state needs entrepreneurs.

Vision Shared is taking a section of each category listed in the progress report to make a better effort in discovering why West Virginia continues to not meet the goals set in 2001.

Education Accountability, Legis. Oversight Comm. on

Promise Scholar Retention

The State Higher Education Chancellor presented the committee with a survey that found that nearly 80 percent of recent Promise scholarship graduates have remained in West Virginia after earning their bachelor's degrees.

The survey by West Virginia University's Bureau of Business and Economic Research found that in 2008, 59 percent of the 3,692 Promise scholars who graduated between 2005 and 2007 were employed in West Virginia, compared to 68 percent of all in-state students who graduated during that period.

Another 20 percent of Promise graduates were enrolled in graduate school in West Virginia, the survey found. One lawmaker believes the survey under reports the numbers of Promise graduates living in West Virginia. The legislator said it leaves out the large numbers of graduates who live in the Eastern Panhandle but work in the Washington, D.C. metro area. He thinks if you factor that in, Promise scholars don't have a smaller percentage than regular graduates staying in West Virginia.

Retention of Promise scholars has been a topic of debate since the scholarship program was launched in 2002. In that same year the governor proposed requiring Promise graduates who move out-of-state to repay a portion of their scholarships, but the Legislature quickly rejected the proposal.

The Chancellor also gave a progress update on a new funding formula for state colleges and universities. The new funding formula would be based on courses, not enrollment according to the Chancellor. He said it recognizes some courses are more expensive to offer than others.

Besides providing higher funding per course in fields such as engineering and health sciences, the formula provides higher funding for upper-level courses than for freshmen courses. He says it puts the incentive on institutions for retention of students and to attract transfers. The Chancellor hopes to have the new funding formula in place for the 2010-11 budget year.

A status report on funding for the "Bucks for Brains" Research Trust Fund shows that both Marshall and West Virginia universities have struggled in the first year of the program to raise contributions necessary to draw down the state's allotment of \$50 million in matching funds for high-tech research efforts.

WVU has raised about \$3.3 million, or close to 10 percent of the \$35 million available in state matching funds. Marshall to date has raised about \$465,000, or about 3 percent of the \$15 million available in matching funds.

Education Subcommittee A - Public Education

School Calendars

An educational expert from the Southern Regional Education Board (SREB) told the committee that rearranging school calendars isn't as important as how teachers spend classroom time.

Lawmakers debated school calendars earlier this year during the regular legislative session, when the governor proposed making the schedule more flexible. The governor

wanted to let school start before Aug. 26 or end after June 8, the limits set in current law, because snow days have cut into many students' required 180 days of instruction. The measure ultimately failed.



Education Subcommittee A - Public Education Photo: Martin Valent

According to the expert, in half of the 16 states that make up the SREB, local school boards decide when schools open and close for the year. In six states, the law specifies when school can open, but not when it must close. Arkansas, North Carolina and West Virginia law specifies both.

Seven of the SREB states define a school year in the number of days only, and most of those require 180 days. Five say the school year can be measured in days or hours, which provides flexibility.

One lawmaker asked why the notion of 180 days has become so ingrained in everyone's head. The expert said that the school calendar as a whole and the 180 days specifically, is based upon an agrarian calendar.

The expert also described "alternative calendars," such as year-round schooling and four-day weeks. Researchers haven't found hard evidence those calendars improve student achievement.

It was noted that much of the research on the subject is contradictory. Also, calendar changes often accompany other education reforms, making it hard to determine their impact on learning.

One lawmaker mentioned they have no knowledge of plans to introduce legislation related to year-round schooling, though the governor has mentioned it in the past. According to the lawmaker, over the past five years, West Virginia schools have averaged about 178 days of classroom time for students. The belief of the committee seemed to be that any competent teacher could make up two days of instruction.

Education Subcommittee B - Higher Education

Higher Ed. Capital Projects & Needs

Senate Bill 638 from the 2009 Regular Session made it through the Senate and the House Education Committees, but lost its traction in House Finance. The measure related to higher education capital facilities, including capital project planning, financing, management and maintenance. Education Subcommittee B is renewing interest in the lost bill and is studying a revised version for consideration during the 2010 Session. The committee is looking to put into place a structured planning and funding process for higher education capital projects.

According to the chief financial officer of the Higher Education Policy Commission (HEPC) and the Council For Community and Technical College Education (CCTCE), a Capital Project and Facilities Needs Commission walked through how projects were planned, managed and funded.

House Bill 113, passed during the 2009 First Special Session, reissued revenue bonds for tourism and education and provided a procedure for the selection of projects to receive money resulting from the bonds. The revised version of the higher ed. capital projects bill inserts language to conform to HB 113 regarding bonding, changes deadline dates to account for the lost year and establishes a more defined process for the planning and funding of higher education facilities.

The chief financial officer suggested the State fund college and university academic facilities and student fees be used



for auxiliary projects, such as parking garages, student unions and other non-teaching structures. To make student fees less severe, it was suggested funding for auxiliary projects might come through other legislative initiatives.

Presently, student fees are tied up in capital projects or money is being used to fund existing bonds. While bonds issued for capital improvements in 2004 are being met by lottery proceeds, the financial officer noted that some older bonds (supported by student fees) wouldn't be paid off until 2034.

The proposed bill also sets up a structure to apply to future bonding. The measure organizes how projects would be identified for higher education institutions, which would align the proposals with a state master plan. Projects would be evaluated based on their need as part of the structured proposal.

Education Subcommittee C - Public Education

Student Issues

During this month's interim meeting, committee members heard from various speakers regarding issues facing students, including their mental health needs, and transition difficulties in the public education system for children of military families.

First to address the committee was the Office of Healthy Schools Executive Director who provided committee members with an abbreviated summary of the factors that are affecting West Virginia's students, specifically those in middle school. The summary showed that students who have participated in risk behaviors were knowledgeable about the outcomes of their actions.

The Executive Director also told the committee that while the variety of factors impacting students success are addressed through prevention/intervention/treatment programs categorically designed to address specific problem areas, it must be realized that at risk students are suffering from various issues instead of just one. However, most of the funding the Department of Education receives is for one specific area of focus only.

Next to address the committee was a Health and Human Resources (HHR) specialist who discussed the Expanded School Mental Health (ESMH) programs for West Virginia, which is sponsored by both the Department of Education and the Department of Health and Human Resources (DHHR).

ESMH is a framework for programs and services upon which other elements are added to help students who receive social-emotional support and prevention services. Shared responsibility is given to both the schools and community health agencies and providers. It is also the model recommended by the President's New Freedom Commission. ESMH uses public health approaches to focus on populations instead of individuals and includes systematic data collection and community surveillance in order to assess mental health needs. Another function of the ESMH is to use school climate and risk/protective factors as assessment tools.

It has been shown that students rank higher on achievement tests, have better attendance, grades and behavior in the classroom when they receive services through prevention services and programs. In West Virginia alone, 9.4 percent of children between the ages of 3-17 have moderate to severe difficulties in areas of emotions, concentration, behavior, or getting along with others. Only 29 percent of West Virginia's children identified with serious emotional disorders are getting adequate treatment.

Military Child Education Coalition

Committee members also heard from a representative with the Military One Source program that provides services, such as counseling, to all active-duty military and their families 24/7.

The representative informed the committee on the Military Child Education Coalition (MCEC), which is a non-profit organization that identifies the challenges the highly mobile military child faces, increases awareness of these challenges in military and educational communities as well as initiates and implements programs to meet those challenges.



Military children make numerous moves to various states during their K-12 school years. Having to relocate can cause stress to these students who must give up the friends they have made as well as having to adjust to a new school environment. The MCEC is working to solve the challenge of helping schools and military installations deliver accurate, timely information to meet transitioning parent and student needs. MCEC will be:

- Developing information to support the transitioning military student
- Developing and maintaining an alliance of school districts for the purpose of communication and networking.
- Determining support in which military installations could potentially provide local districts.
- Examining technologies and procedures to support information sharing between military impacted school districts.
- Examining sources of funding to support the alliance

The representative told the committee that MCEC and Military One Source is trying to get out information to schools and communities with regards to helping these children as best as they can but they have limited resources. He also told the committee that currently there is small participation in school communities with regards to helping military children transition into their new school environment.

Equal Pay Commission

Pay Equity

During its October meeting the commission discussed draft legislation regarding the commission's continuation, which must be done periodically.

The commission also engaged in a general discussion regarding efforts toward pay equity in other states and the things that could be implemented to address similar issues in West Virginia. Some states have a specific oversight position created within government to monitor and enforce equal pay. The commission is examining a women's training program for certain types of male dominated jobs, and

addressing the problem with a greater budget commitment. These are just a few of many options being explored by the commission to achieve pay equity in our state workforce.

Currently, the commission receives \$250,000 annually from the state budget to try to fill in the gaps where equal pay is lacking. It is obvious to the commission more needs to be done to seriously address the problem of pay equity in our state. The commission hopes to work on legislation specifically geared toward reaching true pay equity on a more progressive time line during the 2010 regular session.

Finance, Joint Standing Committee on

King Coal Highway

After hearing subcommittee reports, members of the Joint Finance Committee heard a report regarding the King Coal Highway in Southern West Virginia.

Upon project completion, the King Coal Highway has the potential to bring in millions of dollars in economic impact, not only for residents but also in taxes for state government. A 12-mile stretch has been laid by Alpha Resources in a public-private venture and the initial completed section of the road stretches from Matewan to Horsepen in Mingo County.

Once completed, likely around 2025, the road will cover 95 miles as part of Interstate 73 and will help boost the economies of Mingo, McDowell, Mercer, Wayne and Wyoming counties by an estimated \$220.3 million, while sustaining a projected 2,000 jobs. The public-private venture that led to 12 miles of highway being laid already has saved the state nearly \$300 million.

At the same time, the committee was told, the state is planning the Tolsia Highway Corridor that is composed of Wayne and Mingo counties. Projections call for an additional need of \$1.4 billion to complete the King Coal road and \$990,000 to finish Tolsia. During the construction phase alone, the project could lead to over 1,500 jobs. These corridors are primarily meant to provide residents of these areas better access to metropolitan areas, but also, the roads would

spur more developments and business activities in areas desperate for new enterprises.

The committee was told one such business possibility being discussed is a distribution center, which typically hires around 200 people and has been seen to generate around \$18 million in economic output in similar ventures.

Finance Subcommittee A

State Job Classification System

A consultant for the Hay Group, hired to help the Division of Personnel restructure the state employee job classification system, told the committee the plan should be ready to present to the Legislature during the 2010 session.



Finance Subcommittee A

Photo: Martin Valent

The presentation included an overview of an effective classification and compensation plan. The philosophy comes in four steps. The first step is classification, which involves a description of the work being done. The second step is job evaluation, which involves measurement of that work. The third step is pay structure, which prices the value of the work and the final step is pay delivery, which is the recognition of work performance.

The consultant also noted most states do not pay more based on geography or region because they could not attract competent workers to areas with lower salaries. In

extreme cases where the compensation is different based on region, it comes as a housing allotment to offset much higher costs in that housing market.

The five major compensation benefits analyzed by the Hay group are life insurance benefits, sick or long-term disability benefits, health and dental insurance benefits, annual leave or holiday benefits and retirement savings benefits.

One lawmaker warned that no matter how good the new job classification system is, it will be useless unless administered properly. The legislator remarked that if the state adheres to the same philosophy of years past, money will be wasted.

Finance Subcommittee B

Coal & Gambling Revenue Decline

The state budget director told the committee that gambling and coal, the two main sources of revenue that have kept West Virginia's economy afloat during the recession, are showing signs of significant decline.

Coal severance tax collections are down more than 25 percent so far this year, as prices and demand for coal have weakened. Also, according to the director, the weak economy and increasing competition from new gaming venues in Pennsylvania and Maryland have forced the state to scale back projections for state Lottery revenues, once a reliable source of more than \$500 million a year of funding for the state.

At the current pace, the state should finish the 2009-10 budget year next June with a \$100 million deficit.

One lawmaker stated that state revenues could plunge further if the federal Environmental Protection Agency denies or delays the 23 surface mining permits currently in limbo. The legislator said by his estimates, the resulting downturn in collections of severance taxes, personal income taxes, corporate net taxes and consumer sales taxes could cost the state \$300 million to \$400 million a year - roughly 10 percent of the general revenue budget.



Finance Subcommittee B

Photo: Martin Valent

To date, the director noted, the state has appropriated only \$3.34 million of its \$164 million in federal economic stimulus funds for education.

The state is waiting for the federal government to approve rules and regulations on how to spend funds in most of the education accounts. The state has until Oct. 11, 2011 to allocate the remaining \$160 million.

Finance Subcommittee C

Other Post Employment Benefits (OPEB)

A coalition of the WV Municipal League, the Association of Counties, the WV Public Transit Association, the WV Rural Water Association, the WV County Commissioners' Association and the Putnam Public Service District addressed Finance Subcommittee C with significant concern over their obligations regarding Other Post Employment Benefits (OPEBs).

The nationwide practice of providing public employees benefits greater than those provided in private industry is leaving many states in a conundrum. West Virginia is now facing a \$7.8 billion unfunded liability. The government sub-divisions expressed frustration with the "state inspired" liability.

Citing a no-fault situation, the spokesperson for the WV Association of Counties told lawmakers that spiraling health care costs and a population that does not always follow

healthy lifestyles was a concept initial planners did not perceive. In addition, West Virginia has a smaller population to carry the baby boomers.

Since the sub-divisions had no say and there was no local involvement, the Counties representatives expressed interest in untangling the Public Employees Retirement System (PERS) with the Public Employees Insurance Agency (PEIA). With PEIA in agreement, the uncoupling of the two benefits may save small localities money they do not have.

The County Association spokesperson also said the government subdivisions would like to have an actuarial study done only on their organizations instead of including them under the full umbrella of state agencies.

Also, she noted that Statement 45, devised by the non-elected Government Accounting Standards Board (GASB), should not have the force of law and state Congressional representatives should be notified of the discontent of some of its decisions. (Statement 45 essentially states that in addition to pensions, many state and local government employers who provide other OPEBs as part of the total compensation offered to attract and retain the services of qualified employees including post-employment health-care, as well as other forms of post-employment benefits should be recognized as an expense and a liability and included in their financial statements.)

The other coalition representatives appearing before the committee reiterated the plight of the political subdivisions. Each noted they have no clear direction regarding OPEBs. Citing huge gouges in city budgets, local governments find the costs of funding OPEBs may take as much as 16 percent of their annual budgets - money that could be applied to additional law enforcement or sewer and water projects, it was reported. All said, the cities and counties they represent cannot sustain the amounts they are asked to shoulder.

Two examples were given - the first is one of the largest PSDs in the area, with 11,700 customers and 42 employees. The division pays approximately \$350,000 a year to fund retirees, most of whom are in Medicare.



The second example - a county commission that is a self-insured entity and a PERS participant. A recent study found the large county, which could manage funding actuarial input, paid approximately \$550,000 a month or \$102.43 per employee per month. Part of the study included the age of employees (fairly young), numbers retiring coupled with the numbers of years worked, as well as other elements. It also has 92 retirees participating in PEIA, which costs \$374 per month, 443 active employees who use a self-funded insurance and 28 employees who don't participate in the plan.

One spokesperson said trying to make sense of the OPEB plan is like "stirring alphabet soup....Every time it is stirred, it changes." The person said the more her group learns, the more confused they become.

Lawmakers are seeking suggestions from the coalition regarding changes in state law.

Government Organization - Subcommittee A

Board of Physical Therapy

This committee held a discussion of House Concurrent Resolution 83 which requests a study of the law governing the West Virginia Board of Physical Therapy.

The West Virginia Practice Act, relating to the Board of Physical Therapy, was first enacted in 1931 and was last revised in 1999. Representatives from the Board spoke before the committee citing changes in general healthcare and in the practice of physical therapy as to why they need a revised code section governing their work.

Also, the Board gets numerous questions about the same sections in the code and are seeking to clarify sections that are inconsistent and confusing to its members. Most questions revolve around the supervision of Physical Therapy Assistants (PTA). The Board would prefer Physical Therapists be able to supervise more than the current limit of 2 PTA's.

The Board would also like to alter its composition to include a citizen member, per a previous court ruling, making the

format of the board similar to other states. The representative also stated that the Board continues to struggle to find ways to allow PT's and PTA's to provide adequate care to all areas of the state while protecting the public safety.

Government Organization - Subcommittee B

Consumer Fireworks Regulation

Earlier this year, members of Government Organization Subcommittee B were assigned Senate Concurrent Resolution 65, which requests the study of public safety, health and welfare issues related to the sale, storage and use of fireworks in West Virginia.

During this month's interim meeting, committee members listened to a presentation by the Vice President of B.J. Alan Company regarding consumer fireworks regulation. The B.J. Alan Company operates permanent fireworks showrooms in 12 states and also plays a leadership role in promoting the manufacture and sale of safe consumer fireworks in the United States.

The Vice President told the committee there were various associations involved in regulating firework sales in the United States such as the American Pyrotechnics Association (APA), which has three principle aims:

- To encourage safety in the design and use of all types of fireworks
- To provide industry information and support to the association's members
- To promote responsible regulation of the fireworks industry

The APA also prepares the Standard 87-1 which has been vetted by the U.S. Department of Transportation and has been incorporated by reference into the Code of Federal Regulations at 49 CFR 171.7. APA Standard 87-1 does the following:

- Sets limits of pyrotechnic composition weights
- Prescribes certain manufacturing standards



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- Prohibits the use of certain chemicals
- Mandates specific labeling

To put the composition weights of pyrotechnics into perspective, the Vice President told the committee that standard firecrackers contain 50 mg compared to 500 mg in an aspirin.

The Vice President also told the committee that the U.S. Department of Transportation (DOT), under Title 49 of the Code of Federal Regulation, regulates the transportation of fireworks via the DOT's Pipeline and Hazardous Materials Safety Administration.

Another important corporation in the regulation of fireworks, according to the Vice President, is the American Fireworks Standards Laboratory (AFSL), which is non-profit and was established in 1989. The AFSL:

- Develops voluntary safety and quality standards
- Provides a testing program for fireworks compliance with AFSL (and CPSC) standards
- Provides a certification program for tested fireworks
- Works with factories to improve fireworks design, manufacturing and performance safety and quality
- Promote the AFSL certification mark, support the safe use of fireworks; monitor and report injuries

The AFSL testing process is done at the factory level in China, where approximately 90 percent of all fireworks are made. There are testing rooms provided by the factories and all test results are stored electronically by the AFSL. Since they began testing in 1994, the compliance percentages of AFSL-tested fireworks products went from 64 percent the first year to 93 percent last year.

Another organization important to fireworks regulation is the National Fire Protection Association (NFPA), which writes fire codes. "The code written by the NFPA is the only comprehensive fire code in the country addressing the issues of construction and operation of a retail consumer fireworks sales facility," the Vice President said.

Currently, 45 states allow some or all types of consumer fireworks - including West Virginia. The APA has also found

that revenue figures for the fireworks industry have experienced unprecedented growth in the past decade. In 1998, fireworks revenue was \$425 million and in 2008, revenue had hit \$940 million.

Regarding the number of injuries associated with fireworks, the Vice President told the committee there were 7,000 injuries in 2008 compared to 12,500 in 1994. He also told the committee that most of the injuries occurred in states that did not allow the sale of fireworks. "Arguably, up to 42 percent of the fireworks-related injuries reported by CPSC have nothing to do with the regulated consumer fireworks," the Vice President said.

Mixed Martial Arts

During its second meeting of the October Interims, Gov. Org. Subcommittee B held a discussion of House Concurrent Resolution 84, which requests a study on the Athletic Commission and the regulation of Mixed Martial Arts.

Mixed martial arts (MMA) is a one-on-one combat sport that allows various fighting techniques, from striking to grappling and other forms of martial arts. Around 38 states have already legalized the sport, and several others, including New York and Wisconsin, are considering passing mixed martial arts legislation. Only three states, Alabama, West Virginia and Vermont are not currently considering legislation relating to MMA. Alaska and Wyoming have no state athletic commissions.

If West Virginia were to sanction the legality of MMA, the state Athletic Commission would propose rules for legislative approval and serve as the rulemaking authority. New Jersey was the first state to regulate MMA on the local level in 2000. That state hosts about 30 professional and 50 amateur bouts a year, raising about \$1 million annually in taxes from the events.

The committee was provided with a study from Johns Hopkins University detailing the incidences of injury to athletes competing in sanctioned MMA events. It concluded the competitions involving MMA have changed dramatically since its inception in 1993. The overall injury rate in MMA competitions is now similar to other combat sports includ-



ing boxing and in fact, knockout rates are lower in MMA events than in boxing.

The study further concludes that MMA events must continue to be properly supervised by trained referees and ringside physicians and the rules implemented by state sanctioning must be strictly enforced.

The committee plans to continue the study regarding MMA in future interim meetings.

Health, Select Committee on

Administration of Drugs

Increasing difficulty in recruiting and retaining adequate nursing home nurses brought forth the committee's study (House Concurrent Resolution 91) of establishing a program to certify and permit medication aides to administer certain drugs in licensed nursing homes and other community locations.

The idea to allow certified medication aides to administer drugs to patients is based upon the supposition that administering medicine takes up professional licensed nurses' needed time and expertise; that more care and attention could be provided to nursing home residents by nurses; and medicine administered by medication aides could provide flexibility to individuals with disabilities.

On this topic, the Select Committee on Health received a report delivered by the executive director of the WV Board of Examiners for Registered Professional Nurses. The executive spokesperson said the board was willing to participate in finding a solution to medicinal deliverance but believes the public's health is best protected when a licensed nurse is responsible for administration.

She also noted that registered nurses (RN) and Licensed Practical Nurses (LPN) meet jointly; and as such, the LPN Board also wishes to participate in this study. It was noted nurse staffing in long-term care facilities should include more LPNs.

According to the executive director, changes in resources, technology and the growth of the aging population have encouraged willingness to engage in a Pilot Study regarding the safety and efficacy of utilizing unlicensed assistive personnel as medication aides.

The RN Board is in agreement with the Office of Health Facilities Licensure and Certification (OHFLAC), which require that a Nursing Council review various registered professional nursing programs on a regular basis. OHFLAC also manages the oversight of the Approved Medication Assistive Personnel (AMAP) program.

The Nursing Council prepares a procedural manual and recommendations regarding training that is submitted to the Department of Health and Human Resources (DHHR). It, in turn, develops training curricula and competency evaluation procedures for facility staff members who administer medication, according to state law. The executive director of the WV Board of Examiners for Registered Professional Nurses indicated the willingness of the RN Board to work with the Nursing Council in considering options for the administration of medications.

A quote from materials provided by the executive director states, "It is the Board's intent to protect the public as they are legislatively mandated to do. Currently, the RN Board regulates registered professional nurses, certified nurse midwives and dialysis technicians. The RN Board is willing to pursue a Pilot Study regarding medication aides in long-term care facilities in order to determine whether or not it is a safe alternative for West Virginia. The Board believes the Nursing Council is the forum for further discussion at this time of the AMAPs in the community setting."

Also speaking before the health committee was the director of the West Virginia Developmental Disabilities Council. While he told the committee he was not a medical professional, he is an advocate of the Fair Shake Network, the WV Developmental Disabilities Council, the WV Olmstead Council and the WV Statewide Independent Living Council.

Sharing personal experiences of patients in his network, he ultimately recommended that if "the individual is physically unable to place a dose of medicine in his/her mouth with-



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out dropping or spilling it, an unlicensed person may place the dose in another container and place that container to the mouth of the individual.”

He also provided personal stories that resulted in the following recommendations.

To modify WV Code from “Any individual who is not otherwise authorized by law to administer medication may administer medication in a facility...” to include...”or other setting where services are received” (continuing with existing state law) “if he or she meets the requirements and provisions of this article.”

Among other changes, the advocate called for some restrictions regarding G-tube feedings by unlicensed personnel. He also suggested changes in state law regarding where an AMAP may assist people. He called for clarification of state law where it appears to permit delegation within the Aged and Disabled Waiver Program and suggested responsible agencies develop policy to permit delegation for participants of the Aged and Disabled Waiver Program. “Delegation” is transferring the authority to an AMAP to perform a selected nursing task in a selected situation.

Also adding input for the committee covering health concerns was the CEO of the WV Health Care Association. She said her organization supported the RN Board’s Pilot Program. She told the committee services should be diversified in long-term care and stringent training and support with safety should be a priority. In developing a curriculum for providing medicinal application, the RN Board should continue its certified program to help aides.

The CEO also believed some facilities would be interested in a pilot program. Essentially, she re-enforced the concepts of stringent and continued training. She also reiterated that facilities have the option to be involved in any pilot program. The RN supervisor can approve or disapprove of a non-licensed, yet certified, medicine dispenser.

Lawmakers are seeking National Conference of State Legislatures (NCSL) initiatives on the prospect of unlicensed medicine aides and the accompanying perspectives. A member of the committee noted the success of the programs

in Arizona and Ohio after a year’s implementation.

The committee continues to review and analyze all options and relevant studies.

LOCHHRA

Health Reform Impact

Committee members heard from various Department of Health and Human Resources (DHHR) representatives regarding vacant positions and impending health reform possibly changing the DHHR’s employment needs.

Charts were distributed to committee members showing 39 percent of the state Bureau for Medical Service’s 117 positions were empty as of June 30th. Those figures troubled committee members as they wondered how the bureau would handle federal Medicaid expansion reform. While not certain as to how it would be handled, the Medical Services Commissioner did inform the committee the bureau needs different job classifications in order to meet the demands of new federal reporting standards, the possible creation of a health insurance exchange and other changes.

Overall, 12.5 percent of DHHR positions are vacant, which raised questions by lawmakers given the state’s rising unemployment rate. A DHHR spokesman told the committee that unfortunately, due to state personnel regulations, the department doesn’t have the flexibility to recruit qualified employees at competitive salaries.

Infrastructure, Select Committee on

Vanity License Plates

During the October meeting of the Select Committee on Infrastructure members discussed a proposed bill that would transfer some authority to the Department of Motor Vehicles (DMV) in regard to state-issued vanity license plates.

The draft legislation establishes a set of proposed criteria the agency could follow in deciding on future special



plates. Organizations would have to be nonprofit, have a presence in West Virginia and meet the following requirements: Groups may organize for social, civic, higher education, entertainment or other purposes; logos must not be offensive and must not discriminate against race, religion, sex or national origin; organization may not promote political parties or specific social beliefs, and its primary purpose may not include the promotion of a specific religion; and, special products or brand names should not be promoted.

According to staff counsel, the goal of this proposal is to reduce the time lawmakers spend considering special plate bills each year. However, it would not remove the Legislature’s right to honor certain categories of citizens, such as veterans, with a special plate.

Special plates distributed by the DMV generate about \$1.2 million in additional revenue for West Virginia each year. Most of that goes to the state road fund, while about \$300,000 goes to the Division of Natural Resources’ non-game wildlife fund from the state’s wildlife plates.

Under the Legislature’s proposed bill, organizations meeting the bill’s criteria would have to submit at least 500 applications to the DMV before the plates would be designed and produced. Current plates would be grandfathered in.

Standard plates typically cost about \$30 and many special plates include an extra \$15 fee, including those recognizing organ donors, whitewater rafting fans and 4-H Club members. West Virginia lawmakers also pay the extra \$15 for their special plates. The average cost to issue special plates is about \$13 for the agency and the cost for motorists is about \$55 on average during the first year and about \$45 for annual renewals.

Texting While Driving Ban

Next, the committee discussed the on going debate over banning cell phone texting while driving.

Staff counsel presented the committee with a proposed bill combining efforts from several states including California, Washington and Minnesota to give lawmakers an idea of what other states are doing. Counsel told the committee

that if passed, the measure would make texting a secondary offense.

However, during discussion of the proposed legislation several members stated they felt there should be an outright ban on cellular devices altogether while driving. One House measure that sought to entirely ban the practice of cell phone usage while driving died during the previous year’s regular session.

The committee agreed to consider all amendments to the proposed legislation during the next month meetings and urged all members to present any and all changes to the legislation to staff counsel prior to the meeting.

Judiciary Subcommittee A

Cemetery Regulation

Committee members heard from various speakers regarding Senate Concurrent Resolution 63 - cemetery regulation and preservation.



Judiciary Subcommittee A

Photo: Martin Valent

First to address the committee was a Reverend from Huntington who said protecting our cemeteries is critical in preserving our cultural history. However, these cemeteries are being damaged, lost or destroyed due to industries moving in the areas and in many cases over them, the Reverend said. The Reverend told the committee that she is currently fighting to protect four of her own family cemeteries, where



generations of her family are buried. One of the cemeteries is completely surrounded by mines. Another cemetery has only two gravestones left and the Reverend told the committee that if something is not done, she fears even those will be lost.

The Reverend told the committee it has become very difficult to visit old family cemeteries due to many being located on private property and landowners denying access. Denying family members access, and therefore the right to visit a family cemetery, is illegal under state law, but many times, local law enforcement refuses to get involved in the disputes, the Reverend told the committee. Family members are left with no option but to go to court, which can be expensive.

When asked how to solve this problem, the Reverend told the committee there is currently no identifiable entity in place to help establish lines and boundaries with regards to industries and cemeteries.

To help put this issue in prospective, the Reverend shared personal stories family members have shared with her including one family's struggle in 2001 to find their ancestor's cemetery after a mining company moved it and subsequently forgot where they had placed it.

Also addressing the committee, were members of the West Virginia Council of Churches and also a resident from Boone County who is fighting to protect his ancestors' cemeteries.

At the conclusion of the meeting, the Co-Chair requested that counsel make inquiries into all parties involved regarding this issue including oil, gas and mining industries as well as the Attorney General's office.

Judiciary Subcommittee B

Asbestos Trust Disclosures

Committee members heard from various speakers regarding Senate Concurrent Resolution 67 (SCR 67) on asbestos trust disclosures. SCR 67 requests a study of the need for further disclosure by claimants in civil actions involving exposure to asbestos of all current and anticipated claims against bankruptcy trusts and all supporting documentation filed with the bankruptcy trusts.

SCR 67 is very similar to legislation that was introduced last year as Senate Bill 558, which was redistributed to committee members. The legislation would establish a procedure requiring a claimant who files an asbestos case after the effective date of the bill to provide information to all defendants about all claims filed or anticipated to be filed by that claimant against asbestos bankruptcy trusts, a mechanism for the defendant to challenge those claims, a procedure for sanctions by the court, and for set-offs for those claims.

One speaker to address the committee was a representative with the West Virginia Chamber of Commerce, who told the committee the Chamber of Commerce supports legislation requiring disclosure of asbestos bankruptcy trust claims filed and anticipated to be filed as well as full disclosure of all documents filed with the bankruptcy trusts.

Another speaker was counsel for the AFL-CIO, who does not favor the formation of "trust disclosures" because of the small payout to asbestos victims, due to inadequate funding.

Parks, Recreation & Natural Resources Subcommittee

Stonewall Deer Population Control

The Superintendent Stonewall Resort State Park and the Supervisor of Game Management for Wildlife Resources, discussed the controlled whitetail deer hunt at Stonewall Resort State Park.

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They explained the monitoring of the deer population and surveys conducted by the West Virginia Division of Natural Resources (DNR) wildlife and parks personnel revealed a high deer density on the state park property at Stonewall.

The excessive whitetail deer population places negative consequences for vegetation, creates environmental imbalance within the park and subjects the herd to increasingly poor health conditions.

Cooperative efforts between the Parks and Recreation, Wildlife, and Law Enforcement sections of the DNR and Benchmark Management Company, which operates the facilities for the state, were successful in conducting a controlled hunt in 2008.

The presenters noted they were able to successfully use a controlled hunt as a method of deer management in a public setting last year; however, history has shown that multiple successive hunts are necessary to reduce the population to appropriate levels. They believe the result will be sound and responsible wildlife management.

Last year hunters applied in advance for permits, and were selected by lottery to participate. According to the presenter, last year they had 100 hunters and 70 deer killed. Hunters were allowed to use rifles, muzzleloaders, slug-firing shotguns, pistols or archery equipment.

The West Virginia Division of Natural Resources took applications for the hunt from June to the end of August. The hunt, scheduled for November 16, 17 and 18, 2009, will be open to West Virginia residents and holders of West Virginia Lifetime Licenses who applied for and received a permit.

PEIA, Seniors & Long Term Care, Select Committee on

AARP Presentation

By request of the Select Committee on PEIA, Seniors and Long Term Care, the associate state director of West Virginia's American Association of Retired Persons (AARP) outlined numerous programs it provides to approximately 300,000 West Virginians through its 30 state chapters.

While most recognized for its health and insurance plans for people over the age of 50, the nonprofit, nonpartisan, volunteer driven organization provides a variety of lesser known, but valuable, services.

Below is a listing and brief explanation of some of the services the WV AARP associate director provided to lawmakers. The information is taken from material provided by the WV AARP spokesperson.

Benefits QuickLINK (BQL) helps West Virginians connect with federal and state benefits. BQL screenings take place via peer-to-peer telephone counseling and online. According to the director, BQL has already connected state consumers with more than \$5 million in benefits to which they were entitled but had not applied. Most of the money came from federal dollars.

Tax Aide, another volunteer-run tax service, offers free tax help for low and middle-income taxpayers with special attention paid to those 60 years and older. The confidential service is available from late January through April 15th of each year. In the last year, 14,000 tax returns were prepared by 116 volunteers and 118 sites, generally senior citizen centers and libraries.

West Virginia ElderWatch (WVEW) protects experienced adults from financial fraud and other forms of consumer abuse. WVEW helps West Virginians realize more than \$1 million in replacement products and services, refunds and cancellation of debt each year.

WorkSearch helps individuals find and keep jobs. The program provides a variety of services including web-based interest and ability inventories as well as information about local job markets. Most of these services are web-based.

The WV Senior Medicare Patrol (WV SMP) is a consumer education project dedicated to preventing Medicare and Medicaid fraud, error, waste and abuse. It has provided direct service, education and information to more than 150,000 state citizens, the director noted.

A program to promote independent living for low-income older adults and people with disabilities who have trouble



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handling their personal finances also is in operation. The West Virginia Money Management Program (WV MMP) works by cooperating with local agencies to match clients. Presently, it is active in Raleigh and Kanawha counties but plans to expand to other counties by the close of this year.

The AARP Driver Safety Program, the nation's first and largest classroom drive safety course is especially designed for people over 50. In West Virginia, 35 other states and the District of Columbia, classrooms that participate may be eligible to receive a state mandated, multi-year discount on their auto insurance premiums.

Another workforce assistance program, the AARP Workforce Assessment Tool assists employers in assessing and planning for their current and future workforce needs. It helps employers assess how the aging workforce will affect business; maps out current employer practices and identifies areas of improvement; recommends ways to create an "age friendly" workplace that appeals to all workers; and provides an inventory of workplace strengths.

The Investor Protection Program assists those West Virginians who often are provided to "free lunch" investment seminars. These meetings often promise risk free investments and tax avoidance practices. While some are legitimate, others are scams. In collaboration with the North American Securities Administrators Association (NASAA), the WV AARP is working diligently to fight consumer fraud by encouraging individuals to join the Free Lunch Monitor program. Volunteers can help fight fraud, the material provided by the WV associate director noted.

The Senior Community Service Employment Program helps low-income job seekers 55 and over gain skills to secure permanent employment. Participants are placed in temporary assignments with federal, state, county, city or nonprofit community organizations where they have an opportunity to sharpen skills while searching for permanent employment.

Information, referral and outreach are provided to grandparents who provide care for, or have custody of, their grandchildren through the Grandparenting Program. It works with policymakers, corporations and direct service providers.

The Women's Scholarship Program provides scholarship funds to women 40 years and older who are seeking new job skills and educational opportunities. Priority is given to women who are returning to the workforce after an extended absence, are underemployed or are caring for their own or another family member's relatives.

The Reverse Mortgage Education Project is the leading source of objective consumer information provided to help people navigate the complex world of reverse mortgages. It helps homeowners make an informed decision about financial alternatives to tap into the equity of their homes.

It was noted that AARP membership is NOT required to participate in these programs. More information on the programs can be obtained by calling 1-800-799-4638.

Another issue addressed by the legislative interim committee concerned the existing \$1.75 million Medicaid surplus. Following inquiries about applying it to areas of need, lawmakers were told with West Virginia having the largest senior populated state in the United States, the \$230 million in the overall Medicaid Trust Fund will soon be diminished.

A senior advocate reminded lawmakers that maintaining people in their homes costs approximately \$22,000 per year versus the cost of nursing home care at approximately \$80,000. He suggested a three-to-one draw down in federal dollars for home assistance could go a long way in helping more seniors.

At the close of the meeting, an inquiry was made to determine a way of counting the number of seniors being taken care of by family members.

Pensions & Retirement, Joint Standing Comm. on

Municipalities and Retirement Obligations

The municipal clerk/comptroller from a small, Class IV, municipality appeared before the committee with a resolution adopted by the town council that supported the revision of the WV Retirement Board statute. She told lawmakers the existing policy denied fair treatment to municipalities



in West Virginia and shared her town’s experience with the retirement plan.

From 1973 until resignation in 1983, the former payroll clerk verbally declined and did not establish or pay into a retirement account. Twenty-two years after the clerk left town employment, she bought back into the retirement system. As such, the town received its share of the bill from the WV Retirement Board in the amount of approximately \$40,000, which included approximately \$10,000 for interest on the employee’s share.

The town paid the amount out of its \$640,000 budget. The clerk was seeking support in changes in state law regarding its retirement system. State law presently calls for mandatory entrance into its retirement system upon employment.

One suggestion from the clerk included inserting a statute of limitations from the time a person leaves employment until the time he or she seeks retirement pay. However, a statute of limitations could be difficult and could involve the Internal Revenue Service (IRS).

Also before the committee was consideration of a bill (HB 3190) which did not pass legislative review during the 2009 Session. The bill would allow the purchase of service credit for emergency services officers (approximately 10) who transferred from PERS without having purchased this prior service.

Technical corrections will be made to the proposal and will be taken up for the committee’s consideration in the coming months.

Regional Jail & Correctional Facility Authority

West Virginia Community Corrections

Committee members heard from the Division of Criminal Justice Services Director who reported on the West Virginia Community Corrections Act, which was created by the Legislature in 2001.

The goal of the West Virginia Community Corrections Act, as stated by the Director, is to provide a means for com-

munities to develop, establish and maintain community-based corrections programs in order to provide the judicial system with sentencing alternatives for offenders who may require less than institutional custody. Some of the objectives under the Act include:

- Flexibility and involvement in responding to crime at the community level.
- Opportunity for offenders to make restitution to victims
- Promote accountability of offenders to their community
- Ensure space is available in regional jails and correctional facilities for offenders deemed to be most dangerous.

Offenders in the state’s community corrections must complete community service assignments, undergo counseling and participate in assigned programs based on their needs. Some of the programs provided include substance abuse treatment, job training and basic education. The Director told the committee that drug rehabilitation is a critical factor in the programs provided since most offenders have been convicted either of drug offenses or for property crimes committed in order to buy drugs.

There are normally between 1,200 and 1,500 nonviolent offenders in community corrections programs, saving counties about \$50,000 a day in regional jail costs. However, only 40 of the state’s 55 counties are participating in the programs. When questioned about the 15 non-participating counties, the Director said most are small, rural counties that may not have significant crime problems. He also added that some circuit judges simply do not agree with the concept of community corrections.

While community corrections are still a fairly new concept in West Virginia, the Director told the committee that community corrections in other states have reported recidivism rates that are 40 percent lower than for incarcerated inmates.

The state currently spends a little more than \$5 million a year on community corrections. About \$1.8 million comes from the state’s half of a \$10 community corrections court fee imposed on all convictions other than parking tickets. There has also been, in recent years, more money added to



community corrections through the General Revenue Fund. In the 2008 fiscal year, \$3.5 million was made available.

Veterans Issues, Select Committee on

Impact of National Guard Touted

Members of the Select Committee on Veterans Affairs toured the facilities of the 130th Airlift Wing (AW) in Charleston and the 167th AW in Martinsburg. The tour included flights aboard a C-130 Hercules and originally was to include a flight aboard a C-5 Galaxy. However, due to weather, the committee was unable to fly aboard the C-5.

Committee members were given briefings on the history and future development of the facilities, specifications of the two planes and the economic impact of the West Virginia National Guard and the West Virginia Air National Guard on the state.

The C-130's are based out of Charleston's 130th Airlift Wing Base. It is used to transport soldiers and supplies to and from the battle front. They can land and take off from a variety of surfaces and can even be equipped with skid in order to land on ice and snow. Because of this versatility, the C-130 has landed onto dirt roads in Iraq and in other combat theaters around the world to provide whatever support the troops on the ground require. In extreme cases, the plane can land and come to a complete stop in 100 yards, which is incredibly short for a plane of its size.

The C-5's are based out of Martinsburg and housed by the 167th Airlift Wing. The C-5 is also used for transport, but can carry far more than the C-130. The C-5 can carry up to six fully equipped and assembled CH-47 Chinook helicopters, a versatile, twin-engine, tandem rotor heavy-lift helicopter. The Martinsburg facility houses 12 of these giant transport planes and sends about two per week out to be filled with cargo and flown to the Middle East in support of the missions overseas.

The West Virginia National Guard is the top ranked National Guard in the country as far as troop strength and prepared-

ness and it consistently receives compliments and accolades from other units when it is deployed. The trip was a valuable learning experience for the committee members and staff as it was a first hand look at the dedication our uniformed men and women have for their country and state.

Meeting information contributed by Veterans Committee staffer, Daniel Osborne.

Water Resources, Joint Legislative Oversight Commission on

Marcellus Gas Well Waste Water

An explanation of the committee's study notes, "Five states encompass the Marcellus natural gas formation which has recently been subject to drilling activities because of new drilling technology and increased natural gas prices. These states are West Virginia, Pennsylvania, Ohio, Maryland and New York. The new technology utilizes horizontal drilling in multiple directions within the Marcellus Shale, allowing one wellhead to cover a much larger area than a traditional well. After drilling is complete, the use of a new fracturing process utilizes large volumes of water to drill and hydraulically fracture the Marcellus formation in a large area, allowing for recovery of large deposits of natural gas." The Water Resources Committee is reviewing the impact of the use of water resources in the fracturing process.

In attendance during the committee's October meeting was the executive vice president of production of the EQT Corporation. According to its website, EQT notes "The Appalachian Basin is bursting with new drilling and production activity, and EQT Production is at the center of it all. With more than 3.4 million acres, approximately 13,000 gross productive wells, and 3 trillion cubic feet of proven natural gas reserves, EQT is Appalachia's largest exploration and production company, developing and implementing advanced drilling technology to tap into unconventional reservoirs such as shale, tight sands and coal bed methane."

The EQT executive vice-president told lawmakers the company has entered into a three-year agreement with AOP Clearwater, LLC. This company has recently opened its first water recycling plant in the Appalachian Basin, located in Marion County. The current and future exploration of the Marcellus Shale by the oil & gas industry in West Virginia



and throughout the Basin requires new solutions for water management issues created by this exploration activity.

Committee members were told that AOP disposes of bi-products through a distillation/crystallization process that removes salt and metals from water. Most of the water (blow back) is being recycled, diluted, re-injected. In the past this water was taken to a salt plant in Ohio, the company executive said. He said the company's objective is to make the water environmentally friendly.

Dunkard Creek Fish Kill

Also during the water resources meeting, legislators heard from the state Department of Environmental Protection (DEP) and from the Department of Natural Resources (DNR) District Fisheries Biologist regarding the 30-mile fish kill on Dunkard Creek in Monongalia County that occurred this month. The biology experts worked closely with the Pennsylvania Fish and Boat Commission, the PA DEP, the USEPA, West Virginia University, RAIN, USGS, USGA and the Watershed Association, as well as other officials. The tributary of the Monongalia River also flows through portions of Pennsylvania.

The two division spokesmen provided biological insight into the phenomenon, which left some parts of the stream with living fish and other sections having significant fish kills. The kills were staggered throughout the tributary, which presented a number of queries for the scientists.

A time line of the progress of the study to determine the cause was provided to lawmakers. Initially the kill was believed to be the result of mining operations near the stream. However, it has since been determined that "Golden Alga" was the cause.

Texas biologists were the first to note the occurrence of this alga in freshwater bodies in the Western Hemisphere. Subsequently, other states have reported its occurrence or possible occurrence. Fish kills caused by the alga can be significant, resulting in ecological and economic harm to the affected water bodies. Under certain environmental stresses, this alga can produce toxins that can cause massive fish and bivalve (i.e. clams and mussels) kills. It

grows in saline water and likes brackish water with a high light source. There is no evidence these toxins harm other wildlife, livestock or humans.

According to the biologists, "there is no clean, easy way to live with it other than to change its environment." They indicated controlling the PH of the water might be one solution

Adding to the deliberations was a spokesperson from the Upper Monongalia Recreation Association. The Cheat Lake environmentalists called for vigilant observation of all state streams. He requested a statewide standard of water quality standards of 500 parts; a DEP database of stream conditions accessible by the public (website); and, a fund set up and contributed to by coal and electric companies who pump water into mines. ▲

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