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# Interim Highlights

## Agriculture & Agri-business

A representative from the United States Department of Agriculture's Wildlife Services presented members of the committee with an overview and update on the West Virginia Integrated Predation Management Program.

According to the representative, in the program's first year of operation, which was in 1996, Wildlife Services achieved a 91 percent reduction in the number of sheep lost to coyote attacks. In 1995, prior to the development of this program, an average of 27 sheep were killed by coyotes. Since then, West Virginia has been able to keep that average below five sheep per year. In addition, the representative noted the gross benefit to the state's economy through the number of livestock saved as a result of this program is around \$2.4 million per year. With the predation management budget costing \$140,000 the representative stated the program has become a valuable investment for West Virginia.

The representative noted that the cooperation among Wildlife Services, the West Virginia University Cooperative Extension Service, the West Virginia Division of Natural Resources, the West Virginia Farm Bureau and the Shepherds Federation and the Boer Goat Association has contributed to the success of the program.

To further explain the program, the representative told members of the committee that since the coyote is not indigenous to West Virginia and has been labeled as an invasive predator, the program integrates both non-lethal and lethal methods of predator management. Training workshops are provided by the West Virginia University Cooperative Extension Service and livestock organizations to train farmers on how to protect their livestock. Some of the non-lethal methods recommended by the program and employed by farmers to protect their livestock include purchasing livestock guarding donkeys and dogs, night penning and fencing. The program permits farmers to use certain lethal methods, including calling and shooting, leg-hold trapping and snaring.

Also, Wildlife Services provides other lethal methods in eliminating coyote attacks on livestock, including the use of mechanical traps and snares, as well as the use of chemical agents. The chemical M-44, which is a sodium cyanide compound that can only be used by Wildlife Services, can be directly inserted into the ground and baited to attract canids, or can be placed onto a collar that is attached to the livestock's neck.



The representative added that the program has conducted an environmental assessment, as required by the federal National Environmental Policy Act. The program has been found to have an insignificant impact on the environment with limited negative effects on other wildlife species.

## Education Subcommittee A - Public Education

A representative of the West Virginia Department of Education (DOE) appeared before lawmakers to report on inter-county student transfers throughout the state. He said that parents are authorized under state law and DOE policy to request a child be transferred to a school in an adjoining county and, if denied by the county, to appeal the decision. Reasons for denial, he noted, can include transfers having a negative impact on a school levy. The speaker told lawmakers that there are currently three appeals pending and if two counties agree to a transfer, then the DOE does not get involved.

## Education Subcommittee B - No Child Left Behind

A representative from the federal Department of Education provided the committee with a presentation outlining some statistics that detail the growing problem areas of math and science in schools.

He stated that education in America is primarily a state responsibility and that the federal government supports, not supplants, the state role in education. Approximately 8.6

percent of every dollar for education comes from the federal government.

He presented statistics that noted two-thirds of fourth graders cannot read proficiently and nearly 30 percent of 8th graders are not proficient in math.

Also, the No Child Left Behind (NCLB) initiative, signed into law in 2001, requires accountability for the federal education money. Four principles highlight and guide NCLB: stronger school accountability; expanded options for parents; qualified teachers; and, tried and true teaching methods.

Each state decides its own standards, such as tests used, academic benchmarks and the determination of highly qualified teachers. Also, testing is geared to see how the school is doing in teaching the kids, not how the kids are learning.

According to his statistics, of 100 9th graders nationwide, only 68 graduate high school, 40 attend college, 27 remain enrolled as sophomores in college and only 18 graduate within six years. Also, U.S. 8th graders ranked 11th out of 13 industrialized nations in math and 8th out of 13 in science. Also, U.S. 15-year-olds ranked 24th out of 29th in practical math application among industrialized nations.

The spokesperson stated the NCLB initiative is still in its infancy so it will be a few years before results can be seen as to whether these first steps are improving U.S. numbers regarding math and science. But, he stressed math and science must be made priorities to better prepare students for college courses.

### Education Subcommittee C - School Aid Formula

Information presented to the committee by representatives of Marshall University's Center for Business and Economic Research and the West Virginia University Bureau of Business and Economic Research has indicated widespread under-assessment of real property when determining the local share for school support.

According to the representatives, the current state-aid formula encourages the under-assessment of property taxes by county assessors. The West Virginia Constitution requires an assessment at 60 percent of the true and fair market value, yet when counties meet this requirement, the state share of funding is reduced based on the School Aid Formula. The representatives added that by under-assessing real property, local support from property taxes is reduced and state support

for the district is increased. Schools do not lose any financial support because the state makes up the difference between the local share and the foundation amount.

The representatives estimate a cost of around \$15 million a year to the state for these under-assessed property values. The state support could be used to increase the foundation level of support for all districts or for other educational related expenditures, rather than being applied to compensate under-assessments, according to the representatives.

There are several reasons for the under-assessment of real property in West Virginia mentioned by the representatives, including the failure of county assessors to update property values at levels indicated by the market, a quickening growth in property values and political pressures to keep property taxes down or to slow their growth. The main argument for not reaching the 60 percent level, according to the representatives, is the financial impact on certain groups of residents, more specifically the elderly, the disabled, veterans and others living on fixed or low incomes.

The representatives discussed programs utilized by the state to help offset rising property taxes, especially for individuals on fixed or low incomes, and for senior citizens. When looking into these particular tax relief programs when discussing the School Aid Formula and the under-assessment of real property, the representatives stated officials should: look at the impact on schools and local governments; observe whether relief is provided to taxpayers most adversely affected by raising property taxes; and, examine whether benefits are provided to all taxpayers.

Comparing all of the property tax relief programs offered by the state and by surrounding states, the representatives stated West Virginia should consider utilizing "circuit breakers," which are tax relief programs targeting homeowners earning below a base income level. When property taxes exceed a given percentage of their income, these citizens are granted property tax relief.

According to the representatives, "circuit breakers" receive the most positive endorsements from both academics and those states that use them. By targeting relief to low-income individuals, "circuit breakers" focus on those who are in need. The representatives added that investigating the possibility of further use of "circuit breakers" could prove worthwhile for the state of West Virginia.

The representatives also informed the committee that Pennsylvania has recently passed the largest property tax relief initiative the state has had, to the tune of almost \$1 billion a year.

### Equal Pay Commission

At the beginning of the July meeting, staff counsel introduced the new Director for the Division of Personnel to the Committee.

A representative of the Division of Personnel outlined the preliminary information for pay equity recommendations for Fiscal Year 2007. The Division separates job classes by female or male dominated job classifications. For a classification to be female dominated, females must comprise 70 percent or more of the total employees for the class. For a classification to be male dominated, males must comprise 80 percent or more of the job class.

There are 233 female dominated job classifications in the state, with 7,130 employees in those classes. Conversely, there are 277 male dominated job classifications, with 5,929 employees in those job classes.

The Division of Personnel will present to the Commission its final recommendations for the distribution of equity pay to the members in September. The numbers will be based on calculating predicted pay lines, determining where the most significant differences between male and female pay scales exist and making the needed changes to those areas.

### Finance Subcommittee A

Representatives from the Division of Motor Vehicles (DMV) addressed members of the committee to discuss financial information related to the motor vehicle privilege tax. According to one representative, the DMV pulled a random sample of 514 title numbers from all titles created in the 12-month cycle between May 1, 2005 and May 1, 2006, which equaled 768,752. Documents for each of the 514 titles were reviewed to determine if an out-of-state owner transferred a vehicle. Of the 514 titles randomly sampled, 16 were determined to have been transferred from out-of-state.

The total value of all 514 titled vehicle sampled equaled just more than \$2.5 million, and the value of the 16 transferred titles was just over \$70,000, representing 2.8 percent of the total value of the sample, according to the representative. During the 12-month sample period, the DMV collected a total of more than \$172 million in privilege taxes from all vehicle transactions. Using the 2.8 percent indicator determined by the sample, the estimated amount of privilege tax paid by persons titling their out-of-state vehicles in West Virginia was

\$4.8 million. The representative said it is estimated that the state would lose close to \$5 million if the privilege tax placed on out-of-state title transfers was eliminated.

Members also discussed the possibility of changing the privilege tax, assessed to all vehicles purchased in West Virginia, to a sales tax that would provide a deduction on federal income tax returns. Currently, the state of West Virginia assesses a privilege tax, which is not tax deductible.

### Finance Subcommittee B

In line with their charge to review matters relating to the tax modernization initiative, lawmakers heard from three representatives of local governments who addressed the ways in which changes to tax laws, specifically those relating to property taxes, could affect localities.

The Executive Director of the Association of Counties provided the legislative panel with general information on property taxes.

After addressing the various aspects of property taxes, she told lawmakers the taxes are a major source of revenue for counties and any future reduction or change could have an impact on counties and schools. If any changes to property taxes are proposed, she requested to receive the proposals in advance to ensure timely review.

The Wood County Assessor then told lawmakers that when assessing real and personal property, there are significant challenges, including discovering real property on a timely basis and that personal property can be easily moved around and hidden. In addition, he believes this to be a complex issue and that there are real problems regarding maintaining fairness and equitability.

The final speaker was the Randolph County Commissioner, who provided the subcommittee with recommendations for replacing property taxes. His suggested alternative taxes included many "activity" taxes, one of which would be assessed when someone gets his or her driver's license.

### Interim Committee Information

For information on all Interim Committees, please visit West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Interim" link.

### Finance Subcommittee C

Opening the meeting was the Division of Motor Vehicles (DMV) Commissioner, who provided the subcommittee with a handout detailing the operations of the DMV's regional offices. This included information, as requested by the subcommittee, on the office's opening dates; transaction statistics; positions from 1990 projected through 2007; various expenses; operations in Charleston; Road Fund deposits; and, a comparison of employment positions funded by the Road Fund.

As a continuation of the June interim meeting, an economist from West Virginia University addressed lawmakers. He said a proposal has been drafted to update the 2004 report on the State Road Fund. He said the goal is to determine the long-term forecast on the Fund and its changing characteristics. With the tax modernization initiative in mind, this will include an examination of the taxes that underpin the Fund and alternative funding sources to identify long-term ways to generate revenue. The economist said he hopes to present the updated report during the subcommittee's October meeting.

It was requested that the subcommittee receive information on the six-year plan, which was developed by the Division of Highways (DOH) for highway improvements. Through a letter that is to be sent to the DOH and appropriate agencies, lawmakers are requesting to obtain information on each highway project and a breakdown of federal and state highway money for the last 10 years.

### Forest Management Review Commission

Managing the state's forests means keeping them healthy by managing forest fires and stopping the spread of disease and insect infestations. During the Forest Management Review Commission's meeting, lawmakers were provided the 2006 Annual Forest Fire Report presented by the Division of Forestry and an explanation of the Forest Health Program by the Department of Agriculture.

Lawmakers were told that over a 13-year average, Kanawha County has the greatest numbers of forest fires, which was attributed to its population. Southwestern West Virginia had 6,600 fires attributed to the remoteness of the areas and the traditional "burning-off" of woods in the Spring season.

Causes of the fires include: 42 percent for debris; 32 percent incendiary; 13 percent from equipment use; and, 13 percent was attributed to "other causes."

Grants have been secured to mitigate the consequences. The U.S. Forest Service provided \$500,000 for fire breaks in the Southeastern coal region since coal seam fires account for 21 percent of fire outbreaks and underground mines contribute annually to 2 percent of the outbreaks.

Remote automated weather stations received \$250,000 in grant money as well. Fourteen weather stations, which use satellite technology to calculate fire danger daily, are located throughout the state. This information is posted electronically on several "Smokey Bear" signs near high traffic wooded regions.

The Federal Excess Property Program also has provided \$7.3 million worth of excess military equipment to volunteer fire departments to help fray the costs of purchasing heavy equipment often employed to fight woodland fires. These local firefighters play a major role in assisting local departments and the Forest Service in controlling forest fires.

Drawing manpower from a variety of sources, such as non-violent prisoners, WVU School of Forestry students and WVU Extension personnel, the Division of Forestry utilizes every available body to preserve the state's forests.

Too, the U.S. Department of Agriculture's Forestry Service has provided \$100,000 for the establishment of installing 83 dry hydrants. These devices are used by firefighters when trucks exhaust their water supply. Located near urban developments, their presence reduces home insurance rates in many instances.

Arson bloodhounds also have proven to be effective for law enforcement officials, as approximately 10 arsonists are caught and convicted on average per year.

With housing developments encroaching on state parks and other wooded areas, forest fires are affecting structures, commercial properties and outbuildings. According to the Forestry spokesman, there are certified "Wildland/Urban Interface Communities" being identified throughout the nation. An example of such an area was Coolfont, located in the Eastern Panhandle. Coolfont is the 11th community in the country to be certified.

Another area of managing the state's forests includes the control of endemic species and weeds that may invade West Virginia's natural species, oftentimes to the point of extinction, according to a spokesperson from the Plant Industries Division of the state's Department of Agriculture. Presently the Division is taking on the hemlock woolly adelgid, which maintains its life by sucking juices and draining the sap of hemlocks. Found by streams, the insect has invaded 28

counties in West Virginia. The Plant Industries Division is taking on the creatures by using chemical suppression either injected into the soil or hemlock trunks. The spokesperson noted the presence of the insect is a serious concern for foresters.

The Division also is tackling Sudden Oak Death disease, which assaults oaks, mountain laurel and rhododendrons. Originating in California, the disease was found in West Virginia recently. The state was put on the U.S. Department of Agriculture's risk map since West Virginia has similar host components as California, i.e. fog and moisture. Presently, the federal government is surveying garden centers and nursery stocks in its effort to oversee the disease's progress. West Virginia is using stream-baiting processes to monitor possible infiltrations.

As forest management is a multi-tasking effort by various agencies and divisions on local, state and federal levels, the protection of timberland is a huge undertaking that all participants share.

Of immediate concern to lawmakers was the state Department of Agriculture's warning that the Cooperative Landowners Suppression Program may lose 90 percent of its federal funding. According to the Department's spokesperson, the federal government has de-emphasized the possible threat of gypsy moths. Uncomfortable with the federal government's urge to reduce funding, lawmakers had a letter of support of the Suppression Program drafted and will have the letter sent to the U.S. Department of Agriculture expressing their dissatisfaction with the possible reduction in dollars.

### Government Organization Subcommittee A

Representing the Specialty Vehicle Institute of America (SVIA), an advocate of All-Terrain Vehicle (ATV) safety appeared before the subcommittee to address this continuing study topic. She told attending lawmakers that the majority of accidents and injuries involving ATVs come as a result of misuse of the vehicles and that her organization promotes adherence to the "golden rules" set forth by ATV manufacturers.

These include not operating an ATV with a passenger, unless the vehicle is designed for more than one rider; not operating an ATV on paved roads, as they are only designed for off-road use; and, always wearing a helmet, whether you're under 18 or an adult. The representative stated that of the 34 ATV-related deaths the state has seen this year, seven

victims were under the age of 18, two of whom were wearing helmets.

She recommended changes to state law, included in the SVIA's model state legislation, which would encompass these guidelines. The representative also recommended enacting provisions relating to requiring size- and age-appropriate ATVs for riders and looking into the challenges facing law enforcement in enforcing ATV laws. The Subcommittee requested to hear from law enforcement officials in a future meeting.

The State Superintendent of Schools and a representative of the Office of Healthy Schools also spoke to lawmakers regarding an initiative to integrate ATV safety training into schools' drivers education and health programs. The Superintendent noted the challenge they face in advancing the program is the current limited numbers of qualified drivers education instructors.

### Insurance Availability & Medical Malpractice Insurance Committee

Following up on changes in law concerning third-party bad faith claims as well as rate reductions for homes and autos, lawmakers heard from the Insurance Commissioner.

According to the Commissioner, her office believes changes made by the Legislature have made a positive impact for consumers and insurers. Overall, West Virginians filed 74,675 third party home and auto claims during 2005. Of those, 1,422 were from homeowners. With the passage of Senate Bill 418, which went into effect on July 8, 2005, 301 third party administrative complaints were filed.

Prior to the passage of the bill, which relates generally to regulation of insurance and to third-party bad faith lawsuits, 156 administrative complaints were filed with the Insurance Commission. Since the bill called for administrative review - in as many third party complaints as possible - to be filed with the Insurance Commission, 301 have been filed. Approximately 55 percent of 140 complaints were settled in a "cure period" (60 day or less resolution for the complainant) with the remaining 137 being referred to the Legal Division. Thirty-six were resolved prior to a hearing; 68 were determined to have no merit; and, 24 were determined to have merit.

Claimants now are getting quicker relief than they had with the court system, according to the Insurance Commissioner who also noted changes in the non-renewal process helps consumers. Consumers also have greater numbers of choices in selecting their coverage since more insurance companies are interested in locating in West Virginia.

In other areas, lawmakers have agreed to devote a part of their studies to reviewing “credit scoring” and its effects on user rates. While insurers say that credit scoring is used to predict risks, some lawmakers want to know how companies may target certain markets.

### Joint Commission on Economic Development

Continuing their review of economic development opportunities for the state, lawmakers heard from the Executive Director of the West Virginia Motorsports Council, which is an advisory panel comprised of more than 80 interested parties that was established by Governor Wise in 2001 and recently continued through 2008 by Governor Manchin.

The mission of the Council - the first organization of its kind in the country - is to promote and support all types of motorsports activities in West Virginia as a venue for recreation and tourism, as well as a means for economic development. Members work to accomplish this by supporting existing motorsports activities in West Virginia and working to bring new motorsports development to the state.

He provided statistics regarding the growing popularity of auto racing. It is the world’s most popular spectator sport, with an estimated 75 million purchasing two billion tickets for events worldwide in 2005. Motorsports had the highest number of live spectators than any other sport in the United States last year. In addition, media coverage of these events has grown by more than 1000 percent in the last 10 years, with 2006 expected to see more events televised than ever before.

It also is the fastest growing sport in the world. The speaker told lawmakers that in the last five years, attendance growth for motorsports is more than triple that of Major League Baseball, the NBA, the NFL and the NHL combined. Furthermore, a recent study to determine the top 10 sporting events in the nation, as based on economic impact, found that the Super Bowl ranked fourth, the Kentucky Derby ranked ninth and the other eight were motorsports events.

Regarding the impact these events have on the economies where they are held, he said the local government in North Carolina reports the two NASCAR Nextel Cup events held annually at Lowe’s Motor Speedway near Charlotte impact the local economy by \$750 million. Each NASCAR event at the Texas Motor Speedway provides that local economy with half a billion dollars.

He also noted that a recent ESPN poll ranked West Virginia first in the nation in race fans on a per capita basis - with 50

percent of the state’s citizens recognized as race fans. The speaker said there are 12 operating racetracks in West Virginia, while the five bordering states have 223. He said this causes a number of in-state fans to travel across the border to see their favorite events. He said Tennessee’s Bristol Motor Speedway, which seats 166,000 fans, reports that 46 percent of its spectators come from West Virginia.

He said the Council is continuing to pursue alternative funding sources for a high-profile track project similar to those that applied for, but were denied, funding from the Economic Development Grant Committee in 2002. For example, the Council brought a group of Atlanta businessmen to the state last December to look into the possibility of developing an integrated motorsports complex, Thunder Ridge, in Flatwoods. He said a proposal is currently being drafted.

The President of TTI Technologies, which provides services to the United States Department of Homeland Security, then spoke to lawmakers regarding the placement of a TTI data center in Wheeling. She said the primary reasons the company decided to locate in Wheeling, where it has been operating since March of this year, were the costs of the property and utilities, as well as the advantageous location. As noted, Wheeling is a four-hour drive from Washington D.C., which is the location of TTI’s main office.

In addition, she noted that since the company is looking to hire employees, it has begun working with local colleges and the local workforce is exceeding expectations. She said the quality of employees, combined with the costs of operations, have proven Wheeling to be good place to do business.

### Joint Legislative Oversight Commission on State Water Resources

The Commission heard a presentation from a representative of the National Council of State Legislatures (NCSL) regarding water resource plans in other states.

The speaker said 31 states have adopted, in some form, programs and policies to manage water usage with the purpose of helping to manage water use and water quality. The increase in awareness regarding this issue occurred as a result of growing populations and unforeseen droughts within those areas.

He also stated there are several rivers with headwaters in West Virginia that flow into other states. It was his opinion that a state, if challenged in court over water usage and flow, must show it has an understanding of its state water usages; be able to justify usage; know occurrence of usage;

recognize the state's water needs versus a challenging state; and, demonstrate a sound water plan.

In regard to West Virginia's water plan, the data wouldn't be enough to protect the state's water rights. The state would need a plan for implementation for local levels and a better grasp of what water is needed versus how much is used, according to the NCSL spokesperson.

He also mentioned that Arizona is the only state with a tax on water usage. Most states have simple permit fees, and tax money goes toward buying out water users who are expiring their water usage.

### Joint Standing Committee on Government Organization

During the July meeting of this committee a research analyst for the Performance, Evaluation and Review Division presented a Sunrise Report for the West Virginia Radiologic Technology Board of Examiners.

The West Virginia Radiologic Technology Board of Examiners submitted a Sunrise Application requesting the authority to license Sonographers, Nuclear Medicine Technologists, Magnetic Resonance Imaging Technologists and Radiologist Assistants. The Legislative Auditor considered potential harm to the public in order to meet the need for regulation of these professions.

The report had two findings. The first finding was the lack of regulation of Nuclear Medicine Technologists, Magnetic Resonance Imaging Technologists and Radiologist Assistants poses a discernable risk to the public. However, the lack of regulation for Sonographers does not pose such a risk.

The second finding was licensure is the best way to regulate Nuclear Medicine Technologists, Magnetic Resonance Imaging Technologists and Radiologist Assistants and provided some guidance as to how the licensure process should be determined.

In its response to the report, the Board agreed with the findings and recommendations and believes that by adding these new disciplines to law, the public will be better protected from harmful effects that could be caused by unsafe practices within the profession of medical imaging.

### August Interim Schedule

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

### Joint Standing Committee on Pensions & Retirement

Legal counsel for the West Virginia Consolidated Public Retirement Board (CPRB) provided an update on the merger of the Teachers' Defined Contribution Retirement System and Teachers' Retirement System. A lawsuit, filed by approximately 1,000 teachers and service personnel who do not want the merger, is awaiting a ruling from the Circuit Court. All personnel covered by one of the systems are free to file personal lawsuits.

Also addressing the committee was a spokesman from the Office of the State Treasurer who provided insight into and history of the state's 457 Deferred Compensation Plan.

Enacted in 1982, voluntary government employees Deferred Compensation Plan came into play in 1992 under the direction of the CPRB to supplement state employee pensions under the Public Employees Retirement System. The initial Plan contract was awarded to Aetna. In 2000, ING Financial Services (ING) merged with Aetna and is currently the sole service provider for the Plan, according to material provided by the Treasurer's Office. The passage of Senate Bill 538 transferred the administration to the Treasurer's Office. The Plan allows local government's and political subdivisions to participate as well.

The Treasurer's Office said the mission of the 457 Program "is to provide its participants with a deferred compensation plan that offers attractive, high performing, low cost investment options coupled with comprehensive financial education programs needed to help them gain financial security at retirement."

As of May 31, 2006, 5,231 people are participants in the Plan, which has amassed \$70 million in assets. Its investments are fixed/variable annuity funds. And, while the Treasurer's office administers the program, ING provides investments, custodial service, recordkeeping, marketing and education for the Plan. Because it is a volunteer, public employee option for building their retirement benefits, the Treasurer's Office plans to provide several informational seminars for interested employees.

During the committee's second meeting of the July interims, the Deputy State Auditor spoke about the process of auditing municipalities' defined benefit pension plans. He said the audits are conducted by State Auditor staff, as well as contracted accounting firms. The speaker said they provide opinions on the financial statements and review compliance to ensure the cities are committing the minimum required amounts to the defined benefit plans.

If a city is not meeting the minimum requirement, he said an audit finding is issued and any enforcement follows with the prosecuting attorney.

The Auditor also told lawmakers that most cities are following the alternative funding method, which meets statutory guidelines but is designed for payment over 15 years, not the life of the plan, thereby creating a net pension obligation as determined by an actuarial evaluation. Noting that the cities decide who performs their actuarial evaluations, he recommended creating standardization for actuaries and expanding West Virginia Code definitions for how actuaries are calculating costs.

Committee counsel then provided lawmakers with an explanation of the history of the 1 percent premium tax that is levied on fire and casualty insurance policies. She said the tax brought in \$25,759,000 last year and that 65 percent of the 1 percent tax goes to the policemen's and firemen's pension funds.

### Judiciary Subcommittee A

Following its charge to review and update, if necessary, reforms made in recent years to the state's Family Court System, members of Judiciary Subcommittee A heard from guest speakers.

Opening statements were made by the West Virginia Supreme Court Administrator who reminded lawmakers that "nobody wins in family court." While family courts involve the intimate details of the lives of people and small children oftentimes see no end to family strife, family courts are overburdened. In West Virginia, family court judges hear approximately 1,300 cases a year compared to 900 a year for judges nationwide. The Court Administrator called for more family court judges.

Following his presentation, the Director of Family Court Services provided a history of custody rights. In the past the system labeled a primary caretaker as someone who held the major role in parenting and custody was determined 50-50 or on a Schedule A or B, as determined by the distance a non-resident parent lived from the children. Changes in the law initiated the concept of "shared parenting" and took effect in 2000.

The "shared parenting" program, with its established criteria and mediation program, allows parents the opportunity to devise their own parenting plan, which according to the Director, proved highly effective for all involved. With the

reforms in law calling for plans that held the best interests of children as a priority, parents have generally put aside their self-interests and put visitations together using the utmost qualities of time. The plan is gender-neutral and no one can be pigeonholed into specific time-lines.

In cases of domestic violence, shared parenting is not an option and in cases where parents can't agree, the case goes to court and legislative criteria is enforced.

The Family Court Judge from Putnam County, who also is the President of the Family Court Judges Association, hailed shared parenting and indicated the courts have had very few conflict cases. He noted West Virginia's 35 family court judges look for rational compromise where the focus lies on the children in every case. With shared parenting implemented, the Judge noted less than 10 percent of all his cases go to mediation.

Questions directed to the family court participants by lawmakers included inquiries regarding complaints about the system. According to the judicial spokespersons, complaints from parents involved in custody cases generally cover the time it takes a hearing to get through the family court. While some fathers perceive the system to be biased toward their spouses, the courts find most family court cases are appealed because of the amount of child support awarded. And, the judicial presenters noted all orders could be modified on appeal at any time.

The administrative procedure for complaints includes a telephone call or personal visit to Family Court Services. Responses to most complaints may involve a call from the Family Court Services to see why there are excessive delays or continuations or other less complex problems. Otherwise, formal complaints can be made to Family Court Services under the jurisdiction of the West Virginia Supreme Court.

While the spokespersons responded to a variety of inquiries, lawmakers were uncertain of the surety of responses since little data is collected on the procedures. Although judges and family court officials are pleased with family court reform, families affected by the changes have not been polled.

Other legislators' concerns included the handling of false accusations by one spouse toward another. According to the Family Court Director, accusations are handled based on the evidence provided in court. Proven false accusations made by one parent against another could result in a loss of time with the children; the cost of attorneys' fees; a loss of parental status; and, a loss of custody. However, family court has no jurisdiction on criminal matters although someone can be held in contempt of the court.



The Judge told lawmakers that cases are conducted on videotape and he has turned in people to prosecutors for lying. Allegations now are being investigated by Child Protective Services as well.

At the conclusion of the meeting, the Court Administrator was asked to provide data on the numbers of filings, numbers of appeals, numbers of cases with children involved and other information that would better the legislative analysis of family court reforms presently and in the future.

### Judiciary Subcommittee B

Members of Judiciary Subcommittee B heard presentations that provided an overview of the development of Coal Bed Methane in West Virginia over the last 25 years. It was stated that what was once a safety hazard and nuisance to underground coal mining with no value has become a valuable resource and a new industry is developing surrounding it. Coal Bed Methane (CBM) is natural gas trapped in coal seams, and the majority of CBM remains trapped in un-mined coal reserves.

Several speakers from the coal and gas industries spoke, as well as representatives of the Department of Environmental Protection (DEP). Surface landowners also were in attendance. The speakers stated that gas developers couldn't produce CBM without accessing a coal seam. New technologies recently developed allow horizontal drilling of CBM inside the coal seams. The collection and utilization of this gas may reduce green house emissions and provide for safer working environment for underground mining.

It is unsettled law on who owns CBM, and the state Supreme Court has focused on determining ownership based on the language in leases and deeds conveying mineral and gas interests and the intents of the granting parties. The Legislature in 1994 enacted requirements for consent of coal seam owners to allow extraction of the gas to protect their interests and coordinate development.

The subcommittee will be visiting a gas well head next month and will be receiving recommendations from the DEP and interested parties regarding any environmental impacts and regulatory steps needed to allow for further safe development of this resource.

### August Interim Schedule

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

### Judiciary Subcommittee C

Members of Judiciary Subcommittee C continued their study of Senate Concurrent Resolution 22, which calls for a review of advertising for the legal profession.

A representative of the West Virginia Bar Association's Lawyer Advertising Commission addressed committee members regarding the issue and mentioned that the organization has recently made some recommendations for changes to current law. One provision discussed by the representative would place a 30-day time restriction on when West Virginia attorneys could directly solicit families in times of personal loss. Also, the representative noted many of the complaints the Commission receives from the public regarding lawyer-advertising stem from the promise of free services if the person does not gain some recovery or settlement. Many of the complainants are surprised when they are billed for certain costs associated with their trial, according to the representative.

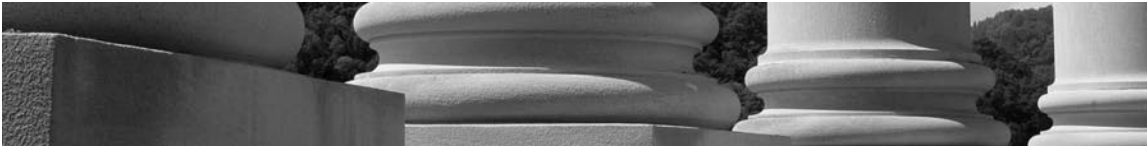
The committee also was provided with information regarding Kentucky's practices with regard to lawyer advertising. One requirement of Kentucky is that a special screening committee must approve all media ads used by lawyers before being submitted for public viewing.

### LOCEA

A representative of the West Virginia Council for Community and Technical College Education provided members of the Legislative Oversight Commission on Education Accountability (LOCEA) with information regarding the Council's proposal for an expansion of allied health programs within the Community and Technical College System (CTCS).

The representative stated that in the nursing profession, there are 882 openings per year, and it is projected that there will be 4,406 openings over the next five years. The average salary for a nursing professional is around \$28 per hour, or slightly more than \$60,000 annually, and new hires average \$21 per hour for an annual salary of just less than \$45,000. Currently, there are 834 nursing students enrolled in the CTCS. The representative proposed an expanded enrollment of 416 students at a projected cost of \$2.5 million.

In addition, the representative noted the Council would like to expand enrollment in the dental hygiene profession from



its current 40 students to 52, at a projected cost of \$309,000. There are around 55 openings per year in this field, and the representative projects 275 openings over the next five years, which would equate to a 46 percent increase over that time period. According to the representative, the average salary for a dental hygienist is \$28 per hour, or \$59,000 a year. Also, the representative requested an expansion in enrollment for medical assisting. This profession is facing 155 openings per year, and an estimated 774 openings over the next five years, which projects to a 67 percent increase in demand. The average salary for this profession is \$15 an hour, or \$32,000 a year, according to the representative. Surgical technology, respiratory therapy and physical therapy assistant also are fields proposed for expansion. The representative stated that the Council would like to propose an overall enrollment expansion of 673 students in six fields at a projected cost of \$4.2 million.

The representative also discussed with members of the Commission some major system initiatives for the delivery of community and technical college education. Some of these initiatives include: continuing to address the development of a tuition strategy to ensure affordable access to community and technical college education; addressing the system's role in enhancing enrollment in engineering and engineering-related programs that advance economic development efforts; incorporating into a funding model incentives for community and technical colleges to deliver high-cost technical programs; working with the Development Office to identify critical technical programs required to enhance economic development efforts; and, continuing the initiative to identify high-demand occupations in targeted industry sectors and the occupations impacted by impending retirements.

Members of LOCEA also were provided information on two new federal financial aid programs. A representative of the West Virginia Higher Education Policy Commission discussed the two new federal programs, which are available for Pell Grant eligible students beginning this Fall. The Academic Competitiveness (AC) Grant will be available to first and second year undergraduates and the Science and Mathematics Access to Retain Talent (SMART) Grant will be available for third and fourth year students.

The representative said a total of \$790 million in federal funding has been provided this academic year, while a total of \$4.5 billion will be provided over the next five years. The AC Grants will seek to encourage students to take rigorous curriculums in high school. The SMART Grants will look to encourage science, technology, engineering and math and critical foreign language majors.

Also addressing LOCEA was a representative of the PROM-

ISE Scholarship program. The representative stated the PROMISE Scholarship Board has increased standards, bumping the ACT requirement from a 21 to a 22 and raising the SAT requirement from a total score of 1000 to 1020. The representative noted the current raise in standards is in response to the passage of House Bill 4049, which mandated the program to raise standards to control the increasing costs of the Scholarship.

In the second meeting of the LOCEA in July, members heard abbreviated presentations by the Superintendent of Schools and the Chancellor of the West Virginia Council for Community and Technical College Education.

Members were told of an updated Web site for the 21st Century Skills program, designed at creating high schools that will improve learning, achievement and competencies and demand a clear understanding of the knowledge, skills and attributes that are increasingly important for every high school student today. Lawmakers were encouraged to browse the Web site and prepare comments or question for the next meeting. The Web site can be found at [www.21stcenturyskills.org](http://www.21stcenturyskills.org).

The Commission also was updated by the Council for Community and Technical College Education as to recommendations for Senate Concurrent Resolution 42, which requests a study of vocational, technical and adult education in West Virginia. The Commission will review the recommendations for the September meeting.

**LOCHHRA**

The Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) met in July to discuss the Medicaid State Plan Amendment.

A representative for the state Department of Health and Human Resources, Bureau of Medical Services told LOCHHRA that in May, the Federal Government approved the proposed West Virginia State Plan Amendment (SPA). The SPA provides for the implementation of flexibilities granted under the federal Debt Reduction Act of 2005. This approval allows the state to provide alternative benefit packages to those eligible for Medicaid, with some exemptions.

The alternative packages will be phased in by geographic area and delivery system availability. Prior to implementation, the Bureau must comply with federal requirements of public notice, which may include posting on a Web site or public service announcements, among others.

West Virginia will offer a basic Plan and an enhanced Plan to Medicaid members. The basic Plan provides all state and federal mandatory services. The enhanced Plan offers additional medical services to members. To access the enhanced Plan, Medicaid members must voluntarily sign the Medicaid Member Agreement. The member will sign the agreement at the medical home.

The Bureau also will track certain personal responsibilities during the first year of enrollment in the Enhanced plan. They include: health screens as directed by health care providers; adherence to health improvement programs as directed by health care providers; missed appointments; and, medication compliance.

Successful compliance with these four responsibilities will be monitored. The HMO/medical home will partner to monitor and report compliance with these responsibilities. If the member has fulfilled the responsibilities agreed to, he/she will remain in the Enhanced Benefit Plan. If the member does not fulfill the responsibilities, he/she will be moved to the Basic Benefit Plan subject to good cause.

Members will receive advanced notification if their benefits are reduced and will have the right to appeal the decision. After 12 months in the Basic Plan and at re-determination, members will have the opportunity to sign the Member Agreement and be re-enrolled in the Enhanced Plan.

During LOCHHRA'S second meeting of the July Interims, the Department of Health and Human Resources (DHHR) Commissioner spoke regarding the perspective on the concept of "Money Follows the Person". This is a national movement designed to lessen the reliance of states on institutional provider models in fiscal preference to models of community support.

In line with the adoption of Senate Concurrent Resolution 88 during the 2006 Regular Session, LOCHHRA is following the progress of the DHHR which is to be working in conjunction with the Statewide Independent Living Council, the Olmstead Advisory Council, the Developmental Disabilities Council and other interested groups or individuals. They are to work on DHHR's developing policies to illustrate how the program can be re-balanced to increase the use of home- and community-based support services and enhance alternatives to institutional settings that consider the quality of life and preference of eligible individuals.

The intended outcomes are to be designed to reduce reliance on institutions, to adjust the state's publicly-funded long-term care supports and to enhance the philosophy of self-direction for individuals in need of long-term care in West Virginia.

According to the DHHR Commissioner, the concepts of 1) Money Follows the Person; 2) services follow the money; and, 3) quality follows the service are more complex than described. The impact of Money Follows the Person would not remain budget neutral for a variety of reasons. For instance, under current reimbursement structure for nursing home services, the cost per patient day in the nursing facility would increase as a result of the decrease of the numbers of individuals being served; elimination of congregate settings would force the state to purchase one-on-one services for some recipients; costs would increase from additional monitoring of individuals returning to their communities; and, costs of traveling nurses and other direct care workers would increase.

With the successful transition of providing support being demonstrated through the closure of the Colin Anderson Center and the movement of those residents to the community, lawmakers would like to see progress in the studies being conducted by the DHHR. At present, the Olmstead office is facilitating a collaborative effort among various bureaus within the DHHR. A study, when finalized, will address the implementation of the Olmstead Plan within the budgetary constraints of the state. Legislators requested time lines be met for a draft study to be ready sometime in the Fall.

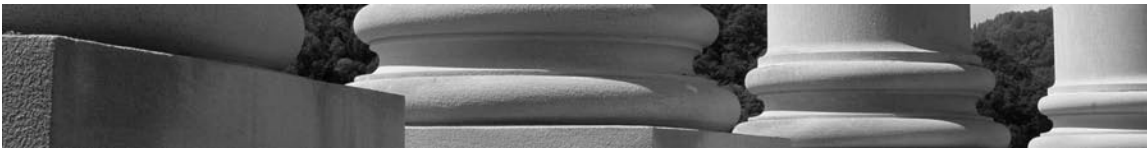
Although a budget-neutral plan may not be feasible, some lawmakers suggested the implementation of pilot projects so the "unknowns" of Money Follows the Person may become known. According to stakeholders, community-based care is philosophically the right way to go but further study is essential.

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

Providing a follow-up to the panel's June meeting, the Chancellor of the Community and Technical College System (CTCS) of West Virginia discussed coal miner training programs at Southern West Virginia Community and Technical College and West Virginia University. The two schools received a \$3 million grant from the United States Department of Labor (DOL) to develop the Academy for Mine Training and Energy Technologies.

He said that over the course of the grant, which will last for three years, Southern anticipates training 1,000 to 1,200 entry-level miners. The training will be designed to provide students with advanced skills the industry is seeking in its workforce.

The Chancellor noted Southern has encountered a challenge in finding a site for its training facility and while it is currently looking for a location, a temporary one has been set up in



# Interim Highlights

Chapmanville. Southern has begun training at its temporary location, but he said the advanced training would not begin until a permanent facility is secured.

Also, the Interim Director of the WVU Mining Extension Service appeared before the legislative panel to discuss WVU's role in carrying out coal miner training through the Academy. He said CONSOL Energy donated a site in Monongalia County that is currently in use for a training center. To date, two classes have been completed, one is ongoing and two are scheduled to begin in August.

He said although the training has been advertised in Morgantown, Fairmont and Clarksburg newspapers, there have been a low number of participants. It was suggested by lawmakers that advertising be expanded to areas that have seen lay-offs in the coal industry. In addition, the Interim Director noted that, of the 34 individuals who have completed the training through WVU, seven have been hired by coal companies. He attributed this to the fact that most companies prefer to hire employees with work histories and more advanced skills.

The speakers said while a director for the Academy has yet to be found, one should be hired by September 30.

A representative of Workforce West Virginia told lawmakers this agency is engaged with the CTCS in the coal miner training effort, specifically in safety training. He also said the Governor is set to make an announcement regarding a grant from the DOL to help implement Helmets to Hardhats, which is a national program connecting members of the Armed Forces with jobs in the construction industry.

The final presenter was the Executive Director of the Region VI Workforce Investment Board. She said she believes Workforce West Virginia has the ability to work with WVU on recruiting additional students for its coal miner-training program. The speaker also said Workforce West Virginia continues to work with coal companies to determine their desired skill sets. She noted there are current employment needs in the machinist and welding industries and they are working to provide training across the state to fill these vacancies.

She also told lawmakers a job fair was recently held in Tucker County, with approximately 100 people in attendance, and jobs were offered that day.

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

## Legislative Oversight Committee on Regional Jail and Correctional Facility Authority

Representatives of the West Virginia Division of Corrections and the West Virginia Regional Jail and Correctional Facility Authority gave a joint presentation to members of the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority regarding the state of the jail and prison population in West Virginia.

According to the representatives, there are two primary factors as to how individuals become part of the jail and prison population. Arrests are the primary factor, with non-felony arrests representing the vast majority. The representatives noted police officers have the discretion on non-felony arrests, unless there are warrants, to either cite an offender to appear in court and release or to book into jail. Outstanding warrants, according to the representatives, evaporate police discretion and mandate an officer to book the offender. Information on how police officers exercise their discretion is important in understanding the jail/prison population demands, according to the representatives.

The second factor revolves around sentencing practices. The representatives said sentencing may originate in municipal, county or state courts, as well as with probation officers and the parole boards, and the length of time regarding sentencing is a major player in the state's prison population demands. Information about sentencing patterns is critical in analyzing population trends, as well as in forecasting needs and fiscal analysis, according to the representatives.

The representatives also stated it is crucial to place a "face" on the jail and prison populations to better understand the nature of the risks that inmates pose to the community. Breaking the populations down and comparing those inmates who are serious or violent offenders with those who have committed public order offenses can be helpful. In addition, to better understand the prison population demands, the representatives said changes in how each criminal justice agency processes workloads can alter the rate at which people are sent to jail or prison, as well as impact the length of each sentence.

West Virginia's prison population is growing at a faster pace compared to other states in the nation, according to the representatives. Knowing the trend is likely to continue, the representatives noted some planning options lawmakers may want to address. The representatives said officials should encourage the use of alternate sentencing and graduated sanctions through the use of probation, community corrections and home confinement. In addition, the representatives recommended some legislative changes, including the use of

work release programs for certain jail populations; increases in sentencing options; increases in offender accountability through fees and restorative justice; greater judicial discretion; and, usage of outside medical services for offenders to be reimbursed at the Medicaid rate.

### Select Committee A - Children, Juveniles, Other Issues

To further its charge in studying issues relating to the well-being of West Virginia children, Select Committee A received information regarding drug-addicted newborns and the challenges in addressing this increasing epidemic. Representatives of West Virginia University's Healthy Start Project told committee members that identifying and treating women who are pregnant and abuse controlled substances is a major challenge. It was noted by the representatives that confronting pregnant substance abusers during their pregnancy usually causes the abusers to go "underground" and refuse any prenatal treatment, which in turn has negative effects on the fetuses.

The representative stated West Virginia needs to develop a system that encourages treatment for the pregnant substance abuser rather than punishment. Education, screening and treatment opportunities that allow for continued care should be promoted rather than policies that create criminal and punitive consequences because it will have a better outcome for the baby, according to the representative.

Currently, there are no solid statistics regarding the number of pregnant women who may be addicted to drugs or who may be using drugs while during their pregnancies, so there is no baseline to determine whether or not the education programs and treatment opportunities offered by clinics in the state are working. The representatives stated that since drug screening is only done when women acknowledge a problem or show signs of drug addiction, they would like to increase the availability of the screening process, but they also believe policies must be in place that provide no criminal consequences for those seeking treatment.

In addition, the committee discussed the epidemic regarding nicotine-addicted newborns. It was stated by committee members that West Virginia has the highest rate of nicotine-addicted babies in the nation, with a rate of almost two times the national average.

### Select Committee B - Minority Issues

The Executive Director of the West Virginia Minority Business Development Center (WVMBDC) addressed members of Select Committee B seeking direction on the ways and means to ensure the development of a business loan pool for minorities and women. Citing disparities in state financial assistance for minority and small businesses owners versus economic development loans to larger, established businesses, the Director sought guidance in securing dollars to assist minority entrepreneurs.

In 2004, a bill (SB 573) to provide a procedure for the economic development authority to address employment and economic development problems of minority populations of the state did not pass the full Legislature. The bill called for the encouragement of African-Americans and other minority persons to participate in the process of competing for state contracts and goods and services, among other provisions.

In 2005, two resolutions (House Concurrent Resolutions 32 & 33) called for the study of the creation of a pool for small disadvantaged businesses and a study of the participation of minorities and other small business in the process of competing for state business.

With these studies on Select Committee B's agenda, the WVMBDC submitted a proposal that would provide \$150,000 for statewide services for women, minorities, veterans and small business people. The \$150,000 requested would be used to draw down federal matching monies.

According to the Executive Director of WVMBDC, the small business organization has made several attempts to receive private funding of \$250,000 from four state banks, totaling \$1 million. The loans would have been 85 percent secured but no loans were made. The organization has worked independently to receive federal grant monies but needs matching funds from the state. The WVMBDC is requesting legislation - with teeth - be developed that assures a percentage of grants or loans are provided to the minority business population of the state.

Information provided by the group indicated that minority businesses in 2002 totaled 632. These businesses employed 5,576 people and contributed a total sales amount of \$372.6 million.

### Bill Status

For bill history information and full bill text of all Legislation from the 2006 Regular Session, please go to the West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Bill Status" link.

## Select Committee C - Infrastructure

Lawmakers were provided updates into the establishment of advanced telecommunication services in West Virginia - Internet access and the availability of Broadband and digital subscriber lines (DSL) - by the Director of Homeland Security and Emergency Management, the Director of the Consumer Advocate Division of the Public Service Commission (PSC) and the West Virginia Chief Technology Officer. These representatives detailed the efforts of government agencies and private industry in creating and enhancing a technological infrastructure designed to improve private and public communications within West Virginia.

Broadband Internet access, often shortened to "Broadband Internet" or just "Broadband," is a high data-transmission rate internet connection. DSL and cable modem are both popular consumer Broadband technologies and are typically capable of transmitting information to the consumer at approximately four times the speed of a modem using a standard digital telephone line.

According to the Consumer Advocate of the PSC, Broadband is becoming exceedingly popular and demand by consumers is accelerating. Presently, Broadband is available throughout 75 percent of the state while it is available throughout the nation at an 85 percentage. Where 25-to 27 percent of broadband usage is acquired by households in the state, it is delivered via telephone lines in some areas, cable services in others and through remote terminals. With 185,000 subscribers in West Virginia, dial-up accessibility is predicted to be the biggest market in the coming years. Although approximately 68 percent of West Virginia households own computers, the demographics of age, education and income continue to provide some barriers for the expansion of broadband.

Also, the committee heard an update on the expansion of global tracking of cell phones and other mobile wireless technology for homeland security and emergency response matters from the Director of Homeland Security and Emergency Management. Operating under a phase-in system, all counties have some service available for a 911 call. Thirteen calls operate under Phase I, which allows for some form of location information based on the area from which the call came; and, 14 counties have implemented Phase II, which allows for site-specific tracking of an emergency call.

According to the Chief Technology Officer, covering the inventory of existing technology in regard to security and inter-connections of cell and landlines for state use, there are two philosophies in increasing the existing 75 percent penetration rate. One is to convince telephone companies

to expand their services and the other calls for a strong promotion of the actual consumer demand. Towers are being built by Ntelos and Verizon has invested \$5 million for remote terminals, while upgrading 101 terminals this year. However, there continues to be challenges as the Eastern Panhandle addresses the connectivity of cell phones and landlines, but private industry is continuing to press on with solutions.

### 2006 - 2007

#### Interim Committee Meeting Dates

August 6 - 8 (Chief Logan State Park)

September 11 - 13

October 15 - 17

November 13 - 15

December 10 - 12

January 7 - 9, 2007

*Note: All dates are subject to change.*

### August Interim Schedule

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

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