

Interim Highlights

3rd Extraordinary Session - 2004

After a comprehensive examination of the possibilities of lowering prescription medicines over the past year, the West Virginia Legislature adopted a resolution supporting the recommendations and strategic plan of the Pharmaceutical Cost Management Council.

During a brief yet vital special session, members of West Virginia's 76th Legislature adopted Senate Concurrent Resolution 301 authorizing ground-breaking policies for the establishment of lower prescription drug costs. The resolution, which received unanimous support from both the House of Delegates and State Senate and was developed through the tireless work of the Pharmaceutical Cost Management Council, recommends the use of the Federal Supply Schedule (FSS) as a benchmark for the negotiation and purchase of brand-name pharmaceuticals, estimating to save the state millions of dollars in public drug costs.

Along with supporting the Council's FSS benchmark, legislators also adopted recommendations listed in the resolution including the ability of the next Governor of West Virginia to appoint a Cabinet-level pharmaceutical advocate dedicated to controlling state cost-management efforts. In addition, the resolution provides for the development of a uniform preferred drug list for all state health-care plans.

The West Virginia Legislature began the groundbreaking and ominous task of reviewing prescription drug pricing in West Virginia during the 2004 Regular Legislative Session when members passed House Bill 4084. The measure created the Pharmaceutical Cost Management Council and established a time-line to allow state officials the opportunity to study ways to lower prescription drugs costs. The bill required the Council to issue a full report in September of 2004 and based on the results of its research, the Council recommended the cost management solutions.

With the passage of House Bill 4084 and the adoption of Senate Concurrent Resolution 301, the West Virginia has set in motion legislation that could possibly save the state upwards of \$500 million. Now, it has been stated by legislative leadership, the cost savings may not be visible for another two to three years as the state begins to negotiate lower prescription drug prices and fully develop the policies incorporated in the Council's strategic plan. But over time, and as other states begin to incorporate similar legislative initiatives; the savings projected will certainly be worth the wait.



Over the next two years, the West Virginia State Capitol Dome will be under construction as major restorations and repairs are conducted. Structural work will be done to the top portion of the dome which contains the State of Emergency lantern before the gold coating is removed and repaired. Once repairs are made to the sheet metal on the exterior of the entire Dome, it will be re-gilded and restored. The entire scaffolding used to restore and repair the Dome will be enclosed and temperature controlled so the work can be conducted year round.

photo: Martin Valent

In addition to supporting policies regarding lower prescription drug costs, members also addressed several supplemental appropriations bills during November's Special Session. One measure, House Bill 301, makes a supplementary appropriation of excess lottery revenue funds to the Workers' Compensation Commission. This money, in the amount of \$9 million, goes to the fund supporting the Self-Insured Security Pool, which will fund benefit pay orders on workers' compensation claims for active self-insured companies who have begun to self-administer the claims of their injured workers. The funding for the security pool will look to protect the self-insured community in the future from problems that have faced other corporations, such as the Weirton Steel bankruptcy.

The Legislature also passed Senate Bill 3006, which makes several supplementary appropriations to various state agencies from the balance of money remaining as an unappropriated surplus balance in the State Fund, General Revenue. The Department of Education receives money in the amount of \$968,511 for increased enrollment and tax assessment errors; the Division of Culture and History receives \$1.6 million for capital outlay, repairs and equipment; and, the Division

of Criminal Justice Services receives \$800,000 for community corrections programs, which correlate with alternative sentencing initiatives.

Funding was also approved, through the passage of Senate Bill 3007, for the West Virginia State Police in the amount of \$3.9 million. This appropriation has been earmarked for the purchase of a new helicopter. Also, Senate Bill 3008 approves an appropriation of \$1.2 million for the Department of Military Affairs and Public Safety to purchase a new helicopter for its services.

In addition, the Legislature passed Senate Bill 3013, which makes a supplementary appropriation of \$6 million from the Revenue Shortfall Reserve Fund to the Governor's Civil Contingency Fund to assist flood victims and to fund other needed infrastructure and community development projects throughout the state.

Along with supplemental appropriations, the West Virginia Legislature addressed legislation that needed immediate attention. One measure, Senate Bill 3002, established a revolving loan fund, entitled the "State Election Fund" to maximize the funding available to counties for election equipment, software, related technology and services upgrades as required by standards established by the federal "Help America Vote Act of 2002" (HAVA). Federal law established under HAVA mandates that all 50 states develop and implement some form of electronic voting system to replace the outdated punch card and/or lever voting systems by the year 2006.

Also addressed by the Legislature was Senate Bill 3003, which enables the Board of Medicine to license doctors under special circumstances if beneficial to the public interest and to authorize the Board to grant licensure where there are technical, non-material omissions or errors in the application process. The bill states the board may overlook errors in the application for licensure as long as there is sufficient information available to the board to determine the eligibility of the candidate.

In addition, the Legislature passed Senate Bill 3014, which authorizes tax credits of up to \$1 million for qualified economic development and technology advancement centers during fiscal year 2005 with regard to the West Virginia Capital Company Act. In addition, this measure allows the Economic Development Authority to allocate or refuse to allocate tax credits authorized by the Capitol Company Act and adopt criteria to aid its determination of the extent to which the applicants for the credits will fulfill the purposes of state law.

In total, the West Virginia Legislature passed 15 measures

during the two-day special session and adopted what many are labeling as the most important and vital policy recommendations in the past several years. With the adoption of SCR 301, the nation is looking toward the Mountain State as the leader in establishing a plan of action for lowering prescription drug costs.

Agriculture & Agri-business

November

In this month's meeting of the Agriculture and Agribusiness Committee, the Committee reviewed proposed draft legislation pertaining to the Beef Industry Self-Improvement Program. The proposed draft legislation would authorize the Commissioner of Agriculture to conduct hearings as to whether a referendum should be held on the proposal to implement an assessment on the sale of beef cattle as well as to review the amount of the proposed assessment.

Under the proposal before the Committee, an assessment of sale would be charged to any livestock markets, packers, buying stations, order buyers, livestock dealers or other persons purchasing cattle, including dairy cattle, and all direct shipments from farms and other private treaty sales. The Self-Improvement Assessment Board would keep all records of assessments and expenditures for a period of five years. While producers of cattle would initially be subject to the assessment, any producer who pays an assessment shall have the right to receive a complete refund of their association fee upon a determination by the Board that they are a producer. Any request for a refund must be submitted in writing to the Board within 30 days of the Board's initial receipt of the assessment.

The proposed draft legislation would also create the West Virginia Beef Industry Council (WVBIC) with the mission to enhance the sale and profit potential of the state's beef industry by supporting efforts to solve problems in livestock health, production, marketing, and breeding. The WVBIC would be composed of nine members to be appointed by the Governor, including six members to serve as representatives of beef producers, one member to represent the dairy industry, one member to serve as a representative of the livestock market, and a member to serve as a representative of the meat packing industry. To be eligible for appointment to the WVBIC, individuals must be residents of the state who have been employed in the beef industry during the five years preceding the appointment. The appointed members of the WVBIC would serve an initial term of three years with the ability to be reappointed by the Governor to serve successive terms.

Finally, the proposed draft legislation would continue the Beef Industry Self-Improvement Program to the first of July 2014.

Education Subcommittee B - Public Education

November

This committee discussed SCR 100, which requests a study on public dress codes and the use of school uniforms.

A representative from JE Robbins Elementary, which currently has a uniform policy in place, spoke about how successful the policy has been at that school. She stated that, as an administrator and a parent at the school, she has seen a marked improvement in the social climate, with less peer pressure for the students and less pressure for teachers and parents in the educational and financial areas.

The policy was implemented after 80 percent of the parents approved it for the 2004-2005 school year and she feels it helps keep the focus on education. She also said that the uniforms are merely encouraged not strictly required.

A representative for the Kanawha County Board of Education said it was his belief that in the handful of schools in the county that implemented uniforms, peer pressure was less when uniforms are present. He also felt that if you go to a uniform policy and then begin allowing accessories such as flashy belts, hats, etc., then the definition would become stretched. Also, he believed that perhaps lowering the threshold of parental approval needed, below 80 percent, might benefit schools.

A representative from the West Virginia Board of Education provided some national statistics regarding uniforms and said that in 1996 only three percent of schools had uniform policies, which is rising. Also, it has been shown that a uniform policy helps provide for a safe school by preventing gangs, discouraging theft and allowing students to better concentrate on the educational aspects of school. There are currently three schools in West Virginia with uniform policies, all located in Kanawha County.

Equal Pay Commission

October

Continuing in its efforts to equalize the salaries of state workers, the Legislature's Equal Pay Commission met to discuss the third pay equity salary adjustment. Effective November

1, 2004, \$635,616 will be distributed to approximately 1,300 state employees in 11 job classes that have been targeted as having salaries well below the expected amounts.

The Equal Pay Commission determined that employee salaries substantially lower than expected earnings, which are based on job requirements, needed to be targeted for the adjustment. As a result, the four classes with salaries more than 35 percent below the expected amounts will receive a monthly pay increase of \$50. The remaining seven job classes, which have salaries that are 30 - 35 percent below the expected salaries, will take in an additional \$36 each month.

The West Virginia Legislature earmarked \$250,000 in General Revenue funds for the Fiscal Year 2005 effort, with the remaining amount provided by federal matching funds. This brings the total amount of state funds appropriated since the adjustments began to \$700,000 - which, in conjunction with federal monies, has resulted in approximately \$1.6 million in salary increases for West Virginia state employees.

The 1999 State Employee Pay Equity Study concluded there exists a consistent pattern of underpayment for female-dominated jobs in comparison to equivalent male-dominated jobs. Updates are being made this year to target the most affected job classes. In making the determination, the Equal Pay Commission charged the Division of Personnel with rerunning the study using the most current information.

The new study evaluated current salaries, tenure data, changes in job classifications and other salary adjustments that occurred because of specific problems. Additionally, it was concluded that lower pay leads to high turnover rates. Therefore, the job classes receiving salary adjustments have turnover rates that range from 13.8 percent to 75 percent. Among those classes are Social Services Coordinator, Child Protective Service Supervisor, Economic Service Worker and Employee Program Specialist.

Finance Subcommittee A

October

This committee continued the discussion of Senate Concurrent Resolution 43, which requests a study of repealing the current corporate license tax and replacing it with a fee to be administered by the Secretary of State.

The study says that the current corporate license tax is archaic, confusing to business and difficult to administer. Streamlining and updating the process to more accurately

reflect the true reporting requirement would be less burdensome to business and more efficient. The committee believes that an annual reporting requirement with an annual fee could be administered by the Secretary of State to replace the fiscal impact of the tax being repealed.

The committee is reviewing both House Bill 4057 and Senate Bill 210 from the 2004 Regular Session, which were drafted to repeal the corporate license tax. Both bills remained in the respective Finance Committees at the end of the session and subsequently died in committee.

November

Reviewing the feasibility of repealing the Corporate License Tax and instead imposing a \$50 flat fee on incorporated entities; lawmakers met and received an overview from committee staff of their duties under Senate Concurrent Resolution 43. This resolution charged members with the task of studying this option, which is known as the Vision-Shared Tax Reform Proposal.

Throughout the committee's discussion, protecting West Virginia's business community emerged as the dominating goal and concern. Accordingly, lawmakers commissioned the Department of Tax and Revenue to determine how repealing this tax would affect businesses and to develop various options for the committee to consider.

A representative of the Department told lawmakers that the way the proposal currently is written, the only non-profit organizations that would be required to pay the fee are those that are incorporated. Committee members requested the Department to determine exactly which non-profits would be affected, as well as provide fee scenarios that both include and exclude these entities.

If enacted, this move could serve to streamline and update this process and would bring West Virginia into conformity with approximately 30 other states that have done the same.

Finance Subcommittee B

October

As called for under Senate Concurrent Resolution 92, members of this committee met to discuss the possibility of reducing or eliminating the sales tax on food. It was stated that proponents of the reduction would need to recommend paralleling cuts in state government.

Lawmakers requested a breakdown of what other states, counties and municipalities have done. Additionally, they asked for an analysis on the effect this reduction would have on projected revenues for grocery stores in border counties.

November

The committee in November continued its study of SCR 92, which requests a study for ways to reduce and eliminate the food tax in West Virginia.

A representative from the Tax Department told the committee that compared to surrounding states West Virginia has an average sales tax rate of 6 percent. Property tax accounts for 20 percent of the state revenue.

The representative also demonstrated the average tax deductions for a \$61,000 income level to illustrate the loss of revenue if the sales tax was eliminated. In West Virginia, under that salary threshold, the income tax would be \$2,783, the Real Property Tax would be \$716 and the Sales Tax \$928 for a total tax burden of \$4,427. Lawmakers questioned whether other taxes would have to be raised to recoup the lost revenue created by eliminating the sales tax.

Compared to all other states, West Virginia has a lower per capita state and local tax revenue of \$2,567 to the US average of \$3,216. Our property tax is less than half the average of all other states, \$498 to \$992, and our sales tax is more than \$200 less than the average, \$533 to \$792. However, our general corporate tax is higher than the average, \$122 to \$100, and our public utilities tax is nearly twice as high, \$122 to \$72.

The representative also said that a state's sales tax on groceries is often used to help compensate for low property tax. Several other low residential property tax states also incorporate a sales tax on groceries to make up for lost revenue. The Fair Tax Commission has recommended keeping this tax.

Forest Management Review Commission

November

To review private ownership of West Virginia's forests, the Director of the Division of Forestry (DOF) appeared before the committee and also provided an overview of the Landowner Assistance Service Policy. He supplied lawmakers with information on the current activity of privately-owned forests and services provided by this Division to assist the landowners.

According to his information, there are 260,000 private, non-industrial forest landowners in the state, with activity on 3,750 parcels of land each year. Additionally, there are 6,769,600 privately-owned acres in West Virginia, with activity on 225,000 acres per year.

The Director told attending lawmakers these private landowners manage their forest land for many uses, including timber production, non-traditional forest products, wildlife habitat, recreation and for aesthetic purposes. In addition, private landowners furnish approximately 99 percent of all raw materials for primary manufacturing plants, including sawmills, pulp mills and veneer plants.

He also reviewed the landowner assistance requests for 2003, which added up to 107 timber sales, 269 management plans, 61 timber marking jobs and 256 consultant referrals. The new Landowner Assistance Service Policy, which went into effect on September 1, 2004, states "DOF employees will render professional technical services to private forest landowners within the scope and guidelines of the forestry programs under the direction of the State Forester."

The services provided by DOF personnel include providing all new landowners with an information packet that includes brochures and other information on services and programs offered. Among services not offered by the DOF are appraisals for tax purposes, timber theft investigations, resolution of disputed ownership and cases involving litigation.

Government Organization Subcommittee A - 1

October

Picking up on their study of the financial operations of West Virginia's senior centers, members of this committee met to hear from a representative of Berkeley County Senior Services. She described services provided to area seniors and addressed the need for fund raising. According to her, they have utilized fund-raising activities to meet the needs of local seniors by providing beneficial services, including programs of support for care givers.

November

The subcommittee reviewed Senate Concurrent Resolution 89, which was adopted in the 2004 regular session, studying nonprofit entities that receive state and federal funds. An attorney from a local law firm addressed the committee to explain various types of entities. The resolution studies the issue of not-for-profit organizations and nonprofit organizations competing with for-profit organizations. Concern was placed

on whether nonprofits be using their tax-advantage status to improperly enrich individuals both in and out of the state. Some not-for-profit and nonprofit organization's Boards of Directors are ignoring their fiduciary and legal responsibilities. These organizations are either a private/family/corporate, private operating or community organization.

The attorney stated the private family organizations' mission is to devise grants for qualifying charitable nonprofits, with donations typically received from a single donor or a related donor. The tax deductions the organization receives include 30 percent of the Adjusted Gross Income for outright gifts and 20 percent of appreciated assets. There are an estimated 341 private operating organizations in the state.

Private operating organizations, he stated are to devise grants for their own tax exempt activities: zoos, libraries, and museums. Donations can be received from both single donors and the general public. The organizations tax deductions are 50 percent of Adjusted Gross Income for outright gifts and 30 percent for appreciated assets. There is an estimated 15 organizations of this type in the state.

Community organizations are the final category of organizations the speaker addressed. These organizations devise grants for qualifying charitable nonprofits and causes, including scholarships. These organizations can receive multiple donations from the general public. Their tax deductions are 50 percent of Adjusted Gross Income for outright gifts; 30 percent for appropriated assets. There are 16 community organizations located in the state.

Government Organization Subcommittee A - 2

November

A representative from a law firm in Pittsburgh, PA spoke to the subcommittee about his experience with legislation Pennsylvania enacted in 1997 pertaining to the taxation of certain nonprofit entities that receive state and federal funds. The legislation, commonly referred to as Act 55, provides tax exempt status to institutions that are designed to be providers of purely public charity. The legislation, however, does not define this term, which has lead to uncertainty in determining which organizations qualify for tax exempt status under the Act.

He explained that historically, such charities have been exempt from taxation due to their contribution to the common good. However, even with a history of providing tax exemptions to such entities, he conveyed that the lack of specific legislative standards as to what constitutes a purely public



charity has caused a considerable amount of uncertainty and inconsistency in the state as to whether a particular organization qualifies for exempt status. This uncertainty has led to confrontation among traditionally tax-exempt institutions and political subdivisions, which in his opinion, is only a detriment to the public good.

To alleviate some of the regulatory uncertainty, the Legislature is looking to develop a unified standard, which would be applied throughout the state for determining eligibility for the exemption. In this effort, the Legislature is studying the standards applied in other states that have enacted similar laws providing tax exempt status to charities that serve the public good. In most instances, other states classify an organization based on the services actually provided by the entity rather than focusing on the purposes under which the charity was originally established/organized.

Government Organization Subcommittee B

October

Continued discussion of Senate Concurrent Resolution 61, which requests a study of local health departments, led this committee to focus on local health boards.

Representatives from a group called Building a Better Eastern Panhandle spoke before the committee concerning ways to form better communication with the local health boards. They reported to the committee that in instances where a new head sanitarian is appointed, the rules can change and are not uniform regarding construction of sewer systems in the area. In one area of the Panhandle, a Class I system is acceptable but a Class II system may be required elsewhere. The group also said they have had trouble contacting members of the health board for appointments.

Representatives from the Eastern Panhandle Home Builders Association said the health boards need to be held accountable if someone is trying to get a response from them. Also, they said the boards should set specific time frames for various permits and establish more consistency regarding staff.

Representatives from the Berkeley and Morgan County Health Boards said they would continue to assess problems as they occur and are attempting to reconcile difficulties regarding problems with contacting them and keeping appointments.

View Interim Schedules and information on the West Virginia Legislature's website: www.legis.state.wv.us

Government Organization Subcommittee C

October

This subcommittee continued the discussion of Grievance Boards and the Administrative Law Judges system.

A representative from the Legislative Auditor's office briefly addressed the committee to explain that the funding for the Grievance Board comes from the state General Revenue Fund. As of February 1, 2004, the Board employed only nine people: a Director, an Administrative Officer, four Administrative Law Judges (ALJs), and three Secretaries in a flat organizational structure. The Grievance Board, in its procedures, must send an annual report which details the numbers of cases, results and money spent, to the Legislature.

The representative also said that the money for ALJs salaries' comes to 58 percent of the budget for the Grievance Boards. They solely hear the Level Four grievance procedures. Typically they hear around 200 cases from the state and higher education sectors at level 4 for about 50 cases per Judge a year. The number of grievances filed at Level Four has remained steady during the last four years. The ALJs continued issuing decisions promptly, often in less time than required by law, which requires decisions to be issued within thirty working days.

The committee will continue to examine these systems and continue the discussion in the coming months.

November

To provide lawmakers with a presentation on the cost of private arbitration in grievance hearings, a representative of the Office of the Legislative Auditor, Budget Division appeared before the committee. She first reviewed organizations that provide alternative dispute resolution services.

One of these is the American Arbitration Association, which provides many dispute settlement alternatives through mediation, arbitration, elections and other out-of-court settlements. The other organization mentioned was the Association of Attorney Mediators, which is a non-profit group of qualified attorney-mediators. They help individuals seeking mediation services in finding the most suitable attorney-mediators.

The speaker then addressed the estimated costs to the state. According to information provided, an employer agency incurs legal and witness time costs. If its own attorney does not represent the agency, then it is required to pay for legal representation through the Attorney General's Office at a

cost of \$47 per hour. At this rate for 5 days or 35-40 hours, the total cost would be \$2,000.

The witness costs are based on the time lost from work by agency employees. According to her, the cost of time lost for the employee whom the grievance was filed against totals approximately \$554. The cost of the witness' time lost is approximately \$500, bringing the total time lost cost to the agency to \$1,054.

Using the 2004 budget, the average cost to the Grievance Board is \$3,458. This brings the total cost to the state to \$6,512.

Joint Commission on Economic Development

October

Representatives from the West Virginia Thoroughbred Breeders Association addressed members of the Joint Commission on Economic Development regarding the West Virginia Thoroughbred Development Fund (WVTDF). This fund, developed in March of 1984, was established to promote better breeding and racing of thoroughbreds in West Virginia through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners.

Representatives stated that funding for the WVTDF was originally provided solely through two percent of the live pari-mutual wagering. Currently, the funding streams for this program have increased and include certain percentages from importing and exporting simulcasting signals, as well as from the net terminal income of three of the four West Virginia racetracks.

According to the representatives, the first \$300,000 deposited into the WVTDF, annually, is available for purses for designated stakes races. Up to 60 percent of the remaining funding is available to the breeders of accredited thoroughbred horses and up to 15 percent available to the owners of the sires. In addition, up to 25 percent is available to the owners of the accredited thoroughbred horses. Any excess moneys are used for purses for accredited or restricted races having only horses enrolled in the WVTDF. To further encourage the breeding and siring of West Virginia thoroughbreds, an annual stakes race, known as the West Virginia Thoroughbred Breeders Classic, offers a \$1 million purse and is funded through the Racetrack Video Lottery Account.

Representatives expressed the importance of the WVTDF in building and maintaining the thoroughbred industry in West Virginia. However, additional legislative action could be taken to further improve the industry. One recommendation offered

by the representatives would be to establish preference to West Virginia bred and sired horses when applying to enter a race. Some states, such as Pennsylvania and Virginia, have established such preferences, which enable local horses to fill racing slots first, with the rest of the applicants to follow. New York State, according to the representatives, offer weight allowances in order to encourage local thoroughbred breeding and siring.

During its second meeting of the October Interims, the Commission heard reports from various local entities regarding local economic development activities and climate.

A representative from Morgan County said that economic development in that county is currently focused on existing business rather than enticing firms from the outside. The representatives also stated many citizens still talk about catching the proverbial "big fish" but their success is better reflected by working with existing businesses, start-ups, real estate and home based businesses.

Recent economic development successes in Morgan County included a \$1.5 million sewer and water extension project that has helped generate twice the amount in commercial investment in two separate businesses along US 522 with more potential for the future. Also, the Economic Development Authority in Morgan County is continuing its Rails to Trails project in Paw Paw and Berkeley Springs and is planning to study the feasibility of a Science and Technology Park.

Also appearing before the committee was a representative from the Region 9 Planning and Development Council. He presented a report concerning efforts made by the Council and noted some of the problems facing the region.

According to the representative, the Eastern Panhandle is experiencing rapid residential growth; and as such, the growth has caused extreme congestion on roads; increased the need for public transportation; required updated public utilities; and, enhanced the need for improved telecommunications. In short, the area has been slow to catch up with the growth. The residential growth is largely due to Washington, D.C. metro families moving to West Virginia to take advantage its lower cost of living. However, this migration increases the need for public services but not the tax base to support them since most of the businesses generating revenue are in surrounding states.

Also, as property values have increased over the last few years, affordable housing is becoming non-existent. With families come children, and the construction of educational facilities is not keeping pace with the residential growth and increasing enrollments.



Interim Highlights

On the positive side, there is quality affordable child care and support services for the senior population.

November

With the upcoming Regular Session in view, members of this committee met to review the economic development tax credits that currently are available. Appearing before the committee first was the Executive Director of the West Virginia Economic Development Authority, who provided lawmakers with an overview of the three tax credits administered by this agency.

Among the Capital Company, Technology Advancement and High Growth Business Investment Credits, he said the majority of activity has taken place in Capital Company Credits. Committee members requested the Authority to gather data on how many jobs have been created as a result of these credits to be presented at the next meeting.

The Executive Director of the West Virginia Development Office (WVDO) and counsel from the West Virginia Tax Department then reviewed the tax credits managed by the WVDO.

Among those are the Economic Opportunity Credit, which is available to qualified businesses that make an investment in a new or expanded business; the Strategic Research and Development Tax Credit, which is targeted at businesses participating in research and development; and, the Tourism Development Incentive, which is available to companies that invest in and operate tourism destination projects.

The WVDO Director also discussed Tax Increment Financing (TIF), which allows increases in property tax associated with qualified economic development and public improvement projects to assist with long-term financing. He said a Sales Tax TIF was used to attract Cabela's to West Virginia and that future TIF projects would need the Legislature's approval.

Joint Commission on Pensions & Retirement

November

The committee heard from the Program Director of Jobs for West Virginia's Graduates Program, who presented the committee with a legislative proposal to withdraw the organization from participation in the Public Employees Retirement System (PERS). As a small organization with less than 10 employees, the Program Director explained that participating in PERS was placing a financial burden on the employees and the organization. The Program Director stated that it

requires legislative action to withdraw from PERS due to a resolution passed in 1998 that prohibited employees of the organization from leaving PERS.

At this time, the Program Director was uncertain of the procedure to withdrawal from PERS and the alternative retirement plans that would be available for these employees. Further research into how to withdraw from the system will be presented at a future committee meeting.

Joint Standing Committee on Finance

October

In the Joint Standing Committee on Finance two speakers were present to discuss the overwhelming population growth that is occurring in the Eastern Panhandle. A citizen of Jefferson County spoke before the committee concerning the highways and schools in the area.

He stated that there is \$205 million total in highway construction in Jefferson County. This amount divided up between \$10 million each being spent for the replacement of bridges in Harpers Ferry and Shepherdstown due to old age and the other \$185 million for road expansion.

Another area of concern in the Eastern Panhandle is the overcrowding of schools. State funding for schools is based on student enrollment for the previous school year. According to the speaker, enrollment for the 2004-2005 year has increased by 700 new students, bringing the total enrollment for Jefferson County to 7,721. In addition, the county is suffering from a lack of funding for new school buses.

Also, the Superintendent for Berkeley County Schools stated that seven new schools opened this year. However he demonstrated concern that there is still not enough space for the increased enrollment. He also stated not only does enrollment need 100 percent funding, but the schools continue to show an inadequacy in technology.

The committee is looking at ways to help with the growth and expansion occurring in the Eastern Panhandle.

Joint Standing Committee on Government Organization

October

Exploring the option of creating a new licensing board for the West Virginia Athletic Trainers Association (ATA), members met to discuss the sunrise application and hear from affected

parties. The Director of the Legislature's Performance Evaluation and Research Division (PERD) was the first to speak and provided lawmakers with the Division's report on the ATA's request.

A lobbyist for the ATA then addressed the committee and encouraged lawmakers to consider creating a licensing board, as 43 other states have done. He communicated the need for athletic trainers to be regulated because they provide care for many of West Virginia's children. Representatives of the ATA and other interested individuals echoed this sentiment because, according to the ATA's President, many athletic trainers currently practicing in West Virginia have not completed much education in this field.

November

The Joint Committee on Government Organization held a brief meeting to discuss Ohio River conservation and river fish management and research.

A citizen from Wood County offered some proposed changes to existing State Code, which would restructure the Ohio River Advisory Council. One of the changes is to rename the Council the Ohio River Fund Management Board and reconstitute its membership to include four citizen members and two members representing the Division of Natural Resources (DNR).

The new Board under the proposed changes would have complete control of the expenditures from the Ohio River Fund and would authorize the West Virginia Wildlife Endowment Fund Board to appropriate money as needed.

Meetings would be chaired by a citizen member and held at least once a year in Parkersburg. A quorum would be present when three citizens members and the DNR representatives were in attendance.

The committee will hear presentations from representatives of the DNR to examine the necessity of such a change and to consider additional possible changes to the Advisory Council in future meetings.

Judiciary Subcommittee A

November

The Subcommittee studied the issue of electronic voting systems in the November interim meeting. A representative from VerifiedVoting.org came from California to speak on the benefits and defects of electronic voting. The goal of the

Verified Voting Foundation is to ensure U.S. elections are transparent, accessible, reliable, publicly verifiable, strictly non-partisan, independent and vendor neutral.

The organization was created due to the Help America Vote Act (HAVA) passed by Congress in November of 2002. The West Virginia Preliminary HAVA Plan was issued in May of 2003. The state then purchased Direct Recording Electronic (DRE) voting machines for disabled access. As for the purchasing of voting machines for the 55 counties in the state, the state will negotiate for the lowest-priced contracts for the purchase of these machines. The state will also provide grants and loans to fund the full conversion of state voting to DREs according to Section 2.A of the West Virginia Rules and Regulations.

The speaker explained the justification for paperless DREs as voting access for the blind and disabled voters of the state. It also prevents over-votes while also warning about under-voting.

Some of the problems with the use of DREs are that voters can't see how their votes are recorded and are concerned there may be a possible deletion of the voter's ballot or a duplication of ballots. Also, paperless DREs complicate the administration of elections. Without a computer and software, ballots are invisible, making manual recounts impossible.

According to the West Virginia State Code, ballot boxes must be empty before polls open, so how do poll workers, election judges, and observers verify that a DRE's electronic ballot box is empty?

Direct Recording Electronic voting machines are more complex for poll workers and voters to use. This makes poll worker training more difficult. The machines are also expensive to purchase and test. Also, there have been numerous documented cases of malfunctions for DREs, according to the representative.

According to the presenter, some options for improving these electronic voting machines are: improved standards with clearly -defined requirements; greater emphasis on usability and security; more rigorous testing and recruitment; and, improved poll worker training and recruitment.

House Counsel reviewed Senate Concurrent Resolution (SCR) 55 addressing state fire code rules in regard to bed and breakfast (B&B) establishments. There are difficulties in maintaining fire standards for most B&Bs in the state. A survey of other state regulations showed that many states had minimal requirements for B&Bs, requiring them to install only sprinkler systems and smoke detectors.

Many of these establishments are typically historic or unique homes with a limited number of rooms rented to a few guests and are not designed, nor financially able, to meet stringent fire code rules designed for larger lodging or rooming houses. However, even though these rules are still applied to bed and breakfasts.

Legislation will be drafted for the December's interim meeting to address some regulation specifically designed for bed and breakfast establishments.

Judiciary Subcommittee B

November

Members of Judiciary Subcommittee B reviewed and discussed two proposed pieces of legislation during the November Interim session. Both measures were amended by the committee and reported to the Standing Committee on the Judiciary with full committee approval.

The first measure discussed by the committee was a bill that would make certain changes to the motor vehicle test and lock program. Committee counsel stated this bill would require mandatory participation in the program for repeat offenders as well as define the term "conviction" as a plea of guilty or nolo contendere, a forfeiture of bond or collateral, or a finding of guilt by a court or jury. Also included in the legislation was a change in language that would permit individuals in the test and lock program to operate a motor vehicle on the job site without test and lock equipment as long as the operation of the vehicle is required for employment. Committee members adopted an amendment, however, that would prohibit motor vehicle test and lock participants from operating a vehicle on public roads and highways even if doing so is part of their job requirements.

The second measure approved by the committee would make certain changes to the West Virginia Contractor Licensing Act, more specifically the composition of the Contractor's Licensing Board. The proposed legislation would add two new members to the Board, one representing the Attorney General's Consumer Protection Division and the other being a consumer advocate.

Representatives from the current Contractors' Licensing Board addressed the committee and voiced concerns over the proposed changes to the board's composition. Citing the industry has been highly successful in policing itself, the representatives stated there was no need for the Attorney General's Consumer Protection Division to have a seat on the board. In addition, the representatives stated current board

members are conscious of the problems and capable of righting the wrongs through a detailed complaint process.

A spokesperson that represents low income citizens also addressed the committee and expressed the definite need for the additional two board members for the increased protection of consumers. The representative noted that most regulatory and licensing boards in West Virginia have consumer protection advocates as members. In addition, the representative stated Maryland, Ohio and Virginia all have consumer advocates on their Contractor Licensing Boards.

Committee members, agreeing on a compromise with regard to the Contractors' Licensing Boards membership, amended the bill to add one additional member from the Attorney General's Consumer Protection Division.

Judiciary Subcommittee C

October

Continuing with their study on the National Crime Prevention and Privacy Compact (SCR 51) the Subcommittee reviewed draft legislation associated with this resolution. The draft legislation would allow West Virginia to join 21 other states in ratifying the compact. The legislation would approve the compact and ratify it, as it existed on January 1, 2004 and remain in effect until legislation renounced the compact.

The Superintendent of the West Virginia State Police would execute, administer, and implement the compact and could adopt any rules, regulations and procedures for the national exchange of criminal history in exchange for non-criminal records purposes. This ratification would not affect the responsibilities of the State Police Criminal Records Section regarding the dissemination of criminal history records within West Virginia.

A guest speaker of the West Virginia State Police was in support of ratification of this compact. The main goal of this ratification is to streamline the transfer of criminal history records for non-criminal purposes between other states that have ratified the compact as well.

November

The Legislature considered a bill during the 2004 Regular Session that would have provided liquidated damages for failure to pay a terminated employee's wages owed could not exceed the amount of actual damages in any claim. Continuing reviewing the possibility of amending the Wage Payment and Collection Act, lawmakers heard from various proponents and opponents of the amendment.

One of the amendment supporters, the Executive Director of the West Virginia Development Office, said that in trying to attract and maintain businesses, the state needs to offer guidance and direction to employers because consistency is essential. A representative of the West Virginia Chamber of Commerce echoed his statements and stated that clarity is needed. She urged lawmakers to define the difference between a mistake and a wanton mistake on behalf of employers.

An opponent, who spoke for construction workers, said this problem of outstanding wages after termination happens often and he does not support disrupting a law that has been historically effective in returning wages to employees. Reflecting this opinion, a spokesperson from the United Mine Workers said the current statute was designed to prevent litigation, and stated that the current law is clear in outlining penalties. Others in opposition, including a representative of the plaintiff class, said this amendment would favor employers and be to the detriment of employees.

Juvenile Foster Care, Detention and Placement Task Force

October

Members of this committee heard a presentation titled “Helping Working Families Succeed” by a representative from the National Conference of State Legislatures.

The purpose of the study is to help legislators develop ways to strengthen at-risk families and neighborhoods and will also help legislators look beyond specialized policy areas and focus on comprehensive policy approaches that cut across programs. Another purpose is to develop leadership capacity and facilitate communications among legislators.

The rationale of the study is that children do better when their families do better. Also, working families have a difficult time building a sustainable base of economic security for themselves, their children, and their neighborhoods.

Some of the factors singled out in the report as risk factors for delinquency include: being a witness to domestic violence; living in an economically or socially distressed neighborhood; being exposed to neglect; having developmental problems or mental health problems; and, family disorganization.

One challenge for State Legislatures in implementing the programs would be working across committee and community jurisdictions to achieve broad based policy approaches.

After this presentation, committee staff presented the monthly report regarding Out-of-Home Care

November

As part of this committee’s continuing aggressive agenda, members met in November to study and discuss child safety in West Virginia. A Child Welfare Technical Assistance Specialist from the National Conference of State Legislatures (NCSL) opened the meeting and addressed how West Virginia compares nationally in the number and types of child abuse.

The information he provided revealed that in 2002, approximately 17 in 1,000 children in West Virginia were victims of abuse, compared to 12.3 in 1,000 nationally. Also in 2002, 30.7 percent of all abuse cases in West Virginia were physical abuse cases, compared to 18.6 percent nationally. In the same year, 7.7 percent of abuse cases in the state involved sexual abuse, while the national average was 9.9 percent.

The NCSL representative then talked to lawmakers about what West Virginia is doing for child safety. The issues being addressed in the state include the recurrence of maltreatment, which is defined as abuse that is repeated within six months of a prior confirmed incident. The national standard for repeat abuse is 6.1 percent or less. In 2003, West Virginia saw 10.1 percent.

According to the speaker, West Virginia also is working toward ensuring that children are safely maintained in their homes when possible. He said there is a significant relationship between maintaining children in their homes and caseworker visits with children and parents; the needs and services of children and parents; parental involvement in case planning; and, the timeliness of initiating investigations.

Strategies utilized by other states to address safety include enhanced training for workers, supervisors and judges; new risk and safety assessment processes and tools; improved collaboration with other agencies and communities; and, strengthened supervisory oversight.

The other presenter who addressed this issue was the Assistant Commissioner of the Office of Planning and Quality Improvement from the Bureau for Children and Families. She said the Office has submitted its program improvement plan to the Federal Government. This plan included a comprehensive assessment of the planning system and found that safety is the top issue and concern.

Therefore, according to the speaker, child safety has become the focus of the improvement plan. She said the efforts of other states mentioned by the NCSL spokesperson are included in this plan. Also, she said West Virginia is not alone in its review of risk and safety assessment processes, as many other states are doing the same.

The Executive Director of the Mountain State Family Alliance (MSFA) then spoke to committee members. Subsidized by federal, state and community funds, MSFA provides a coordinated service delivery system for children with or at risk of a serious emotional or behavioral disorder. Services are provided to these children who are returning to a family-like setting from an out-of-home placement, as well as those at risk of custody or placement outside of the home.

The Commissioner of the Bureau for Children and Families closed the meeting with the monthly foster care report. On September 30, 2004, there were 2,871 foster care placements. Of this number, 396 were out-of-state placements.

LOCEA

October

To resume its study of West Virginia's educational system, this committee convened and first heard from the Chancellor of the Community and Technical College (CTC) Council. The report he provided outlined the Council's five major goals for the delivery of CTC education.

These goals are to provide access to affordable and far-reaching CTC education throughout West Virginia; produce high-quality graduates who will be successful in the working world or in continuing education; provide high-quality workforce development programs; collaborate with providers to deliver education and training to the CTC community; and, work with the public school system to increase the state's college attendance rate.

A representative of the CTC of Shepherd then provided attending lawmakers with an update on the college's progress and successes. As a result of various pieces of legislation, improvements have been made on the campus including the expansion of classrooms and improved grant funding. He also described the CTC's customized and targeted training that includes collaboration with companies including Ralph Lauren, Jefferson Memorial Hospital and Verizon.

The Assistant Superintendent of the West Virginia Department of Education then addressed the committee regarding major changes to Policy 5202 - a legislative rule that establishes the minimum requirements for the licensure of educational personnel to be employed in West Virginia's public schools.

Among other changes, language has been added to policy to match eligibility requirements and training stages contained in State Code for alternative programs for the preparation of

teachers. Additionally, revisions are needed to align policy requirements for tuition reimbursement with requirements in the State Code.

The Chancellor of the Higher Education Policy Commission was next on the agenda and provided lawmakers with data on the turnover rates of Classified Employees and the performance of high school students enrolled in public colleges and universities in Fall 2003.

Among other statistics, the data provided was broken down by each county's college attendance rate, average Fall and Spring Grade Point Average (GPA) and the percentage of those who completed 30 credit hours in the first year. Using Nicholas County as an example, there was a 54 percent college attendance rate. The average Fall GPA was 2.57 and the Spring GPA was 2.58, while 41 percent of the students completed 30 hours in their freshman year.

The President of Shepherd University was the final speaker and provided the committee with a presentation on the growth perspective for the University. According to him, the estimated impact of Shepherd on the state in Fiscal Year 2005 includes direct economic spending in West Virginia of approximately \$17 million.

The President said Shepherd and the Eastern Panhandle are growing and can play a significant role in West Virginia's economy. He encouraged policy-making that would foster this potential.

November

The Legislative Oversight Commission on Education Accountability (LOCEA) heard from the Director of the Higher Education Policy Commission (HEPC) that after reviewing the situation it had found very little evidence that the extension services started by West Virginia State University duplicate programs long offered by West Virginia University in counties where they co-exist. Budget cuts have reduced the amount of state funding for higher education, thereby prompting the review.

Members were told that with WVU extension offices in all 55 counties, West Virginia State University largely offers complementary services in 14 counties since offering extension services in 1998.

Extension programs assist farming-related endeavors and are offered by land-grant institutions. They also help families with nutrition, diet and health programs and aid businesses with research and continuing education studies.

A representative from West Virginia State University (WVSU) said his school drew down more than \$6 million in matching federal funds with \$1.2 million budgeted from state funds last year. This year, the school received no state funds for extension services while WVU was budgeted at \$8.5 million for extension services.

Committee members inquired about the possibility of the two schools forming a collaborative institution to combine resources and funds, to better deliver services to the state. To which the representative from WVU's extension services replied that the two schools have discussed collaborating and are currently in talks to coordinate some efforts. He also said WVU would be glad to work with WVSU and the Legislature to come to some agreement.

In the second meeting of LOCEA in November, members heard from representatives from The Washington Center, a non-profit, non-partisan educational organization in Washington D.C.

The representatives said that the organization provides internship programs and academic seminars to college students from across the country and around the world. It is affiliated with more than 850 colleges and universities nationwide and works with 2,000-3,000 internships placements in Washington, D.C. representing major professional fields in the private, public and nonprofit sector. The Washington Center currently has over 30,000 alumni.

Its internship program makes use of a unique format that allows students to gain academic credit from their colleges or universities. In addition, it works with colleges and universities to ensure credits are provided to keep financial aid from being lost.

The Center representatives said that up to \$4,250 in financial assistance is available to eligible students From West Virginia public colleges and universities and up to \$3,700 to students from West Virginia private colleges and universities. The cost to attend the 2005 Fall Semester including the application fee, housing and the program adds up to \$9,005.

Students typically work 4-5 days a week and there are several opportunities to meet and talk with members of Congress and other powerful Washington personalities.

The committee was most concerned with the cost of participating in the program -- whether lower income West Virginia families would be able to afford attending and whether or not the cost may preclude some deserving students from attending. Lawmakers requested further information on where exactly the money from participants was applied in order to

determine the worth of this program. State lawmakers were perturbed that it had taken the Washington Center so long to provide what information it had provided.

LOCHHRA

November

West Virginia residents who received child support payments will be seeing changes in the way their moneys are distributed, according to a representative from the Bureau for Child Support Enforcement.

In order to lower administrative costs to the state with regard to mailing and check printing, the Bureau has developed the Child Support Debit Card Program. This program, according to the representative, will replace child support checks with a Visa branded debit card offered through Branch Banking and Trust Company, more commonly known as BB&T Bank. The representative stated the state would save an estimated \$118,000 a year through reductions in postage, stationary and replacement procedures for lost or stolen checks.

The debit card program will also increase customer service for those receiving custodial benefits, according to the representative. Child Support payments will be faster and more reliable with immediate access to funds and the ability to pay for goods and services wherever Visa is accepted. In addition, individuals receiving child support payments will have access to their account via a secure Internet website. This will offer customers 24 hour-a-day balance information and customer services.

Members of the Commission voiced concerns regarding this program, especially pertaining to fees and charges that custodial benefits recipients may incur. Some of the fees, according to members of the Commission, may not be known by the recipient and may cause them to lose upwards of \$10 a month. The representatives from the Bureau for Child Support Enforcement stated the program is optional and child support recipients may opt not to participate in the debit card program.

A representative from the West Virginia End-of-Life Care Center addressed the Commission regarding proposed legislation and potential cost savings that can be generated by providing better end-of-life care to West Virginia citizens. According to the representative, 40 percent of West Virginians have completed an advanced directive for end-of-life care, which is well above the national average. The representative also noted that Forbes Magazine has listed West Virginia as one of the nation's "best places to die" - a title explained by

the representative as a positive marker of exceedingly good end-of-life care services.

Although end-of-life care in West Virginia has its accomplishments, the representative stated more could be done to further enhance the program. The representative discussed reasons to adopt the Medically Ineffective Treatment Amendment to the West Virginia Health Care Decisions Act. According to the representative, this amendment would help solve a common problem in regard to cardiopulmonary resuscitation (CPR) by defining when CPR is ineffective. The representative stated sometimes a patient's advanced directive requests the use of CPR yet his/her medical condition has deteriorated such that CPR procedure would be medically ineffective. In addition, the amendment would preserve health care provider and health care facility integrity, as well as reduce health care costs, according to the representative.

Finally, a representative from the Bureau of Medical Services presented the Commission with an update on the progress of the Unisys System, an implemented claims management processing system for Medicaid payments. According to the representative, the process has been a challenge and the system has had some technical problems but progress has been made in the past few weeks. The representative also stated they have been in direct contact with the International CEO of Unisys and are meeting with company associates on a regular basis. The representative added that states across the nation are closely monitoring the system to see if Unisys can provide a quality and effective claims processing program, which means West Virginia will be receiving immediate attention as Unisys attempts to showcase the benefits of its company.

October

The commission heard presentations from a representative of the YMCA from the Kanawha Valley concerning exercise programs in secondary schools, higher education and multiple communities regarding the Activate America Program. The Activate America Program, launched in early September 2004, promotes national, state and community activities for healthier living. The goals of the effort are to raise awareness and strengthen the framework for a national movement among all sectors of society to reverse the trends in physical inactivity, obesity and other unhealthy lifestyles.

The Activate America Program is taking place in 14 participating states. West Virginia and Delaware are the only two states that have all YMCAs participating in the program.

According to the representative, the Kimberly-Clark Corporation and JCPenny After-School Program are combining

efforts to activate multiple sectors of our society to pioneer healthier communities. He stated that very little has been done to combat the lack of physical activity and unhealthy eating habits among our population.

Another presenter before the interim commission was a representative from the West Virginia Department of Education, Office of Child Nutrition, who discussed obesity in children. The issue of obesity and youth is a problem all across the nation. The representative stated that 60 percent of overweight children have at least one additional risk factor for cardiovascular disease, and 25 percent have two or more risk factors.

Children spend the bulk of their waking hours in school, at least 1,250 hours each year. While in school, the students learn lasting lessons about nutrition and physical activity through their curriculum, teachers and peers. It is up to schools to model healthy eating and physical activity, both in theory and in practice. According to the Representative of the Department of Education, some of the programs West Virginia is currently using include: "Fruits and Vegetables Galore; Recipe for Success; Leading the Change; Rise and Shine; and, Snack Smart."

The final speaker was a representative from the Healthy Lifestyles Coalition. The Coalition's mission is to devise a plan of action promoting healthy lifestyle programs by surveillance, education, community-based intervention, outcomes research and public policy.

According to the speaker, the rate of obesity among children doubled between 1980 and 1994, with 20 percent of all children being overweight. Today, nearly half of 5th grade students and one-third of kindergarten children in West Virginia are found to be above the 85th percentile for body mass index (BMI), approximately double the national average. Health risks for children who are overweight include heart disease, diabetes, hypertension, sleep apnea and breathing problems.

The Coalition aims to foster a collaborative approach and strategy to combat childhood obesity in the West Virginia.

In the second meeting of the Commission a representative from the National Conference of State Legislatures (NCSL) spoke on providing health insurance to the estimated 44 million uninsured Americans. Unaffordable health care costs have been coupled with technological advancements, prescription drugs, unmanaged healthcare; as well as, personal health management, which can include smoking, certain problems concerning obesity and many other preventable illnesses.

State initiatives for covering the uninsured fall into three categories for the uninsured, according to the findings by the NCSL. They are: public market initiatives that could help increase employer offered insurance and create market reform; public/private sector initiatives that could assist low-income uninsured via government sponsored programs that leverage dollars for insurance and support direct care program; and, public sector initiatives that could assist low-income uninsured via government sponsored programs.

Improved access to private health care is needed, according to the representative. 5 out of every 7 people under age 65 are covered by a private plan with most of these plans being employer-sponsored. States need to provide substantial premium subsidies, build on existing programs, minimize administrative burdens on program partners, streamline eligibility determination and allow the whole family in the same program.

There has been increased public interest in a health insurance program that is exempt from state-mandated benefits. This would enable individuals who fell seriously ill to have an alternative for health care coverage in case their existing insurance provider would not cover their medical bills. With a program such as this, a large purchasing pool could be created like the PacAdvantage and Connecticut Business and Industry Association.

Other ways to combat rising health care costs are to extend state continuation periods for health care coverage in case of an employee resignation during the interim, and to expand the definition of a dependent for those families with children 19 or older, dependent parents and grandchildren. Premium assistance programs are another way to save for the state with health care costs. The representative stated these Premium Assistance Programs have provided a cost savings in the millions in Pennsylvania and Missouri.

Legislative Oversight Committee on Regional Jail and Correctional Facility Authority

November

The Executive Director of West Virginia's Regional Jails and Correctional Facility Authority provided his monthly report to lawmakers during the early November meeting of the oversight committee. Among his report of recent openings of detention centers and overall crowding throughout the system, the director was quick to demonstrate his concern regarding a recent ruling of the Sixth U.S. Circuit Court of Appeals.

According to the WV Director, the Circuit Court has sided with the State of Ohio regarding restrictions of access to

unconventional religions for inmates. Do inmates have a right to practice the religion of their choice and obtain materials for religions that are not in the mainstream. This issue began in Ohio's prisons and is now on the U.S. Supreme Court's docket.

The problem with the Circuit Court's ruling for restrictions on religious freedoms is that it disagrees with the rulings of other federal courts which found the Religious Land Use and Institutionalized Persons Act (RLUIPA) guarantees the right, under the First Amendment of the U.S. Constitution, to freedom of religion for inmates to practice their religious beliefs -- as long as those practices do not interfere with prison security.

If the U.S. Supreme Court agrees with the Circuit Court's restriction policy, then prisoners will be restricted in some practices. But, if it rules with other federal courts, then states will be looking at lawsuits from prisoners who are claiming religious exemptions to obtain more freedom behind bars.

For instance, will Rastafarians be permitted to smoke marijuana since the religion believes it is necessary to get closer to God? Will the more unconventional and aberrant religions, such as Satanism, request specific reading materials and texts regarding incantations or other related materials?

Presently the state's Regional Jails allow any religious tracts for inmates as long as they are not hard-back books and they come directly from the publisher. The latter criteria prohibit contraband from entering the jail from families or friends of inmates.

The Regional Jail Authority, according to its director, goes to great lengths to provide services for any and all religious beliefs, the most popular being Protestant Christians. Also, the jail systems provide Priests, Rabbis and Moslem clerics and other appropriate clergy for inmates upon their requests.

Again, the WV Regional Authority wish the committee to know about the legal case and to be prepared should the U.S. Supreme Court rule upon restrictions or uphold RLUIPA.

Also before the committee was a discussion regarding inmate population numbers. Data provided ultimately led to sentence structures.

With the numbers of elderly yet non-threatening inmates filling room because of long sentencing procedures, lawmakers are considering a re-think of the lengths of time people serve in line with the crime committed.

Also, if an individual is sentenced to 20-years for third-felony offenses (which could include DUI) when he or she is 40



LOCWIED

October

By traveling to the Eastern Panhandle in October, members of this committee were given the opportunity to hear from the Region Seven Workforce Investment Board (WIB), which provides services to Pendleton Grant, Hardy, Mineral, Hampshire, Morgan, Berkeley and Jefferson Counties.

The Board's Chair spoke to the committee about various concerns, including funding issues. According to him, Region Seven is the least funded in West Virginia, but also is the state's highest growth area. Despite this, he stated, in Fiscal Years 2002 and 2003, the WIB met all 17 of the performance requirements and was the first region to work on apprenticeship development programs.

Additionally, this region has been extremely successful in providing On-the-Job Training (OJT) opportunities to West Virginians. A local resident who participated in the OJT program and now works as a secretary provided lawmakers with her success story.

The President of the Business Education Partnership told lawmakers they are collaborating with the Region Seven WIB on a wastewater management program. Additionally, according to the speaker, the Eastern Panhandle is losing nurses to surrounding states and they are working to keep these workers in West Virginia.

The meeting concluded with a presentation from a representative of the Community and Technical College (CTC) of Shepherd who provided attending lawmakers with an update on the college's advancements. Progress has been made on the campus with the expansion of classrooms, building renovations and improved grant funding. Additionally, the CTC utilizes customized and targeted training by collaborating with companies such as Quad Graphics and Ecolab.

November

The Commission heard a proposal concerning Middle College Expansion from the Chancellor of the WV Council for Community and Technical College Education. The proposal funds three additional locations in Southern West Virginia that showed the greatest need for adult basic education services. The presidents of Southern WV Community and Technical College, New River Community and Technical College and the Director of Adult Education under the Department of Education will determine the sites. The proposal will give \$137,000 per site to be used for start-up costs, equipment, supplies and operating expenses. The total amount of stu-

years old then a release at 60-years of age may cause further financial strain on social services offered by the state. Although, it was discussed, the savings on health care costs would be significant since inmates do not have access to Medicaid or Medicare during their time of incarceration. Upon the inmate's release, those federal programs would cover some health care costs for the released inmate thereby freeing-up state dollars.

Lawmakers also heard that approximately 800 of the 2,496 inmates housed in Regional Jails should be housed in the state's prison.

However, since some alternative sentencing programs are implemented and have been found to be successfully rehabilitating, a supplemental appropriation bill was passed to disperse \$800,000 to the Community Corrections Grant Fund during the 3rd Extraordinary Session, conducted on Nov. 15th and the 16th. The money will be provided to the centers based on the successes of the qualifying entities that submitted grant applications.

Also appearing before the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority was the Commissioner of the Division of Corrections. The commissioner provided a comparison survey on salaries and retirement systems among the states of West Virginia, Ohio, Virginia and Maryland. According to the Commissioner, the situation is not all bleak. He noted money would have been impossible to find if the counties had to upgrade and maintain their own jails.

In closing the discussions, lawmakers noted they wished a continuation of issues affecting the state's jail system by expanding opportunities for the state's Regional Jail and Correctional Facility Authority to address standing committees during the 2005 Regular Session. It was suggested the prosecutors' association also be included in any fundamental changes regarding the judicial system.

Wary of losing some ground to financing the incarceration or monitoring of adult offenders by shifting money from juvenile detention services, lawmakers noted those programs for youth offenders oftentimes served as a life saving device to young people who first enter the corrections' system. The committee agreed a careful analysis of programs and dollars on all levels of the system was necessary.

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dents served per site is between 200-250, according to the Chancellor.

A second speaker, the Director of the Governor's Workforce Investment Division, discussed the Annual Report of the One-Stop System to the Commission. The One-Stop System is the primary vehicle for workforce investment services delivery in the state and is in its second year of operation. These centers offer a large array of services around the state through physical presence of partner agencies and by access to technology that provides links to other services.

The Director also discussed the awarded funding for the Rapid Response Awards. Region 1 received a total award of \$490,000 for the WV Courtesy Patrol Educational Component and the Tamarack Foundation Fine Craft Instruction. In Region 2, \$30,000 was awarded to Cabell County Youth Empowerment Program; Region 3 \$1,175,000 to Apprenticeship Training and Outreach and Journeyman Retraining Programs; HOPE Workforce Development Initiative; Jobs for WV Graduates; St. Marys Correctional Center; Anthony Correctional Center; and, Construction Workers of WV, Inc. Region 6 was awarded \$42,000 for Monongalia County Technical Education Center and WV Women Work.

The Commission requested information of how these Rapid Response Awards are granted, how to apply for an award and who determines how the awards are granted for the December interim meeting.

Parks, Recreation & Natural Resources Committee

November

Members of this committee were presented the Annual Mast Survey and Hunter Report from a representative of the Division of Natural Resources.

The report stated the good news for 2004 is white oak, chestnut oak, red and black oak, and scarlet oak mast crops are better than last year. The white oak and chestnut oak indicators more than doubled. The bad news in 2004 is there is a greater than 70% drop in beechnuts and walnuts and a 48% drop in hickories. Because of this decline in the amount of hickory and beech mast, the combined index of beech, hickory, oaks, and black cherry is also below average.

The report stated further that not only is the amount of beechnuts, walnuts, and hickory nuts lower than 2003 but also were below average. The survey of black cherry shows that production is 37% below last year, but still average. Likewise yellow-poplar production is not as good as last fall, but the

rate was equal to our 34-year average. However, last year the state saw a bumper crop of hickory nuts.

The remainder of the understory trees and shrubs was about evenly divided with some producing more mast than last Fall while others had less mast. Indicators were higher for grape, scrub oak, blackberry, greenbrier, and sassafras, but production is lower for hawthorn, crabapple, dogwood, and common apple. Statewide, no major differences in mast conditions were noted in regard to elevation except white oak, hawthorn, and crabapple mast was more common at higher elevations.

In regard to the hunting outlook, since the state had a bumper crop of hickory nuts, walnuts, and beechnuts in 2003, the squirrel population will be higher this Fall. Rabbit numbers have been increasing over the last three years, and mast survey participants are forecasting that cottontail hunting in 2004-2005 will be better than last year.

Raccoon populations are still suffering from two years of poor acorn crops. However, most DNR field personnel think hunting should be similar or slightly improved from 2003. Combining the forecasts of our deer experts with field personnel predictions throughout the State looking at mast conditions over all regions, the total white-tailed deer harvest should be similar to slightly higher this year.

Wild turkey brood counts are currently running 46% ahead of last summer so, statewide, the wild turkey population is higher this year. The prediction is that the turkey harvest likely will be similar to last year.

Overall, the predictions are, across the board for all species: West Virginia will have a similar if not slightly better hunting season than last.

Select Committee A - Flooding & Railroad Issues

October

Citing the need for legislation that establishes criminal penalties for interference with medical treatment of railroad employees, a representative from the United Transportation Union addressed lawmakers during the October Interim meeting of the Select Committee A on Flooding and Railroad Issues.

According to the representative, state law should contain additional fines and criminal provisions for employers who deny or delay medical treatment for railroad employees, or harass an employee into not receiving medical care. The representative added that many times employers do not want

to report injuries or complete the appropriate paperwork and attempt to convince the injured worker not to seek medical treatment. In one case, as explained by the representative, an employer cancelled a request for emergency ambulatory care after an employee severely injured his leg. Such instances, according to the representative, demand criminal penalties in addition to any termination or reprimand policies established by the railroad companies.

In contrast, representatives from the Norfolk Southern Corporation voiced their concerns regarding the establishment of criminal penalties for interference with medical treatment of railroad employees. According to the representatives, the drive behind enacting this legislation, which singles out an industry for criminal, fines and possible jail time is based on unfounded allegations of a labor organization. In addition, the representatives stated doing so would set an appalling precedent and must be avoided.

To further compound their argument, the representatives stated any proposed legislation is preempted by federal statute, which provides rules and regulations prohibiting unreasonable delay in providing medical treatment for injured employees with oversight from the Federal Railroad Administration. If violations occur, federal penalties are assessed to both corporate and individual participants. Since 1990, according to the representatives, a formal statement of company policy contained within the Six Point Action Plan for Safety of Operations has governed Norfolk Southern Corporation.

November

The Committee heard examples of how the City of Mullins, WV and state and federal agencies are working together to address the recent flooding problems experienced by the city. A representative from the US Army Corps of Engineers spoke about some alternatives for correcting the flooding problem. First, the Corps has to decide if there is a Federal interest to proceed in correcting the flooding issue. Next, the Corps determines what the assistance will accomplish for the city. The Corps is proposing many possible strategies to correct the flooding issues in Mullins, such as dredging the stream or stream channel restoration. But, one main possibility is the relocation of the city itself. A cost benefit ratio is being conducted to assess the feasibility of this option.

Another speaker indicated that better maintenance of rain and stream gauges is needed to help prevent or warn against possible future floods. He also stated in the past 60 days the Corps has checked for accuracy 16 percent of the rain gauges around the state and in the next 60 days, hopes to check 90 percent of the gauges for accuracy of measurement.

When the floods occurred in the past three years only eight percent of the gauges were reporting data.

Select Committee B - Insurance

October

With the adoption of House Concurrent Resolution 31 and Senate Concurrent Resolution 63 during the 2004 Regular Session, lawmakers are studying the use of credit scoring in the insurance underwriting and rate making business.

Appearing before the Insurance Committee during the October Shepherdstown meetings were a representative of the Fair Isaac Corporation, a preeminent corporate provider of analytics, and a representative of the Westfield Group, a leading regional insurance group. The two businessmen were invited to provide explanations regarding the use of statistical correlation for evaluating insurance coverage and premium costs.

Based on provisions of the federal Fair Credit Reporting Act, passed in 1970 and amended in 1996 and 1997, consumers are provided access to their credit files so they may have knowledge of their financial standing. Also, the Act calls for consumer reporting agencies to ensure accuracy and relevancy. In 2003, the federal Fair and Accurate Transaction Act was passed by Congress enhancing the federal law to allow access to the information to be used for other purposes, such as for court orders, written instructions by the consumer, proof of employment and underwriting insurance.

Without applying protected classes, such as age, disability, gender, race, health status, marital status and other classifications that may fall to discrimination, credit scoring is more accurate in reflecting risks of future insurance loss, according to the presenters. Instead, insurers are looking at late payments, collections, bankruptcies, length of credit history, outstanding debt, new applications for credit and types of credit in use.

The presenters said insurance companies believe credit reports are more accurate than motor vehicle reports and the reports succinctly summarize credit history and nothing more. In all, the presenters appearing before lawmakers noted that it is statistically proven that the relationship between how people maintain their credit and property is "simply common sense."

According to the presenters, credit based insurance scores help facilitate consistent underwriting, provide input to refine decisions, provide more objectivity and accuracy, help un-

derwriters focus on risks needing the most attention, help to reduce premium subsidies and inequities, strengthen insurer solvency and open up competitive markets.

Three major credit reporting agencies are the main sources of information and are used by insurers in most states, to check a score:

- Equifax - 800-685-1111
- Experian - 800-888-4213
- TransUnion - 888-397-3742

November

Lawmakers heard from the State Insurance Commissioner regarding topics relating to credit scoring. The commissioner provided a brief history of the use of credit scoring since 2001 to brief the membership on its background. While only Hawaii prohibits the use of credit scoring regarding insurance policies totally, Maryland bans it for homeowner's coverage; Utah allows its use for new business or rate decreases only; Washington prohibits it for its use for cancellations or non-renewals; and, all other states allow a broader use of the scoring within certain guidelines and restrictions.

A number of studies are also being undertaken by various states to determine if the scoring has adverse affects on any demographic group defined by race or socio-economic status. Some findings indicate: the use of credit scoring is statistically correlated to loss experience, (VA); it does not have an inappropriate or illegal disparate impact on low income or minority populations (MI); more examination is needed to conclude that scoring does or does not have a consistent negative effect on certain demographic groups since most studies are premature (WA); after the use of credit scoring, more of its states consumers were placed in a standard or preferred product (AK); and, low-income and minority groups are being charged higher personal auto and homeowners' rates (MO).

With these findings, West Virginia's Insurance Commissioner recommends that West Virginia approach the issue by having it become part of a study resolution. The commissioner said abrupt changes without appropriate study might disrupt an already volatile market and cause unwanted circumstances.

As such, the commissioner has sent West Virginia Informational Letter No 142A to all insurance companies licensed to do business in the state, to insurance trade associations, to insurance media publications, and to all other interested parties regarding the Insurance Commissioner's policy on the use of credit scoring. The 16-step policy only applies to personal lines property and casualty insurance.

In the packet provided to lawmakers were results of findings related to credit scoring for insurance underwriting and rate

making according to sources such as the National Association of Insurance Commissioners (NAIC), The National Association of Insurance Legislators' and its Model Act, the Federal Trade Commission and the Federal Trade Board. Collectively, these groups have offered material to the West Virginia Insurance Commission that will assist in future discussions of insurance coverage in West Virginia.

The Insurance Commissioner told committee members that she is following market conduct and; in addition, has staff who are charged to review and audit insurance companies to determine if West Virginia consumers are being penalized. Presently, not all companies operating in the state use credit scoring to determine rates.

Lawmakers will pursue this issue during the 2005 Session.

Select Committee C - Pharmaceutical Availability & Affordability

October

During the October meeting of the Select Committee on Pharmaceutical Availability and Affordability, representatives from the Pharmaceutical Cost Management Council expressed the need for the Legislature to adopt a resolution supporting the council's recommendations on ways to lower the state's financial burden when purchasing prescription drugs.

According to the representatives, establishing the Federal Supply Schedule (FSS) as a benchmark for reference pricing in a resolution adopted by members of the West Virginia Legislature would greatly improve the bargaining and negotiating power of the state when purchasing prescription drugs and give concrete support to the policies being sought by the council. The representative noted that with establishing the FSS, the Legislature would be setting negotiating standards and not approving or supporting pharmaceutical price controls.

Aside from using the FSS as a threshold for negotiations, the council also recommended the creation of a Cabinet-level Pharmaceutical Advocate position, which would be responsible for, and dedicated to, controlling state cost-management efforts. In addition, the council would like to see a uniform prescription drug list established for all state health-care plans. Currently, a preferred drug list (PDL) has been established for Medicaid, according to the representative, and projects to save this program \$40 million. The representative stated that with a PDL pharmaceutical companies will come to the table and offer better drug prices in order to be included on this list. The main reason for this, as stated by the representative, was that most pharmaceutical companies are more interested

in moving volume of merchandise and achieving a higher percentage of the market share over their competitors.

Select Committee D - Water Resources Protection

October

While visiting Shepherdstown, WV, members of this committee met and first heard from a representative of the United States Department of Agriculture's Natural Resource Conservation Service regarding water issues in the Eastern Panhandle.

The issues people are facing in this area, according to the speaker, include the protection of water quality and the adequacy of future water supply, which is a concern partially because of population growth.

Representatives from the West Virginia Water Research Institute at West Virginia University (WVU) and the Center for Environmental, Geotechnical and Applied Sciences at Marshall University then addressed lawmakers. They provided a report on the West Virginia Water Resources Protection Act Research and Management Support Program.

The speakers told the committee that WVU, Marshall and the Department of Environmental Protection are collaboratively moving forward with the technical requirements of Senate Bill 163, which established the Water Resources Protection Act.

November

Resuming its task of monitoring the statewide water survey, this committee met in November to hear from the Director of the Division of Water and Waste Management of the Department of Environmental Protection (DEP). He provided lawmakers with an update on the progress of this survey, which will provide an overview of large water users in West Virginia.

According to the speaker, the DEP's current tasks include developing the survey and web interface, which will allow users to provide data via the Internet; developing a memorandum of understanding with West Virginia and Marshall Universities, who also are playing a vital role in this survey by conducting priority research projects; and, meeting with partner agencies, WVU and Marshall, to discuss the creation of a central database.

Additionally, the DEP will continue evaluating comments on the draft survey from the West Virginia Chamber of Commerce and the West Virginia Coal Association, meeting with

survey participant representatives and will schedule site visits to coal facilities to observe their water use processes.

Members of the DEP already have met with select representatives of the Coal Association to discuss water use classifications. They also have met with the Chamber of Commerce to determine survey questions and concerns from a manufacturing and business perspective. In addition, the DEP has included comments from the West Virginia Geological and Economic Survey (WVGES) in the water survey. The speaker said the WVGES shared expertise in gathering water-use data.

The representative also addressed challenges anticipated by the DEP. Among others, these challenges include possible double counting of water use, funding of research projects, measuring consumptive use and the difficulty of estimating groundwater reserves.

According to the speaker, the DEP is on schedule with its major tasks and is slated to provide an annual report to the Legislature in December 2004 and provide the final report in December 2006.

Select Committee E - Racial Profiling

November

Representatives from the West Virginia Black Medical Society, during the November Interim meeting of the Select Committee E on Racial Profiling, encouraged lawmakers to consider legislation that would relocate and rename the Minority Health Program in the Division of Rural Health Policy, Office of Community and Rural Health Services to the Office of Minority Health under the supervision of the Bureau for Public Health.

According to the representatives, making this administrative change would place a greater emphasis on minority health issues without incurring additional costs to the state. In addition, the representatives expressed an interest in creating a Governor's Council, comprised of minority health entities and Department of Health and Human Resources (DHHR) agencies, to investigate, coordinate and unify DHHR actions on minority health disparity issues.

Along with the above administrative changes, the Black Medical Society also recommended lawmakers adopt legislation that requires schools of medicine in West Virginia to conduct curriculum integration of the national standards on culturally and linguistically appropriate services in health care. By doing so, as explained by the representatives, health care



professionals across the state would be better equipped to handle culturally diverse patients and be more aware of minority health needs.

Members of the Select Committee also heard from interested parties concerning the Department of Transportation’s (DOT) Disadvantaged Business Enterprise Program. Representatives from the DOT briefly explained the application process, noting that a company must be 51 percent minority or female owned in order to receive certification. Once certified, these businesses would be able to seek contracts for certain DOT projects that must be given to disadvantaged business enterprises. Representatives stated fraud has occurred in the past with certain business claiming to be minority-owned but in reality were not. In addition, representatives expressed a need to educate minority businesses in a more effective manner with regard to this program and the opportunities available.

Select Committee F - Campaign Finance Reform

October

Candidates for Secretary of State addressed members of the Select Committee F on Campaign Finance Reform to discuss their opinions regarding the establishment of a publicly financed campaign finance program in West Virginia.

The Republican candidate stated she is in favor of major reforms of the campaign finance system but expressed her concern for the creation of a program that uses public monies to finance political campaigns. Such a system, according to the candidate, would be difficult to enforce, especially in today’s electronic age. The proposed legislation dealing with the public financing of political campaigns has limited enforcement measures and may lead to further problems.

According to her, the state should focus on limiting voter fraud and “beefing up” investigative units to curb any fraud that may occur. In addition, she would like to see the Secretary of State’s Office have prosecutorial powers to give weight to any fraud investigations. Also, adapting to provisions of the federal Help America Vote Act (HAVA) should be a major priority of the Secretary of State’s Office to assure we achieve what the federal law requires.

A representative of the Democratic candidate for Secretary of State also addressed the committee and stated that he would “strongly support” legislation authorizing the establishment of a public financing campaign system. The representative noted that states such as Maine, Vermont and Arizona have successfully adopted such programs and have seen great successes. According to the representative, public campaign

financing forces candidates to focus on the issues rather than obtaining enough money to run for office.

November

The Committee heard from two representatives of the Department of Education at the October interim meeting regarding education and the community. Minority students’ achievements in West Virginia compiled from the 2002-2003 SAT-9 were presented to the committee. Twelve West Virginia counties have the largest population of African-Americans. These are: Monongalia, Marion, Berkeley, Jefferson, Ohio, Kanawha, Cabell, Logan, McDowell, Fayette, Mercer and Raleigh.

The speaker said interaction between children and adults provide opportunities for children to develop an understanding of self and others; and are characterized by warmth, personal respect, individuality, positive support, and responsiveness. Teachers facilitate interactions among children to provide opportunities for development of self-esteem, social competence, and intellectual growth.

She went on to say, HB 4669 is giving the schools and communities an opportunity to look at themselves and improve. This bill establishes a special five-year demonstration of a professional development school project and provides a report to the Legislature of their progress.

The representative for the Department of Education believed the bill was necessary to provide specifics to outline school improvement. The bill provides the room for these schools to become centers of excellence.

The second speaker supported HB 4669 and stated the bill would give schools the help needed to bring students up to higher performance levels. She did express the need for further funding to help initiate the effort in schools and discussed possible ways other funding could be accessed.

Further discussion of the progress of HB 4669 into the workings of the public school system will be presented at upcoming interim meetings.

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