

Interim Highlights

Agriculture & Agri-business

West Virginia Beekeeping

Members of the committee heard from State Apiary specialists on the importance of the development and support of WV beekeeping.

One representative said that perhaps as the southern part of the state is not conducive to farming its great prosperity in wildflowers has gone unnoticed. This is a key resource to be exploited for the WV beekeeper.

Not only is beekeeping a lucrative enterprise in itself but also is beneficial to the timber and coal industries as it aids plant growth and regrowth in those areas. It is an industry also well suited to wildlife that feeds on the plants that those bees pollinate.

The State Apiarist stressed the importance of organizing bee clubs in southern WV to support beekeepers and the need to educate them on how to keep bees.

The northern part of the state has received more attention for its honey but is underutilized in the complementary market of shipping bees to farmers across the country to pollinate their crops, another specialist said. Bees can be rented out in the off-season of their honey production. This allows for the income created to be completely supplemental to that of honey production. Different crops (i.e. apples, almonds, et cetera) rent at different prices and for different lengths.

Honey this season, however, is facing a 50% loss in production due to droughts this summer and unexpected bouts of cold weather. Foreign markets are also hurting honey sales all over the United States.

Africanized Queen bees, one representative said, will be seen in WV in the next few years and will be throughout the state in 15 years. The expert said it would take \$58,000 to equip EMS workers throughout the state with proper suits to allow them to operate in sites inundated with bees.

This development, though, could prove advantageous in the short term for the West Virginia beekeeper. Not having instances of the Africanized honeybees makes this state's bee rentals preferable to those of southern states that do have the Africanized bees.



Capitol City Pumpkin Drop

A student watches his entry in the Ninth Annual Capital City Pumpkin Drop fall from the roof of the Capitol. More than 900 students from 32 primary and secondary schools in 19 counties participated in the October 19th event. All participants received a trophy, but those whose pumpkins survived the fall and landed closest to the target received cash prizes in order of \$100 for first place, \$75 for second and \$50 for third.

photo: Martin Valent

Education Subcommittee A - Public Education

Increased Salaries for Rehab Counselors

A representative of Rehabilitation Counselors in West Virginia presented information on their need for salary improvements.

Rehabilitation counselors have the same qualifications as school counselors, and while school children comprise roughly 30 percent of their clientele, they treat all age groups. Their job duties include, for example, helping those with spinal cord injuries find work and get on with their lives.

While the representative stressed that the rehabilitation counselors are not in competition with teachers and school counselors, they do want to be paid on the same scale. These rehabilitation counselors oftentimes receive master's degrees, the representative said, and are still paid less than teachers and other school counselors who have only received their bachelor's.

A few years ago in an effort to entice rehabilitation counselors to work in West Virginia, the state offered starting salaries of eight to nine thousand dollars a year more than those who had

been employed as such for several years. The representative said the counselors are seeking reparations in accordance with these new salaries as well as experience.

The representative further explained that these counselors are dedicated to their jobs and their area even though those employed in their same position in neighboring states make eight to ten thousand dollars a year more than they do. To rectify this, salaries will constitute a total cost of \$2.65 million, the representative said.

Education Subcommittee B - No Child Left Behind

NCLB Reauthorization

Once again, the subcommittee heard from several speakers in order to review the impact of No Child Left Behind (NCLB) on the state. This month, the members heard from representatives for educators and other school personnel and from the National Conference of State Legislatures (NCSL).

The NCSL representative provided an overview of how NCLB has affected the federal-state relationship. According to the speaker's report, the NCLB was enacted under the spending clause of the U.S. Constitution, but it might violate two of the five guidelines established by the U.S. Supreme Court for spending clause legislation. *South Dakota v. Dole* (1987) established that spending clause programs "must be unambiguous in describing the terms of the transaction for receipt of federal money" and "must be a financial inducement and not coercion." The speaker said NCLB's compliance with these provisions was suspect.

The speaker also criticized the testing requirements of NCLB. The Adequate Yearly Progress (AYP) standard compares each class to next year's class (e.g., this year's fifth graders would be compared to next year's fifth graders). According to the representative, the NCSL supports a system where each class is tested against its own performance from the prior year (e.g., this year's fifth graders would be compared to next year's sixth graders). Another aspect of AYP he criticized was the strict requirements that every test group passes. There are 36 such groups (plus an attendance/graduation requirement). A school that fails one requirement is counted the same as a school that fails 35 of them.

Another major criticism the speaker levied against the program was the lack of funding. While there has been a \$10.4 billion increase in federal K-12 funding since NCLB was implemented, compliance costs negate any gains. The speaker relayed a common concern that NCLB was an unfunded mandate as a result of this.

The representative gave several recommendations for changes to NCLB that the federal government should adopt, such as: giving the Individuals with Disabilities Education Act (IDEA) supremacy over NCLB when the two conflict, allowing states more flexibility in determining the percentage of special education students, using native-language tests instead of English-only tests, allowing states to define whether a district is rural or urban, identifying other special circumstances and substantially increasing federal funding for NCLB.

The report was especially timely since NCLB is up for reauthorization next year. The speaker said Congress, when considering reauthorization, should take some of these complaints and recommendations into account.

Representatives from the West Virginia School Service Personnel Association, the West Virginia chapter of the American Federation of Teachers, and the West Virginia Education Association echoed many of these concerns. All of them said that while there were some positive goals in NCLB, the implementation is flawed and costly.

Education Subcommittee C - School Aid Formula

Special Education Funding

This committee heard a report from members of the Center for Business and Economic Research regarding Alternative Approaches to Support Special Education in State School Finance programs.

The report details that for the past two decades the fastest growing national education expenditure has been for special education. While the definitions of what constitutes special education vary among the states, it is always related to students with disabilities, which restrict in some manner their full participation in a traditional classroom. These range from problems such as below-grade performance, deficiency in essential skills, speech problems, impairments in vision or hearing, mobility restrictions, autism, mental retardation and total disability.

Different states use a variety of formulas and classifications to determine the amount of funding for special education. West Virginia's formula assigns a specific weight to students with disabilities. Most of the states that use this approach weigh the allocation on the classification of student disability. There are only two states (Oregon and West Virginia) that use a single weight for all special education students. These different weights are based on the cost of providing services to that particular group of students. Nineteen states use a form of this type of system.

In examining different models from surrounding states, the report demonstrates that no “ideal” or “model” program exists among the states for special education finance that can be transported to West Virginia. But it does appear that the use of the “two times weight approach” in the West Virginia Public School Support Program is an anomaly compared with other states.

The weight in use does not recognize the differences in costs for providing special education to students with different disabilities. The formula may in fact encourage districts to classify students as needing special education in order to obtain additional funding. Small school districts are at the risk of a student with a major handicap creating an expense beyond the capacity of the district to pay.

The report also stated that further investigation into a more appropriate approach appears warranted.

Finance Subcommittee C

Highways Update

This committee heard a report from a representative from the Division of Highways (DOH) regarding the six-year highway plan, which stated that money simply isn’t there to finance road projects in Southern West Virginia. The representative informed the committee that the time for building new roads could be drawing to an end, as money grows harder to come by. The DOH is instead beginning to turn more and more toward maintaining and preserving the system we have in place.

The report stated that other regions of West Virginia are growing at a more rapid pace and new roads are needed to accommodate the development. Because of this, the report went on, no Southern West Virginia projects made the top 10 in the six-year plan.

An accompanying 10-year report, showing a construction program cost summary for the last decade, shows the disparity between highway funding in the three Congressional districts in the state. During that span, Congressional District 1 received \$1.8 billion, District 2 got \$2.5 billion, and District 3 received \$1.5 billion. In the current 6-year plan the figures are just as disproportionate. The report shows that Districts 1 and 2 each are to receive around \$1 billion while District 3 is to receive about half as much.

The DOH has provided the committee with several reports for their consideration.

During the committee’s second meeting, the state Secretary of Transportation answered questions regarding the 6-year

and 10-year plans as a follow-up to the first meeting. The subcommittee was also told that DOH was going to work with Marshall University and West Virginia University to develop a long-range, 25-year plan.

Forest Management Review Commission

Monongahela Forest Plan

Committee members heard a report detailing the new revised Monongahela Forest Plan. The purpose of this plan is to guide natural resource management activities on lands administered by the Monongahela National Forest. It describes management direction and practices, resource protection methods and monitoring, desired resource conditions, and the availability and suitability of lands for resource management.

Implementation of new projects associated with the new plan begins on October 23rd followed by a 90-day appeals period.

Themes of the new plan include a conformation of age-class diversity and regenerating mast-producing species in suited timberland, maintaining or restoring long-term ecosystem and watershed health and integrity, and issues relating to soil nutrient and base action depletion and soil acidification related to acid deposition.

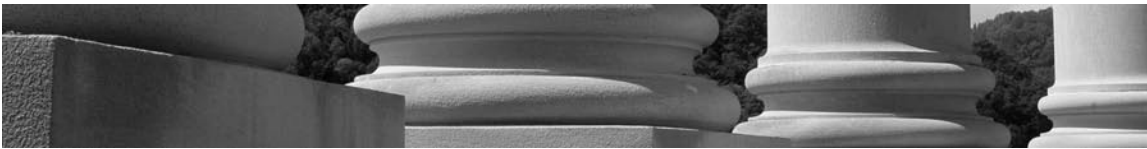
The report also stated that 35 percent of the forest is suitable timberland, 43 percent is large, core ecological reserves and 21 percent is smaller areas of sustainable land. The report is available, the representative stated, on the web at: <http://www.fs.fed.us/r9/mnf/index.shtml>.

Government Organization Subcommittee B

Sunset Process

This committee continued the discussion regarding Senate Concurrent Resolution 72, which requested a study of the sunrise and sunset process in West Virginia.

Staff counsel explained that the Sunset process is the automatic termination of state agencies and regulatory boards unless legislative action is taken to reinstate them. The legislative action usually occurs following the receipt of a performance evaluation, which is used as a means to determine whether or not an agency is operating in an efficient manner and to determine if there is a demonstrable need for the continuation of the agency. The review also found that in 42 states, the State Auditor conducts performance audits.



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Counsel stated that in studying this topic there are a couple of options available if West Virginia wishes to change the current sunset process. The state could revise the time period between review periods or expand or limit the criteria for review. The state could delete the schedule for reviews and make it only upon request.

Also, the state could impose requirements for audit requests or require agencies to present justification for continuation.

Joint Standing Committee on Economic Development

21st Century Jobs Cabinet

By Executive Order, and to ensure that all education institutions and state agencies, commissions and boards are on the same page regarding job development and creation, the 21st Century Jobs Cabinet has been created. Appearing before the Legislative Economic Development Committee was its co-chairman and first lady Gayle Manchin who outlined the goals of the new commission.

According to the first lady, education and economic developers and other business professionals are parts of the whole regarding the enhancement of West Virginia's economy. Citing a "seamless education", to include preschoolers through grade 12, the first lady emphasized that all West Virginia children should be on a level playing field. As such, it is the plan of the new commission to integrate 21st century skills into the curriculum of all schools and to provide a solid educational background for every child entering a higher field of study upon graduation from high school. Also included in the commission's studies are plans to better prepare and retain educators and to ensure the integration of vocational and technical education and career counseling.

West Virginia is presently at a crossroads, the first lady told lawmakers. Promoting global competition, high technology, long distance learning and basic comprehension skills in the lower grades, the co-chairman told legislators the time to strategize is now. Working cohesively, the newly created Cabinet should be able to devise a long-term plan that will encourage children to see greater 21st century job opportunities, she said.

When asked what types of jobs the state would prepare workers to perform, the first lady noted the future of technology was unpredictable but emphasized students should learn skills adaptable to 21st century advances.

But, most important to the first lady was the overall promotion

of West Virginia so future citizens will be able to take pride in being from the Mountain State.

Participants of the Cabinet include its co-chair, Ralph Baxter, chairman and chief executive officer of Orrick, Herrington and Sutcliffe, LLP, the secretary of the Department of Education and the Arts, the state superintendent of schools, the CEO for the Center for Professional Development, the chancellor of higher education, the chancellor for Community and Technical College Education, the commissioner of the Bureau for Children and Families, the executive director of the state Development Office, and the director of Workforce West Virginia, among others.

Joint Legislative Oversight Commission on State Water Resources

Critical Water Planning Areas

Senate counsel addressed the commission to talk about draft legislation that would allow local governments to establish critical water planning areas (CWPA). In the draft, such areas are defined as "any significant hydrologic unit where existing or future demands exceed or threaten to exceed the safe yield of available water resources."

If a municipality is located in one of these areas, it can establish a Critical Area Resource Plan (CARP), which would be developed by a Critical Area Advisory Committee (CAAC). This committee would be comprised of representatives from local government; appropriate state and local government agencies; agricultural, public water supply, industrial and other water users in the area; conservation and environmental organizations; and water resource experts.

The CARP would include an identification of existing and future "reasonable and beneficial" uses for the water resource, an evaluation of current water availability, a study of how much water would be available for the foreseeable future and how much might be needed, an assessment of water quality issues, a consideration of storm water and floodplain management, a study of potential conflicts among users and how to avoid or resolve such conflicts, and a consideration of alternatives for ensuring an adequate supply of water either by reducing demand or increasing supply.

The commission then asked two representatives from the Division of Environmental Protection (DEP) to clarify some of the particulars of the draft legislation. Currently, DEP is surveying how much water each watershed in the state has. The members expressed concerns that the statewide DEP study is using a different benchmark than independent regional studies in the eastern panhandle. The commission

asked DEP to look more closely at the methodology of the eastern panhandle studies.

Joint Standing Committee on Finance

WV State Road Fund

Finance committee members from both the House and Senate continue to hold discussions regarding the state highway fund. West Virginia's State Road Fund is derived from the motor fuel tax, registration fees and the privilege tax. With the cost of fuel rising along with materials and construction costs, highway maintenance is becoming an increasingly expensive production.

With a freeze on the wholesale price of gasoline, which automatically adjusts every January based on the average price of gasoline purchased from July through October of the previous year, West Virginia could lose as much as \$50 million in highway funding. The tax presently stands at 6.5 cents per gallon, which makes the state's gasoline tax 27 cents. With federal tax added, West Virginians pay 45 cents per gallon in taxes.

A report by West Virginia University's Bureau of Business and Economic Research was compiled in 2004 to outline other changes affecting the user fee-based funding of the state's highway system. Since oil prices have escalated along with materials and construction costs and consumers are becoming savvy about fuel efficiency, the Bureau has been asked to update its research.

According to the university spokesman, the privilege tax is the cornerstone of the highway fund's revenues. Since that tax consists of five percent of the value of the vehicle, revenues generated by the privilege tax continue to rise.

Also, the Federal-Aid Highway Construction Price Index regarding pricing and cost trends in U.S. highway construction has increased respectively from 4.5 percent in 2004 to 27.4 percent in 2005. This increase was due in part to the higher energy prices experienced by many in the construction industry.

Peak value for the state's road fund tax sources was in 1994 at approximately \$609 million (including federal dollars) while existing value of those sources has seen a 22 percent decline at approximately \$475 million. Use of the highways has declined by 21 percent during the same time frame.

The Bureau director told lawmakers that user fees do not fully reflect the costs and benefits to the system. For instance, a motor fuel tax may not capture the benefits of economic development that can accrue to local businesses and residents.

He also said that a comprehensive highway financing strategy is needed to allocate the financial burden in accordance with benefits received. For example, he told the committee, general revenue funds, local option sales and property taxes could be used to finance highway construction and maintenance in addition to motor fuel taxes. An increase in the privilege tax from five to six percent, which is comparable to the sales tax, could also be considered.

Registration fees administered by the Division of Motor Vehicles (DMV) could also be increased, according to the findings of the WVU Institute. These include annual registration fees, drivers' licenses and permits. It was also suggested that a late fee be imposed on expired registrations – \$10 for each month car tags are past due. If the registrations were coordinated with county assessors, additional personal property tax revenue could also be distributed to the counties.

Another major trend in state highway funding, the director of WVU's research bureau noted, is the shift from highway user fees to other local government revenue sources. Using data provided by The Center on Urban and Metropolitan Policy, the university economist provided an explanation of local option transportation taxes (LOTT). The review of LOTT included its definition as a "tax that varies within a state, with revenues controlled at the local or regional level, and earmarked for transportation-related purposes." The five major types of local taxes that were examined for transportation-related purposes were fuel taxes, vehicle taxes, property taxes, sales taxes and income, payroll, and other employer taxes.

Among other innovative suggestions was Public-Private Partnerships (PPP), which are contractual agreements between a public agency and a private corporation. As such, public and private sectors share in delivering a service or facility for the use of the general public. The findings of the WVU Institute indicated the General Accounting Office found that state and local governments might be wary of such projects, "due to the greater political costs associated with the limited ability to improve competing publicly owned roads."

Concluding its updated report, the Institute also offered the option of exploring the use of vehicle-miles traveled fees. For instance, Oregon's transportation department is testing a mileage-monitoring system that would tax drivers by the distance they travel on state roads instead of the amount of fuel they consume.

In all, lawmakers continue to seek input from a variety of economists to determine the ways and means to continue maintaining West Virginia's highway system.

Joint Standing Committee on Pensions & Retirement

State Pension Issues

Meeting in the chamber of the House of Delegates to accommodate the numbers of visitors, the Legislative Committee on Pensions and Retirement was provided a synopsis of current state pension and retirement policy issues from throughout the nation. Delivering the explanation was the Director of the State Services Division of the National Conference of State Legislatures (NCSL).

Issues of concern included the results of defined benefits and defined contribution retirement plans, funding issues and taxes on pensions. According to the spokesman, since 1950 state governments have used defined benefit (DB) plans while private industry, since the 1970s, has increasingly replaced DB plans with defined contribution (DC) plans.

Private sector retirement plan participation has changed because of workforce preference. Many employers believe DC plans match worker mobility, the business environment and a reduction in federal regulations.

The NCSL representative told lawmakers that state pension funding challenges were a result of inadequate funding. Further reasons for the deterioration of the plans included poor market conditions, the impact of benefit increases and the longevity of the workforce.

Various states restructured their plans by making changes to the final average salary calculations, increasing age of eligibility, limiting COLAs (cost of living allowances) and capping salary increases. The state of Oklahoma restricted legislation regarding any increase of benefits to a two-year session. Furthermore, any measure with a fiscal impact would be assigned to the Oklahoma State Auditor for an actuarial impact before its legislature could act on the measure. Ultimately, any legislation would have to be ratified by the public.

The NCSL spokesman provided data from states throughout the nation for his informational presentation. In all, state legislators will continue to receive and review options to assist in reducing pension liabilities in West Virginia.

Municipal Pensions

With approximately \$164 million in assets and \$590 million

in unfunded pension liabilities, municipal pension plans are struggling to stay afloat. To get a handle on the overall system, lawmakers heard from legislative counsel regarding the overall performance of retirement plans for city employees during the committee's second meeting of the October Interims.

According to counsel, options for assisting the failing plans are being studied. One suggestion was to ensure oversight of investments by the Investment Board of Municipal Pension Bonds.

While the teachers' retirement program has an aggressive portfolio, cities continue to vary in their individual programs. Some municipal pensions are well funded while others are vastly underfunded. Oversight would include actuarial reports and stability of cash flows for each retirement program. Findings would determine how much cash a city could afford to invest. With limited dollars available, some cities could invest small amounts but could expect only normal rates of return.

In the past, retirement benefits have been capped in some instances and state dollars have been used to shore up others but lawmakers said city officials have to develop a new mindset in assuring appropriate savings. City employees must also understand the concept of investing dollars so they become comfortable with the idea.

Overall, lawmakers are considering some oversight and/or funding from the state or other revenue generating authority.

Also appearing before the committee was the Executive Director of the WV Consolidated Public Retirement Board who provided an update on the impact of the Pension Protection Act of 2006.

Passed by the U.S Congress, the Pension Protection Act (H.R. 2830) will fix outdated pension rules to help ensure employers properly and adequately fund their worker pension plans, provide meaningful new disclosure to workers about the status of their pension plan, protect taxpayers from a possible multi-billion dollar taxpayer bailout, and make common sense modifications to encourage greater personal savings for retirement and other needs.

Changes in the federal law, which affect state law, include two that apply to public safety officers. Local plans for public safety officers should be consistent with one another and the actual definition of "public safety officers" should be exacted since there is no statewide definition.

Interim Meeting Schedule & Agendas

Please visit West Virginia Legislature's Web site:

<http://www.legis.state.wv.us/committees/interims/intcomsched.cfm>

Judiciary Subcommittee A

Distilled Spirits

Should West Virginia lawmakers authorize the sale of liquor on Sunday? In line with House Concurrent Resolution 72 (HCR 72), lawmakers are reviewing whether or not the state is at an economic disadvantage compared to surrounding states which do provide for certain sales on a Sunday.

Upon request, Judiciary Counsel provided a comparison of bordering states. In Ohio, Sunday operating permits are issued after a county or local option. Pennsylvania has 25 percent of its selected state stores open. Maryland, too, has Sunday sales where permitted by statute under local option. Virginia has selected state stores operating, specifically in Northern Virginia around Virginia Beach/Norfolk. Kentucky provides city/county local options for Sunday sales; for instance, a county may be dry but a city may vote to sell liquor on Sunday. In all, 34 states now allow Sunday sales of distilled spirits.

According to a representative from the Distilled Spirits Council of the United States, West Virginia could earn \$1.1 million a year in revenue by selling liquor on Sundays. Surrounding states are competitive in their tax rates in comparison to West Virginia, which taxes a gallon of liquor at the rate of \$1.70 a gallon, Maryland taxes at \$1.50 per gallon, Kentucky at \$1.94, Pennsylvania at \$6.48, Ohio taxes \$8.40 per gallon and Virginia taxes distilled spirits at \$14.02 per gallon.

Lawmakers also requested data on alcohol-related fatalities in all 50 states, as reported by the National Highway Traffic Safety Administration for the years 2001-2005. According to the material provided, there appears to be no connection between states that allow Sunday sales of distilled spirits and those that do. The spokesperson for the Distilled Spirits Council said the best deterrent of drunk driving and alcohol-related fatalities resides in a comprehensive drunk driving policy, including escalated penalties for repeat offenders and those found driving with a blood alcohol content (BAC) of .15 or higher. West Virginia presently finds those drivers whose BAC is higher than 0.08 to be driving under the influence of alcohol.

Lawmakers are seeking further details regarding population comparisons and the number of people actually buying liquor on Sundays to be addressed in future meetings.

In another and completely different matter, lawmakers of Subcommittee A also heard from a representative for the American Association of Marriage and Family Therapists. The spokesperson requested that lawmakers consider li-

censing these professionals. Today, only West Virginia and Montana do not license Marriage and Family Therapists in lieu of licensing counselors, social workers, psychologists and psychiatrists. According to the spokesperson, Marriage and Family Therapists are authorized to treat more than a single person at a time in a family group setting.

Judiciary Subcommittee B

Coal Sludge & Groundwater

As part of a meeting regarding the impact of coal sludge on groundwater, the subcommittee heard from two residents from Mingo County.

This sludge consists of waste from the coal mining and cleaning processes. Waste is crushed, water is added and the mixture is injected into abandoned underground mines. Mingo County has several such injection sites.

The first resident, from Rawl, described how she developed liver problems since having moved to the area. She also said her children, who do not live in the area, developed sores on their backs from clothes washed in contaminated water. She showed a sample of her tap water, which was tainted red, to the subcommittee.

The other resident, from Lick Creek, talked about the various health problems her family has experienced. She said her family, including her six-year-old son, had all passed kidney stones. She told the subcommittee that a doctor said her son's health problems were likely caused by toxic environmental poisoning. The resident added that she had miscarried, most likely from drinking contaminated water.

Before hearing from the Mingo County residents, the subcommittee had several scientists and government officials talk to them about the impact of coal sludge on groundwater aquifers. A biology professor from Wheeling Jesuit University presented the subcommittee with a study of wells near the Sprouse Creek Slurry Impoundment near Williamson in Mingo County.

The study tested for various metals and other chemicals. These chemicals fell into four categories: primary standards (known to cause health problems), secondary standards (only causing aesthetic or cosmetic problems), lifetime health advisories (known to cause health problems with prolonged exposure) and non-regulated (minimal or unknown health effects).

According to the study, several wells exceeded Environmental Protection Agency standards. Nearly all the wells exceeded

the allowed amount of iron (which falls under secondary standards). Five wells had unhealthy amounts of lead. The eight wells tested at high flow all showed excessive amounts of manganese. The EPA secondary (i.e., voluntary) standard for manganese is 50 parts per billion (ppb); some wells had levels around 2,900 ppb, with the lowest value at 82 ppb.

A later speaker, a toxicologist, told the subcommittee that manganese and other metals have been linked to several health problems, such as gall stones, kidney stones, diarrhea, boils, Attention Deficit Hyperactivity Disorder, tooth loss, thyroid problems, neurological disorders and fatigue.

All the speakers recommended further studies into the coal slurry issue and possibly alternative ways of disposing of waste. Members of the subcommittee expressed interest in hearing from the coal industry about the issue.

Judiciary Subcommittee C

Court's Regulating the Practice of Law

Counsel presented the committee with a memorandum titled "West Virginia Supreme Court's Exclusive Authority to Regulate the Practice of Law".

The brief memorandum was a description of counsel's opinion that the Legislature is prohibited from regulating the practice of law in West Virginia, specifically the practice of attorney advertising.

Counsel believes that the West Virginia Constitution grants exclusive authority to the Supreme Court of Appeals in West Virginia to regulate the practice of law. Article 3, section 3 of the Constitution states "the court shall have power to promulgate rules...for all the courts of the state relating to...practice and procedure, which shall have the force of law."

Additionally, Counsel pointed out, Article 5, Section 1 of the Constitution provides that "the legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the other..."

It was Counsel's contention that in reading these two provisions together it seems clear that the Court has exclusive authority to regulate the practice of law, including legal advertising. Therefore, according to staff counsel, any efforts by the Legislature to make any legislation designed to restrict and suppress the current parameters of lawyer advertising would be ineffectual.

LOCEA

Achieving U.S. Prosperity in the 21st Century

The Commission once again heard monthly reports from the Chancellors of the West Virginia Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education.

The members also heard a report titled *Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future*.

The National Academies created the Committee on Prosperity in the Global Economy of the 21st Century to respond to this request. The charge constitutes a challenge both daunting and exhilarating: to recommend to the nation specific steps that can best strengthen the quality of life in America—our prosperity, our health, and our security.

This report reflects the consensus views and judgment of the committee members. Although other solutions are undoubtedly possible, the committee believes that its recommendations, if implemented, will help the United States achieve prosperity in the 21st century.

In its report the committee reviewed hundreds of detailed suggestions—including various calls for novel and untested mechanisms—from other committees, from their focus groups and from their own members. The challenge is immense, and the actions needed to respond are immense as well.

The committee identified two key challenges that are tightly coupled to scientific and engineering prowess: creating high-quality jobs for Americans and responding to the nation's need for clean, affordable and reliable energy. To address those challenges, the committee structured its ideas according to four basic recommendations that focus on the human, financial, and knowledge capital necessary for US prosperity.

The four recommendations focus on programs in K–12 education (*10,000 Teachers, 10 Million Minds*), research (*Sowing the Seeds*), higher education (*Best and Brightest*) and economic policy (*Incentives for Innovation*) that are set forth in the report.

Some actions involve changes in the law. Others require financial support that would come from reallocation of existing funds or, if necessary, from new funds. Overall, the committee believes that the investments are modest relative to the magnitude of the return the nation can expect in

the creation of new high-quality jobs and in response to its energy needs.

The committee notes that the nation is unlikely to receive a sudden “wake-up” call; rather, the problem is one that is likely to evidence itself gradually over a surprisingly short period.

LOCHHRA

Impact of the Deficit Reduction Act

The commission heard from several speakers about the impact of the Deficit Reduction Act (DRA) of 2005 on the state’s welfare and Medicaid programs. The Interim Commissioner of the Bureau for Children and Families (BCF), a division of the state Department of Health and Human Resources (DHHR), provided a brief overview on how the DRA affects the WV Works Act. The WV Works Act is the state’s implementation of Temporary Assistance for Needy Families (TANF).

According to the Commissioner, the biggest impact was on the work participation rate. All states need to maintain a 90 percent participation rate or face penalties. Before the DRA, West Virginia was able to do this because it received a 56 percent caseload reduction credit. Under the DRA, that number is around 12 to 15 percent.

The Commissioner also noted that the DRA does not allow two- and four-year college programs to be considered vocational training. Formerly, WV Works recipients could count enrollment in two- and four-year programs toward TANF’s work requirement. Now, such programs are not counted as work participation.

BCF’s TANF Program Manager then addressed the Commission with specific changes that need to be made to the WV Works Act. These suggestions would try to bring the Act in line with the DRA requirements. This includes removing language that allows two-/four-year programs to count as vocational education, reducing the number of exempted classes to match federal requirements, and other minor changes remaining consistent with the DRA.

The commission also heard from a representative from the Office of the Inspector General on how the DRA affects laws pertaining to Medicaid fraud. Currently, the speaker said, Medicaid is funded 75 percent by the federal government and 25 percent by the state. This means when fraud is discovered, the recovered money is returned in the same proportion.

According to the speaker, if someone discovers Medicaid fraud and sues under what is called a “qui tam” statute, that “whistleblower” (technically called a relator) is entitled to 15 percent of the recovered amount. Currently, the bonus is taken only from what the federal government recovers. However, the DRA tries to encourage states to pass their own “qui tam” laws by giving them 35 percent of the recovered amount if they do.

The speaker recommended against passing such law, saying the extra 10 percent is deceiving. The speaker said that passing a “qui tam” statute would force the state to pass on 15 percent of the amount the state receives to the “whistleblower.” Such a provision, according to the representative, only favors lawyers who stand to gain more money from “qui tam” suits.

HPV Prevention & Medical Tourism

During the committee’s second meeting, the Chief Vaccine Officer of the Merck Vaccine Division presented members of the committee with a report on the importance of vaccinating against Human Papillomavirus (HPV), which can lead to the development of genital warts and cervical cancer, the latter of which women in West Virginia die from at close to twice as high a rate compared with the national average.

He began by noting the prevalence of HPV, saying that over 50% of sexually active men and women will develop it sometime in their lives. While the body will clear itself of most of these infections, the vaccine reduces the risk of contraction greatly.

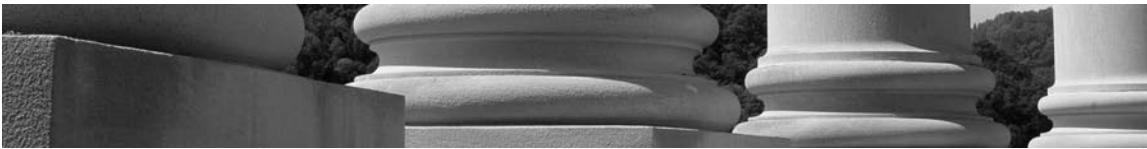
No vaccine is yet available for men, but the officer recommended that girls receive the treatment in adolescence as it is most effective at this stage of development and is important to get before their first sexual encounter.

The side effects, the officer said, are reasonable and mostly related to those of the injection itself.

The Vice President of Consulting Services from Joint Commission Resources and Joint Commission International presented the committee with information regarding the accreditation of health care organizations (e.g. hospitals, ambulance services) both in this country and abroad.

The Joint Commission on Accreditation of Healthcare Organization is the oldest and largest health care accreditation body. It evaluates the entire health care organization and engages the health professionals in creating standards.

The representative said that the mission of this organization is to improve the quality and safety of these organizations and work in developing countries to help build their facilities.



They have worked in fifty counties, base their standards on those in the US and are viewed as the gold standard in healthcare accreditation, the representative said.

Continuing quality assurance remains a priority as a formal on site evaluation takes place every three years and employs a team of health care professionals who have extensive personal experience in the field.

One of the main goals of the organization is the continued updating of their international databases, which allows hospitals and those in their employ to gauge their performance in accordance with those organizations in the U.S. and others in their region.

International safety goals include preventing wrong site surgery and patient falls and have seen the biggest improvements in medication errors. Since 1999 Joint Commission International (JCI) has accredited close to 100 hospitals.

New initiatives for JCI include increasing the recognition of accreditation by World Health Organization and developing international voluntary indicator monitoring systems for accredited hospitals.

A representative from PEIA insurance presented the committee with information regarding his organization’s position on the rising interest in the availability of health care outside of the United States, often referred to as medical tourism.

PEIA has a guarded interest at best, the representative said, and is uneasy about several factors involved, such as:

- There have been no studies that say definitively that these treatments are effective, and most patients rely on the anecdotal evidence of their friends or relatives.
- Most American physicians will be reluctant to accept patients who have had major surgery in another country for follow up evaluations and procedures.
- Those procedures offered in other countries might not be the same as those in the United States and are thus difficult to compare in cost, which is a major factor for patients seeking these treatments.

As an insurer, the representative said, PEIA is concerned with the idea of the accountability of a doctor or hospital and the inherent difficulty in establishing that for those around the world.

LOCWIED

Workforce Development Updates

The commission received updates from the directors of the seven regional workforce development agencies, as well as representatives from statewide agencies.

The Executive Director of the Office of Adult Education and Workforce Development discussed two programs that need to be expanded to meet workforce replacement needs: machine tool technology and industrial equipment maintenance. According to the Director, as many as five industrial maintenance programs could be added, possibly in Marshall, Wayne or Cabell, Kanawha, Berkeley and Harrison counties. The Director said additional machine tool technology programs were not needed and the existing programs should be upgraded. These recommendations were created with input from employers, he added.

The regional directors each had their own suggestions pertinent to both the state and their respective regions. These included: using videoconferencing technology to bring training to rural areas, providing more evening training classes, adding refresher courses for incumbent workers, attracting more youth to the mining industry, and aligning workforce development efforts with economic development.

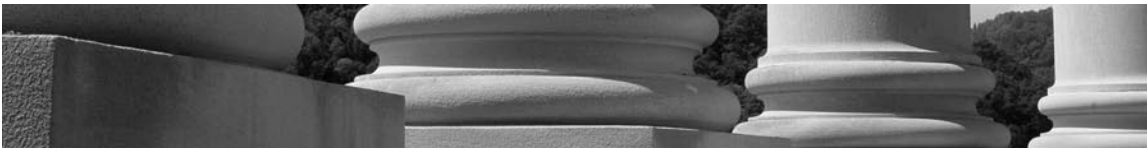
The Chancellor of Community & Technical College Education said he had spoken with industry officials to assess the state’s employment needs. There are presently openings in the oil and gas industry, he said, with as many as 2,000 more employees needed in the next five years. All sectors, the Chancellor added, need more supervisory training. A representative from the West Virginia Manufacturer’s Association said it was working with the Chancellor on finding employment needs.

Legislative Oversight Committee on Regional Jail and Correctional Facility Authority

Probation & Community Control

Two representatives from the Supreme Court of Appeals talked to the committee about the state’s probation system. The Administrative Director emphasized the difference between probation and parole. Probation is typically given in lieu of jail; parole is intended for those who have already served time in jail. The Administrative Director said there was a low number of revocations and that probation revocation had a very limited impact on prison overcrowding.

The Director of Probation then went into more detail about the probation system. Currently, about 14,400 West Virginians are



under supervision by probation officers. Of those, about 7,400 are under the supervision of adult or adult/juvenile officers.

The average caseload for each officer has increased from 71 in 2002 to 84 in 2006. According to the Director, 267 adult probations (about 3.5 percent) were revoked in 2005. Between January 1 and June 30 of 2006, the revocations numbered 131, or about 3.5 to 4 percent, on par with last year.

The committee also heard from the Fayette County Sheriff about the community control program. The program was started last December with an initial grant of almost \$90,000. Since then, more than 100 nonviolent offenders have been sentenced to the program, with only 21 revoked. Most of those revoked were drug addicts who struggled to stay clean, the sheriff said.

According to the sheriff, several groups help out with the rehabilitation of those under community control. The Board of Education provides adult basic education and GED training. Alcoholics Anonymous and Narcotics Anonymous provide support for substance abusers. In addition, the offenders under community control have provided more than 5,000 hours of community service in the last four months.

The sheriff suggested statewide implementation of community control programs. Inter-county models might be needed in order to reduce costs. The sheriff said community-based corrections must be recognized as a permanent part of the state's criminal justice system.

Select Committee A - Children, Juveniles, Other Issues

Special Victims Unit Status & Child Abuse

A lieutenant from the West Virginia State Police updated the committee on the status of the Special Victims Unit (SVU) created by the Child Protection Act of 2006 (H.B. 101 from the most recent special session). This unit, which consists of six officers, is contacted whenever child abuse is reported, regardless of the jurisdiction.

The officer said he was working with the state medical examiner to find out how to improve abuse investigations. Currently, the examiner reviews all children with major injuries. The officer suggested employing an additional part-time or full-time examiner to help reduce workload.

Committee counsel then addressed the committee to discuss draft legislation that would extend the definition of child abuse to include alcohol and substance abuse. The counsel told the members that under the draft, alcohol and substance

abuse would be considered child abuse if it interfered with proper parenting skills. Such a definition is limited to after the child is born and does not include prenatal alcohol and substance abuse. Counsel said the bill was drafted as such to avoid the abortion issue.

Select Committee B - Minority Issues

State Contracts for Small Businesses

The minority issues committee heard a report based on HCR 33 from the 2005 Regular Session, which requested a study of the participation of minority and other disadvantaged small businesses in the process of competing for and obtaining state contracts.

In studying this matter, the Department of Administration came upon a number of challenges in creating a small business/minority preference during the competitive bidding process. One example is creating a reliable mechanism to verify small business and/or minority status. Another challenge is establishing criteria for the application of preference or maintaining the certification status for vendors.

The Purchasing Division of the Department of Administration has offered several initiatives to recruit small business entities. For example, the Division provides staff to assist small business representatives through the purchasing process. They also provide a purchasing bulletin advising vendors of bidding opportunities. The Division provides a web page for statewide contracts advising the status and actual copies of all statewide contracts. The Division has also simplified the Vendor Registration and Disclosure Statement and Registration process and maintains a vendor advocate web page.

Select Committee C - Infrastructure

Telemedicine

"Nationally, chronic diseases such as cardiovascular disease, diabetes and arthritis account for roughly 78 percent of health care costs annually. More than 800,000 (over 40% of) West Virginians have one or more chronic conditions," according to the Robert Wood Johnson Foundation.

To improve the health status of rural communities in West Virginia, 19 community health centers have formed the WV Primary Care Network, Inc., dba (doing business as) the Community Health Network of West Virginia, to use technology and integrated resources to attack the health challenges. "The approach of the community health centers involves

the redesign of the delivery system utilizing care teams using the chronic care model, an integrated electronic health information system to manage and coordinate care and to exchange health information to coordinate care and patient centered self-management and education,” according to materials provided by the Community Health Network of West Virginia.

However, the concept is dependent on broadband access of this “telemedicine”.

Lawmakers heard details of the possibilities of electronic transference of medical and educational information from households to hospitals to clinics to family members and the positives of electronic medicine. For West Virginia families, physicians and other health care providers to participate, the infrastructure must support broadband services for the expeditious receipt of medical information. The bottom line for resolving this issue is for the state to convince electronic service providers to establish facilities in rural areas of the state, according to the Director of the Community Health Network. Lawmakers will continue to explore areas of discussion relative to attracting communication providers to set-up in West Virginia.

Another matter before the Infrastructure Committee covered House Concurrent Resolution 102, calling for an Interim study of the availability and connectivity of broadband services and networks in this state. Among areas discussed were how to increase public interest and interest by political subdivisions, how to stimulate provisions by servers, how to apply for grants and loans, and how to coordinate and utilize non-profit organizations.



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.

2006 - 2007

Interim Committee Meeting Dates

November 13 - 15

December 10 - 12

January 7 - 9, 2007

Note: All dates are subject to change.

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.

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