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West Virginia Legislature's  
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# Interim Highlights

## Agriculture & Agri-business

### Drought and Bee Populations

Following a presentation by the deputy commissioner of the state Department of Agriculture, lawmakers agreed to draft a letter to the Joint Committee on Government and Finance seeking to include \$200,000 as a supplemental appropriation to be used toward fighting drought conditions in West Virginia. The bill could be taken up during a Special Session, which is expected to occur sometime in August.

With at least 15 percent of West Virginia experiencing a severe drought, 49 percent a moderate drought and the entire state considered abnormally dry by the National Weather Service, lawmakers believe the funding could go toward matching \$250,000 already provided through federal funding.

The \$250,000 in federal money is to be matched by farmers in developing water resources, but the deputy commissioner told lawmakers the fund has been overrun by applicants. The additional \$200,000 would go to expand that program.

Drought conditions, which began in the western section of the state, have moved east, putting most of the Eastern Panhandle in the severe drought category. Those counties were not included earlier when a federal disaster drought declaration was made covering 42 West Virginia counties. In those areas, grain loss is anywhere from 25 to 60 percent and may cover as much as 1.3 million acres overall, including corn and other vegetables.

The Agriculture committee agreed that farmers could use additional state assistance and moved to submit a letter affirming their beliefs.

Also appearing before the committee was a West Virginia University entomology professor who provided video coverage of his beehives that are thriving near a cell phone antenna in Monongalia County - a county that only had 4.5 inches of rain in July. Theories of beehive deaths, labeled Colony Collapse Disorder (CCD) by scientists, have been related to cell phone



*The beautifully refurbished dome of the State Capitol stands against a vividly colored sky which permeates through this particular West Virginia afternoon.*

—photo: Martin Valent—

microwaves and limited rain, but the professor believes there is another reason the hives are dying.

The entomologist attributed 75 percent of the bee losses to Varroa mites. He told lawmakers that the mite is possibly transferring a new virus from hive to hive that makes the honeybees become disoriented and lose their hives. Another 20 percent of CCD can probably be attributed to new nicotine-based pesticides such as Imidacloprid, which was banned in France after being linked to honeybee disorientation.

During his presentation, the WVU professor concluded the formic acid fumigation of honeybee hives has a positive result in protecting bee colonies, but indicated the procedure is not approved by the federal Environmental Protection Agency (EPA) and, as such, is not being implemented by many beekeepers.

## Broadband - Select Committee E

The subcommittee heard an update on the Tower Access Assistance Fund Committee from one of its members. The fund, paid for with revenue from the enhanced 911 fee, is used to provide subsidies to cellular service providers looking to construct wireless towers in areas with little or no coverage.

The speaker told the committee that several groups, both private and public, request funds for tower projects. These applications are judged on several criteria, e.g., lack of

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current coverage, costs to the state, extent of potential coverage and economic development impact. So far this year, nine projects have been approved, with two already completed. He said the remaining projects should all be done by the end of the summer.

The subcommittee also received an overview of broadband availability from a representative of the Public Service Commission. The presenter called broadband Internet the fastest growing technology in history, outpacing even the growth of cell phones, television, telephones and radio.

He told the committee that while the number of households with computers has risen steadily over the past decade or so, the number of broadband subscribers has risen exponentially. While this trend applies both nationally and to West Virginia, the state, he said, is lagging behind the rest of the country. About half of all households in the country have some form of broadband, but only 35 percent of West Virginia households are connected using broadband technology.

The speaker also gave a more technical look at broadband, especially in terms of speed. Most connections in the United States are between 2.5 megabits per second (mbps) and 10 mbps. However, the nation has a much slower average connection speed (1.9 mbps) compared to other industrialized nations (e.g., Japan has an average download speed of 51.2 mbps).

Additionally, the presenter said cable modems are the primary form of broadband in the state, but ADSL (which uses phone lines) has caught up in the last couple years. According to the speaker, there were about 128,000 cable modem lines in 2005, compared to 69,400 ADSL lines. By 2006, the number of cable lines increased to 159,000 while the number of ADSL lines was up to 112,000.

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

Differentiating the West Virginia Support Enforcement Commission from the WV Bureau for Child Support Enforcement (BCSE), the bureau's commissioner reported to Select Committee A that the Support Enforcement Commission has not convened with a quorum since April of 2005.

Established statutorily in 2001 (§48-17-101), the Support Enforcement Commission consists of eight members. Seven members are appointed by the governor with no more than five may belonging to the same political party. One member is a lawyer licensed by, and in good standing with, the West Virginia state bar, with at least five years of professional experience in domestic relations law and the establishment

and enforcement of support obligations. Another member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency. Another is to be an employer experienced in withholding support payments from the earnings of obligors. Another is to be a practicing family court judge, as an ex-officio member who will serve in an advisory capacity without compensation or voting rights. Finally, three are to be representatives of the public at large, with at least one being an obligor and one being an obligee.

The eighth member is to either be the Commissioner of the Bureau for Children and Families or his or her designee.

These individuals were to meet twice a year and prepare a yearly report regarding their findings and suggestions, which were to be broad-based in nature, regarding all aspects of child support. In addition, the committee was to devise their suggestions in line with existing federal mandates.

However, according to the BCSE Commissioner, not only has the appointed commission been unable to meet in a quorum since 2005, all of their terms have expired although the law states they remain in the commission until a governor appoints new members. The law has no sunset provision.

The study commission was created while another governor was in office; as such, lawmakers inquired as to whether the existing governor is aware of the existence of this commission. Legislators gave themselves and legislative staff additional time to do homework on the issue before proceeding with committee actions.

Also before the children's committee was an explanation of bills carried over from the 2007 Session and bills proposed by the Bureau for Children and Families.

The former included two measures. One would prohibit parents, guardians or custodians from knowingly allowing registered sexual offenders access to children in their custody, and the other, carried over from 2007, would expand the definition of "imminent danger to the physical well-being of the child" to include alcohol and substance abuse on the part of the parent(s).

Bills suggested for review by the committee from the Bureau for Children and Families included a measure which would allow the authorization of some employees of the Department of Health and Human Resources (DHHR) to obtain and use confidential records obtained from within various divisions in the DHHR under certain circumstances but not for disclosure to outside sources.



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Another proposed bill would update state law to follow constantly changing federal guidelines.

One bill, which raised several inquiries from the committee, would make it a criminal offense to commit a malicious assault upon a DHHR employee. Lawmakers are asking to see the bill limit the types of employees of the DHHR who are assaulted. While the measure was intended to cover workers removing children from homes or issuing paperwork or other tasks that lend themselves to private/public physical confrontations, the language of the proposal takes in all DHHR employees.

### Economic Development, Joint Commission on

The committee received several different reports on the benefits of land conservation in West Virginia. First, the Director of Government Relations, the President of West Virginia Wildlife Federation and a retired farmer appeared in tandem to say that land conservation is a win-win. Landowners get to choose what they want to do with their land. This is never made mandatory, so the ultimate decision lies with the proprietor of each piece of property. It is also a win for the communities that get the benefit of the well-maintained land for the pleasure of relaxation and general enjoyment.

It is also a benefit for the economy, the speaker said. By taking care of our landscapes, we not only facilitate our tourism industry by enhancing those activities which relate to the increased upkeep, but we also improve the general perception of West Virginia as a desirable place to be and do business, the presenters said. Among the scenic vistas, hunting, fishing, bird watching and other activities, West Virginia supports an \$800 million-a-year tourism industry, with one presenter saying that we have the potential to be the leading hunting and fishing location east of the Mississippi.

They continued, stating that land conservation was supported by 79 percent of voters, though they did not discuss their survey methods, and that many landowners demand conservation for their own land.

Two additional speakers gave pre-recorded presentations: a representative of Dominion Coal and one from Mead-Westvaco. Both stressed their ties to West Virginia through their love of the state, their history of business and their financial investment as well. They are committed to taking care of the land and being “good stewards” for the state, they said.

Finally, a representative from Madison Coal & Supply said that land conservation is the key to keeping young people in the state, though as one legislator pointed out, land conservation in the eastern panhandle is becoming increasingly difficult due to a growing population and rising property values.

### LOCEA

During the first meeting of the Legislative Oversight Commission on Education Accountability (LOCEA), committee members heard reports from the Chancellor of the Community and Technical College System (CTCS) and the Chancellor of the Higher Education Policy Commission (HEPC).

The CTCS report focused on the System Initiatives for the Delivery of Community and Technical College Education in West Virginia. The first goal mentioned to help achieve the system initiatives was to provide access to affordable, comprehensive community and technical college education in all regions of West Virginia.

Mentioned as ways to further promote this goal were: Developing a System Capital Strategic Plan and promoting a capital bond project to the Governor’s Office and the Legislature to address critical capital needs throughout the System; increasing system online learning opportunities that include career technical education utilizing technology; initiating, in conjunction with the State Workforce Planning Council, a campaign to promote technical education; implementing the policy to convert non-credit to credit; and incorporating incentives for delivering high-cost technical programs into a financing policy.

The next goal mentioned was producing high quality graduates with the general education and technical skills to be successful in the workplace or their subsequent education. This can be achieved through initiating discussions through the CTC Financing Rule Committee to address financial incentives for increasing the number of community and technical college graduates and addressing changes to the delivery of developmental education to better serve students and increase retention and graduation rates.

The next goal mentioned by the representative was to provide high-quality workforce development programs that meet the demands of West Virginia’s employers and enhance the economic development efforts of the state. This can be met by continuing to assess employer occupational needs and implement programs that meet employer and economic development needs, strategically implementing new tech-



nical programs based upon the data collected through the employer occupational needs assessments in the Energy and Manufacturing sectors as well as completing an occupational needs assessment in the health care sector.

The final two goals included collaborating with other providers in delivering education and training programs to the community and technical college district and collaborating with the public school system to increase the college attendance rate in West Virginia.

The representative from the HEPC presented his report titled, Profiles and Trends in West Virginia Higher Education: A Focus on Affordability. This report was presented to the committee and highlighted the cost of attending college in West Virginia via tuition and fees, the average cost of tuition over the last 10 years, the increasing dependency by schools on tuition as it relates to their operating revenue and the rising dependency by students on financial aid and other grants. This report can be found on the HEPC website.

## Education Subcommittee A - Public Education

Several school principals appeared before the committee to present information in regard to Senate Concurrent Resolution 60. The first presenter began by saying there are many success stories coming out of the public school system that they, as principals, can be proud of.

However, most of the rest of the discussion was made up of far less flattering assertions about the school system. One presenter, a principal from the eastern panhandle, related a story about his attempts to hire a teacher whom he thought best for a job, who ended up taking a similar position in a neighboring state, despite her unwillingness to leave the area. While he is not sure how much more money she was offered for this position, specifically, he did say that on average, teachers in the district where she will be working make \$10,000 to \$15,000 more per year than those in his school.

He reported that many teachers who could possibly become principals have said that the job is not worth the extra stress and additional work given the small increase in salary. He continued that, despite feeling he was doing an important job, he was beginning to burn himself out and is not sure if he will continue being a principal beyond next year.

But the biggest problem that these presenters labored over was the extreme lack of input they have regarding who they can hire as a teacher for any given position. Because of the

way the teacher's union is constructed, principals have a very difficult, bordering on impossible, time of hiring anyone other than the person with the most seniority. One presenter related the story of a teacher who had been at five different schools in as many years, could offer no real explanation for this, but whom she had to hire based solely on her experience.

The best the principals can do is put these teachers on what is called a "plan of improvement," which none of them like or think is effective. One principal suggested using quantitative representations of their assessment of the quality of a candidate in a variety of areas. This would give some credence to the principal's decision and establish some definitive criteria for the hiring process. Despite these problems with the hiring of teachers, however, all principals who presented were emphatic about how good of a job their teachers are doing.

## Education Subcommittee B - Higher Education

The president of West Virginia State University addressed legislators about the unintended consequences of separating the community college from the university. The most damaging consequence, the president said, was the loss of some of the university's Title III-Part B funding.

This is a federal fund designed to provide assistance to historically black colleges and universities, such as WVSU. The amount of funding is based on enrollment. Because of the separation, WVSU is no longer able to count community college students in this calculation.

A similar result occurred at Bluefield State College after its community college was made into a separate institution. The presidents of both schools are asking for appropriations in order to redress these losses.

## Education Subcommittee C - Public School Finance

A representative from the state Department of Education addressed the subcommittee about the usage of additional state aid to public schools. The availability of this additional money was realized after the Legislature lowered the local share from 98 percent to 94 percent.

According to a survey of county boards of education, 12 counties are using the money for salary supplements while 19 are using the additional money for other personnel costs. The remaining 24 counties reported spending the money on other costs, such as optical or dental insurance, although





several counties listed “general expenses” when asked to elaborate on their spending.

The speaker said that by lowering the local share, counties enjoyed an extra \$16.5 million collectively. However, he reminded members that the local share will go back up to 98 percent after 2009 if the current rate is not extended.

The representative also briefed the subcommittee on the way enrollment is calculated for funding purposes and the impact of early intervention programs on this calculation. Currently, she said, there are two ways of calculating enrollment: net enrollment and adjusted enrollment. Net enrollment is the total number of students, whereas the adjusted enrollment places weights on certain students (for example, gifted students and special needs students). Under certain circumstances, net enrollment is used, while in others, adjusted enrollment is used. He recommended dumping adjusted enrollment completely, especially in light of the fact that it hurts schools that are using early intervention programs to reduce the number of special needs children.

Another representative from the Department of Education then briefed lawmakers on these early intervention programs. The speaker said about 80 percent of special education students have reading problems. Several of these children, she said, have been misidentified as special needs because of their reading difficulties. By providing intensive instruction to younger students who are struggling academically, schools have been able to reduce the number of children identified as special needs. This is called a Response to Intervention (RTI) model. RTI uses research-validated techniques for education, often focusing on fighting reading problems, thus allowing students to catch up with their peers.

According to the presenter, 36 elementary schools in West Virginia now have an RTI model. By 2009, all elementary schools will have one, and eventually the program could be extended to middle schools and high schools.

**Finance Subcommittee A**

The subcommittee, pursuant to House Concurrent Resolution 70, continued its study of Public Defender Corporation. Last month, the committee heard from supporters of expanding the corporation model. This month, the committee heard from legal professionals who oppose further expansion.

As the first speaker, an attorney from Wood County, explained, most circuits use panel lists for assigning attorneys to indigent criminal defendants. These lists consist of local attorneys who

bill the court for their time defending these criminals. Public defender corporations, on the other hand, are non-profits corporations that provide public defender services for a few circuits throughout the state. In circuits that use these corporations, panel lists are still employed, but not nearly as often.

The speaker, who himself was a panel attorney until this year, said public defender corporations (PDCs) take away potential cases from panel attorneys who are just starting out. Many times, younger attorneys place themselves on the panel list in order to start up their own practice. According to the speaker, limiting the role of panel attorneys would hurt attorneys who rely on indigent cases to pay for their business. Without the panel list, the attorney said, he would never have been able to start his own practice.

This sentiment was echoed by the following speaker, an attorney from Marion County, who added that judges in his circuit were usually not in favor of moving to PDCs. He also said the bar associations for Marion and Monongalia counties opposed PDCs.

The subcommittee heard next from a private investigator from Wood County who often works with panel attorneys. She presented a per capita assessment of the costs of public defender services, both in circuits that use corporations and those that do not. This data compared the costs of circuits with only panel lists to those with corporations and panel lists. Typically the costs were higher in circuits with corporations, although several members of the committee questioned the legitimacy of using a simple per capita calculation and not a caseload calculation.

Finally, the subcommittee heard briefly from the state Secretary of Administration. The secretary pointed out that from a strictly financial standpoint, PDCs would cost less than panel attorneys, especially for certain circuits. However, he added that a statewide implementation would not save the state a significant amount of money.

**Finance Subcommittee B**

**County Group Self Insurance Pool**  
When one lawmaker asked why the legislative subcommittee was following the business of the West Virginia Counties Group Self-Insurance Pool (WVCoRP) saying the pool was offering very good insurance coverage for counties, another lawmaker noted the committee should, in fact, follow the business since it did appear to be doing a good job, while another said the Legislature should follow projects that work if only to learn from them.



Appearing before the finance subcommittee was WVCORP's chairman, who provided a history of the program. Having researched Virginia's county pools (initially 11 West Virginia counties) in an effort coordinated by the County Commission Association and the Association of Counties, entered into a self-insurance pool administered by a group from the state of Virginia. Based on actuarial studies, the insurance plan implemented resulted in a substantial amount of savings for the counties. To date, 21 counties are on board with the pool and others with private insurance have also signed up.

The coverage amounts to \$250,000 per incident while re-insurance will cover catastrophic claims up to \$180 million. According to an administrator from the VA administrative firm, all properties are assessed individually. If the loss is greater than its coverage, then the reinsurer picks up the remaining costs. The pool covers all replacement costs including ADA compliance if the building were not compliant prior to its demise. The pool does not include expansion coverage.

With the exodus of these counties from their previous insurers (which may include the Board of Risk and Insurance Management (BRIM)), lawmakers questioned if the state should continue offering the insurance. When the initial 11 counties left state coverage, they took about \$1.5 million in annual premiums; and, although BRIM's solvency remains strong with an estimated \$73 million paid to it annually, lawmakers wondered about the financial implications for BRIM should 45 or more counties belong to the self-insured pool.

In support of the self-insured pool was an Upshur Countian who told lawmakers that after the Morgan County Courthouse fire, Upshur County upped their coverage from \$8 million to \$12 million. That increase did amount to an additional \$4,000 for the county, but that amount still kept the county's insurance premium below the \$50,000 to \$60,000 it had previously paid a private firm.

In opposition to the pool was a spokesman representing the Profession Independent Insurance Agents of West Virginia. The spokesman noted the county commissions were receiving a two percent commission when they send new business to the insurance pool group.

Lawmakers will continue to follow the progress of the self-insured county group although the group is directly under the oversight of the West Virginia State Insurance Commission and must adhere to its rules and policies.

**Finance Subcommittee C**

**PEIA and Other Post Employment Benefits (OPEB)**  
Appearing before Finance Subcommittee A, the Public Employees' Insurance Agency's Chief Financial Officer addressed West Virginia's OPEB plan as the benefits related to GASB reporting requirements.

**Government Operations, Joint Committee on & Government Organization, Joint Standing Committee on (Joint Meeting)**

Members attending the joint meeting of the Joint Government Organization and Government Operations committees were told that the costs of tuition and fees at state four-year colleges and universities have doubled over the past 10 years, in part because West Virginia is the only state that funds nearly 100 percent of costs to build and maintain campus buildings through student fees.

A representative from the Higher Education Policy Commission told the committee that HEPC was interested in having a state program to help fund capital construction projects on the campuses. The representative stated that while state contributions to fund higher education have increased over the past decade, the state's share has not kept up with inflation for higher education costs.

He stated that 10 years ago, the state covered 60 percent of the costs to educate an in-state student, while the student's tuition and fees covered 40 percent. Over the 10 years, those percentages have reversed, with students picking up 60 percent of the cost of their education.

Next, a representative for the state Community and Technical College System said that tuition and fees charged by two-year institutions that are administratively linked to four-year colleges are among the highest in the United States because students are charged fees to pay for capital projects on the four-year campus.

State colleges and universities have a total of \$719 million in revenue bonds outstanding for capital improvement projects, to be paid off through student fees.

**Government Organization - Subcommittee A**

The committee heard from the Director of General Services who reported on the myriad projects that are in various states of development around the State Capitol campus. Stressing

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that the improvements are on what he called a five-year-plan, the Director said that though there are established three levels of priority for the various projects, they are top-heavy with those labeled highest priority. This is due not only to the need for a great many overdue improvements around the campus, but also several instances in which the damage assumed turned out to be far less than what was actually the case.

For example, when the chandeliers were taken down for cleaning at the end of this past session, they were found, beyond being dirty, to be in a dangerous state of disrepair. The electrical wiring was frayed and some of the pieces of crystal were hanging tenuously from their corroded metal placeholders.

The capitol cafeteria will cost about \$3.7 million to complete, \$700,000 of which is going to replace the transformers in the basement that are unable to support the new facility. In addition, total transformer and electrical upgrade costs around the capitol have been placed at highest priority and will cost an estimated \$10 million.

Even though the capitol parking garage is only about seven years old, it will undergo \$380,000 worth of repairs to correct damage done because of the poor quality of materials used to build it, coupled with general deferred maintenance. The director said this building is not in danger of collapsing, though eight of the 10 wells in the garage have failed.

At least one member was particularly interested in the lack of fresh air ventilation, saying its deficiency is generative of health problems and should supercede in importance those other projects that do not pose health risks. The director explained the ventilation system was designed at a time when the method for moving in fresh air was to open the windows and the process is already in the engineering phase. It will then take some time to complete the project, as it is difficult to preserve the historical nature of the Capitol and integrate this new technology.

The possibility of cleaning out the air ducts was brought up, to which the Director said common sense told him it would help matters in the meantime, though he did not know what the exact effect would be. One member asked how it might affect the situation if people were not allowed to smoke inside the capitol. He answered, saying he did not have any idea how to accomplish this and was so remiss he labeled it “the best question I’ve ever heard.”

## Government Organization - Subcommittee C

The committee heard, from various presenters, reports and information regarding Professional Employer Organizations (PEOs) and their increasing prevalence in West Virginia.

PEOs have been confused with temp agencies, but where the latter are concerned with placing employees in a job, PEOs deal with those already employed. PEOs are organizations generally used by small businesses with few enough employees that offering benefit plans is impractical, overly burdensome or simply impossible.

The PEO, essentially, hires the employees of several business. While these people continue to work in the same capacity as they did before, they are legally employed by the PEO, an organization with a large network of several such persons from different small businesses, allowing the PEO to make available to them healthcare, insurance and other benefits that they have the power to bargain affordable rates for, due to this large network of employees.

This representative said the company he works for charges two percent of whatever the salary of each employee that the PEO now, technically and legally employs. Once the PEO has taken over in this regard, it is able to do much of the bookkeeping and office management, allowing the business owner to focus more on what his or her business actually does.

Ninety-nine percent of the time, he said, the owner of the business is hired as an onsite supervisor, allowing that person to continue to be in control of raises, firing and the other details of the business he or she would want to retain power over.

The representative appeared before the committee in a plea that theirs be a industry that must be regulated by the government, arguing that doing so will lend credibility to their profession and make it easier for them to do business. This will also help define what a PEO is, establishing some constancy in the minds of the public, lending those in their profession the trustworthiness and accountability they need to attract new customers.

## Health - Select Committee D

Lawmakers heard a presentation from a representative of the West Virginia Autism Training Center at Marshal University detailing the neurological disorder, autism.

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Please refer to the index on page 15.



Autism manifests itself early in life, before the age of three, and has unknown causes. There are no medical tests that can be used to diagnose this disorder; diagnosis is based on behavioral observation and parent interview. Specific assessments can be used for communication, cognition and sensory deficits but it is extremely important to start the comprehensive assessment program as early as possible.

Lawmakers heard that autism is considered a “spectrum disorder”, meaning that the neurological impairments may present themselves in many different ways in each individual ranging from, as an example, one child who may be nonverbal to another child who is highly fluent and intelligent with some odd characteristics. This is a very diverse disorder that can cause difficulty in diagnoses and may result in delays recognizing and treating individuals with autism.

Autism spectrum disorders are chronic, lifelong brain disorders whose symptoms can improve with age and intervention. It is a challenge for both the individual and his or her family, as early intensive intervention is critical for a good prognosis and support is needed for a lifetime.

Next, the representative briefly gave an overview of her center and the programs they offer to individuals and families with autism. The Autism Training Center was established through the efforts of parents of children with autism throughout West Virginia. Their parents, with the help of a trained professional, convinced state legislators of their need for intensive, individualized educational and behavioral training for families, educators and other individuals involved with the person with autism. In 1983, the West Virginia Legislature established the Autism Training Center at Marshall University in Huntington.

Since 1983, over 1,300 individuals and 900 families of children of all ages with autism have received services from the center at no cost to the families. The mission of the Autism Training Center is to provide education, training and treatment programs for West Virginians who have autism, Pervasive Developmental Disorder (NOS) or Asperger’s Disorder and have been formally registered with the center. This is done through appropriate education, training and support for professional personnel, family members, guardians and others important in the life of a person with autism.

The committee will continue to examine this issue throughout the interim to see how more effectively and appropriately the state can deal with this disorder as the numbers of diagnosed individuals increases.

Health (Sub. Com. on Certificate of Need) - Select Committee D

A representative from the West Virginia Health Care Authority provided the subcommittee with an overview of the certificate of need program.

According to the speaker, Certificates of Need (CON) are meant to control health care costs by preventing the duplication of costly health care services. Health care providers, such as hospitals, nursing homes and methadone providers, must submit an application for a CON to the Health Care Authority whenever they engage in certain activities. The primary activities requiring a CON are construction projects, acquisition of a health care provider, expansion of services, obligations for a capital expenditure above \$2 million, and the purchase of major medical equipment like MRI machines.

The speaker said 36 states, including West Virginia, have a CON requirement of some sort, although the implementation varies. For example, West Virginia requires a CON for open-heart services, but Delaware, another state with CON standards, does not.

The presenter gave the subcommittee a summary of the CON application process. First, a health care provider sends the Health Care Authority a letter of intent. After that is an official application and fee, followed by a declaration that the application is complete. Public notice is given before the application goes under review. This review process involves the Health Care Authority, the Department of Health and Human Resources and the parties affected by the CON. The process is a “quasi-judicial” one and denied applications can be appealed to an administrative law judge (ALJ), the speaker said. Appeals of the ALJ’s decision would go to circuit court then the state Supreme Court.

Health (Sub. Com. on Oral Health) - Select Committee D

This was the initial meeting of the committee that is expressly committed to improving oral health throughout West Virginia. The committee heard first from a representative from the Benedum Foundation who announced she was not there to debate the Dental Practice Act and continued, saying the strengths of the foundation were rooted in it being independent and apolitical.

West Virginia has the poorest oral health status in the nation, she reported, and is troubled by the assumption that most residents seem to believe this is acceptable. Bad oral health has been shown to be related to obesity, diabetes





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and poor employment prospects. This is not helped by the complicated issues with oral health making reimbursement for dentists difficult to obtain.

In order for this situation to get better, everyone needs to work together, she said, and parents and dentists need to take their appropriate responsibility.

The committee heard next from a representative from the WVU School of Dentistry who said that according to the 2000 Surgeon General's report, uninsured children are 2.5 times more likely not to receive healthcare and two-to-five year-olds are the only demographic with an increase in tooth decay.

West Virginians are particularly affected as the tooth decay rate for school-age children is 59 percent higher than the national average and smokeless tobacco is three times more common here than in the rest of the country.

The representative said dentists are not trained in how to deal with young children and suggested that parents establish a "dental home" to further establish a relationship with a dentist and a healthy lifestyle.

Lastly, the committee heard from a representative from West Virginia Work Force Issues, who focused on the problem of the decreasing number of dentists in the state. West Virginia has only one dental school (at WVU) and will soon reach the point where the number of retiring dentists will exceed the number of graduating ones. She suggested that retired dentists be allowed to work at the free dental clinics and that the legislators pass a bill that would absolve them from any liability while working there.

She ended with another suggestion, saying that by paying for a portion of dental school graduates' debt, they could entice some established dentists to take a certain number of Medicaid patients. This is based on a program currently in place in Maryland and would attempt to provide care to those who might not otherwise be able to afford it.

### Infrastructure - Select Committee C

The committee heard from a representative from the United Transportation Union about rail safety and security. The speaker explained that rail safety refers to internal issues like track and equipment inspections, operating practices and personnel training, while rail security deals with external factors like vandalism, terrorism and the communities served by the railroads.

The speaker complimented West Virginia for being one of the best in the nation when it came to rail safety. There are 10 inspectors in the state, he said, working in five disciplines, the highest work output of the 30 states in the State Rail Safety Participation Program, run by the Federal Railroad Administration.

However, though he outlined some areas where rail security was an issue, these were problems common to many states, not just West Virginia. The biggest concern was so-called "dark territory," which are areas of track without remote signals or track circuits. The switches in dark territory are protected only by simple locks, the keys for which can sometimes be found for sale online or at flea markets. The speaker said if someone broke into one of these boxes, they could move the tracks far enough apart to cause a derailment. This could lead to a major accident with severe environmental consequences if the train were carrying hazardous materials, he said. Working with railroads to reduce the amount of dark territory would be one way to prevent this from happening.

### Judiciary Subcommittee A

#### **Insurance Commission and Workers' Comp Oversight**

Appearing before Judiciary Subcommittee A, the state Insurance Commissioner provided an explanation of the commission's responsibility in overseeing workers' compensation during the transition from the state-operated Workers' Compensation System to private insurance. Presently, Brickstreet is the sole insurance carrier until July 1, 2008 for private employers and July 1, 2012 for government entities.

The Office of the Insurance Commission (OIC) continues to serve as a regulator of rates, rules, fraud and other oversight responsibilities. It also continues to administer the Old Fund, which addresses claims filed prior to July 1, 2005, and assumed all black lung claims with dates of last exposure after Dec. 31, 2005. (The OIC is in the end stages of bidding out all Old Fund services. It is expected to have a Third Party Administrator (TPA) on board within the next two weeks and to have all claims transferred to TPAs by Jan. 1, 2008. The TPAs will help out regarding medical expertise thus improving case management, the Commissioner told lawmakers.)

Presently, the OIC regulates insurers through a variety of means such as financial analysis, market analysis, market conduct exams and consumer complaints. Although Brickstreet is the sole carrier, some 120 employers are self-insured and the OIC reviews their stability and performance through the same means listed above.



In its preparations to ready for an open market in 2008, the OIC has worked with the National Council on Compensation Insurance, Inc. (NCCI) which is the oldest and largest provider of workers compensation and employee injury data and statistics in the nation. This nationally recognized statistical agent has defined risks and clarified 595 classifications of jobs. These numbers have allowed the OIC to take artificial rates out of the system. These classifications have lowered some employers' premiums but also have increased others. While some employers believe the new rating system is unfair, the Insurance Commissioner told lawmakers the rating system has made costs equitable and fair for all employers. Sales clerks are not being rated with the same risk factors as underground miners, so employers of clerks have had their rates reduced while employers of miners may have seen theirs increase.

Also, with the NCCI guidelines for defined risk factors in place, the OIC will be better prepared to pick up businesses who may not be able to pick up workers' comp insurance when the market opens to competition. The Commissioner told lawmakers that those individuals who would not be insured would be picked up in an assigned risk pool.

She also said the OIC is looking into security and guaranty funds which could be derived from fees on the assessments of self-insured individuals.

Although the consumer services division is up and working regarding complaints, the Commissioner said employers still are seeking information regarding the changes in coverage, particularly their concerns regarding "inappropriate denials".

In her closing remarks, the Commissioner said she believes the privatization of Workers' Comp will be a "growth engine for West Virginia's business climate". Since the inception of the plan to privatize, rate decreases have amounted to 27.4 percent to date. She also noted the OIC will continue to work with the Governor and the Legislature to identify issues which may need to be addressed.

### Judiciary Subcommittee B

This committee addressed Senate Concurrent Resolution 87, requesting a study of the insurance coverage on public buildings and property. This issue has come to the forefront following a courthouse fire that occurred in Morgan County last year and destroyed many of the county documents, most of which were irreplaceable. This also incurred a huge cost due to less than adequate insurance coverage.

Morgan County had \$4 million in insurance coverage; the cost to replace the destroyed structure is estimated at \$12 million.

Lawmakers on this subcommittee heard explanations as to why a group of counties switched from state insurance coverage to being covered by a risk pool administered from another state. So far, the pool has offered counties rates running 20 percent to 30 percent less than Board of Risk & Insurance Management (BRIM) charges.

Eleven counties previously covered through BRIM (the state-operated insurance firm for public bodies) left it this past month to enroll in the West Virginia Counties Risk Pool. That pool now has 21 counties in it. The pool covers building losses of up to \$250,000, then reinsurance kicks in for up to \$180 million.

A representative from the risk pool administrator said the policy would cover rebuilding such a structure in a historical manner if the county opted for the more expensive historical policies. If not, it would pay only to rebuild the space destroyed. He also stated that because the pool is in West Virginia, any possible disputes between his company and the counties would go before a West Virginia court.

A spokesman for BRIM expressed some concern because when the 11 counties left recently, they took \$1.5 million in annual premiums that were paid to BRIM with them. He also mentioned that if further counties join there needs to be some discussion as to whether or not the state should continue to offer this type of coverage. Right now, BRIM still has 14 West Virginia counties to which it offers this coverage.

### Judiciary Subcommittee C

The committee heard from several of presenters on the topics of making vision screenings a requirement for the renewal of driver's licenses and the use of bioptic telescopic lenses for low vision drivers.

West Virginia is only one of 11 states that do not require its citizens to have vision tests upon the renewal of their driver's licenses (which would be every five years). The DMVs are already equipped with the proper equipment for this test, which allows for drivers to prove their vision acuity with the aid of corrective lenses. This practice would be beneficial to drivers who are unaware if the lapses in their vision, making the roads safer for them and all traveling.



## Interim Highlights

The West Virginia Academy of Ophthalmology (WVAO) recommends this policy, agreeing that its installment would promote safer driving.

The representative said that a person who fails the DMV's vision screen would be referred to an eye care professional for further examination and treatment. Generally, diagnosis of a vision disorder will result in the applicant receiving a restricted license requiring them to wear glasses or contacts.

A representative from the AARP reported that the organization is in favor of this requirement being for all drivers, as is proposed, and not just those over a certain age. They support equal treatment under the law for everyone.

Several presenters were heard who supported West Virginia offering telescopic bioptic lenses for those who need them to drive. One occupational therapist reported that in her experience bioptic lens users are comparable to other disability types, regardless of the diagnosis, with regard to their driving. In order for those using bioptic lenses to obtain a drivers license, they would have to demonstrate the same competency of any other driver.

### Parks, Recreation & Natural Resources Subcommittee

A lieutenant from the law enforcement section of the Department of Natural Resources presented information about recreational boating issues in West Virginia. The lieutenant focused on boating accidents in the state and potential ways of preventing and reducing them.

The speaker gave an overview of accidents from the past few years. According to data he presented to the committee, there have been five fatalities from boating accidents so far in 2007, with three of these occurring in a single accident in June. In addition to the number of deaths this year, there were 14 injuries in 13 boating accidents. This is comparable to the data from 2006, when there were 25 total accidents causing 10 fatalities and 17 injuries.

The lieutenant also provided 2005 accident information for the entire nation, broken down by age, experience and training of the operator; the number of persons on board; and the availability and usage of life jackets. According to those statistics, the operator of a boat in an accident is typically between the ages of 36 and 55. In accidents where the amount of operator education was known, 72.4 percent of boat fatalities involved operators with no training. Most fatalities resulted from drowning in cases where a life jacket was not worn.

The most common factor in accidents, the lieutenant said, was careless or reckless operation. Alcohol use, on the other hand, was the sixth most common factor, although it was still the most common factor in fatalities. However, he said lack of training was still a much bigger problem than drunken operation.

The officer also said West Virginia was among the worst states in the country in per capita boating deaths. From 2001 to 2005, there were 8.39 deaths per 100,000 boats registered in West Virginia. This was the eight highest amount overall, but the third highest among non-coastal states.

The lieutenant pointed out that West Virginia does require a boating safety education certificate for operators born before 1986. However, he recommended extending this requirement to all recreational boating operators, regardless of age or prior boating experience.

### Pensions & Retirement, Joint Standing Committee on

This committee discussed the teacher retirement plans during the July Interim meetings.

A representative from the Consolidated Public Retirement Board (CPRB) told lawmakers on this committee that new figures suggest that of the 19,851 employees with individual accounts in the Teacher Defined Contribution (TDC) plan, none of those age 60 or older have sufficient earnings in their account to retire. Of the 1,100 enrollees in that age group, only 23 have more than \$100,000 and the largest of those accounts is \$157,000. The overall average TDC account contains \$33,944, and, on average, TDC enrollees have earned less from their investments than either the national average for such retirement accounts or the Investment Management Board, which oversees the traditional pension fund.

The representative suggested that TDC enrollees should invest aggressively early in the plan, choosing stocks over bonds, and more conservatively as they near retirement age. Yet the numbers show enrollees under age 30 are the most conservative. The Legislature allowed for the TDC accounts in the early 1990's after closing the older pension fund to stem any more unfunded liability against the state. The TDC plan was shut off to new members in 2005.

The state had wanted to merge the 401(k)-style retirement accounts in the TDC into the main teachers' pension fund, the Teacher's Retirement System (TRS). A judge ruled earlier this year that the TDC's individual investment accounts are the enrollees' private property. To combine those accounts



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into the older plan's general fund would be an illegal undertaking under the state constitution, the ruling concluded. The CPRB is appealing the ruling.

Those enrolled in the traditional pension fund, the TRS, meanwhile, can count on benefits of between \$200,000 and \$400,000, depending on life expectancy and whether they were teachers or service personnel. The older pension plan guarantees a benefit based on final salaries and years of service. The older plan has also benefited from huge deposits of extra funds, including \$807 million from the recent sale of tobacco settlement-backed bonds. The plan is on track to be solvent by 2034 and is expected to be over 50 percent funded once the tobacco bond sales numbers are calculated.

### Regional Jail & Correctional Facility Authority, Legislative Oversight Committee on

The Committee first heard from a doctor who recently inspected the medical facilities at Mt. Olive Correctional Center. A family doctor from Oak Hill, this was his first inspection. He examined the Medical Board at Mt. Olive, their facilities and the inmates' access to care. His findings included: there were two on-call doctors; the Director of Nursing works nine to five, five days a week; there are X-rays on site, dental services and a back-up nephrologist and they offer a chronic care clinic and a "fairly well-equipped" trauma room.

In addition to having some more common drugs on site, the pharmacy services generally allow for drugs to be received 24 to 48 hours after the order is put in, but they are able to get things from a St. Albans pharmacy in a couple of hours if needed.

Their mental health facility houses a 30-bed unit and is staffed by a full-time psychologist and psychiatrist. The doctor suggested further inquiry into whether the facility has standard and effective protocols under which they operate for the treatment of strokes, diabetes, etc., as well as for communicable diseases such as TB and HIV.

Based on these observations, the speaker said he thought the inmates received good care, and that they reported so as well. He would like to see more proactive care for things like diabetes, not only for the patients' sake, but as it is a more cost-effective way to deal with these ailments, which can be far more expensive later on in their untreated development. He further suggested that the Legislature look at the mortality statistics to find if there are any trends that need additional investigation.

The Committee next heard from the Deputy Secretary for Operations & Media, who reported on efforts to find a location for the three academies of Corrections, Regional Jails and Juvenile Services. He is currently looking at facilities at Glenville State to combine two of these academies in one location, but ultimately wants one building that can house all three.

Several of the members of the committee were confused as to why West Virginia University Tech was not mentioned as a possible location, given its attributes and having been listed previously as a good option by other presenters. The speaker clarified that while this location has not been eliminated from his considerations, it is not currently and actively being considered for several factors.

The committee next heard reports regarding what were described as an "extreme problem" of prison overcrowding and one "we can't build ourselves out of." Prison populations are exceeding rapidly, which will necessitate the construction of what the presenter said would need to be a 1,200-bed facility. This would not solve the problem, however, and additional steps will need to be taken in order to reduce the number of inmates and will necessitate dealing with punishments in different ways.

Along those same lines, the next speakers presented information about helping offenders re-enter society and how they can affect a decrease in the rate of reincarceration. The focus was primarily on domestic abusers. The methods used to prevent recidivism once out of prison have recently been shown to be ineffective. Where before the emphasis was based on education, which consisted mostly of memorization, it now has been shown that a value-centered program, which focuses on the offenders' thoughts, feelings and reactions to situations, is a much better way to deal with seeing that they do not fall back into these destructive behaviors.

The last presenter spoke briefly about the possibility of creating a uniform bond schedule. The speaker said that magistrates, who do not necessarily have any legal background, are in elected positions and can fall prey to setting bonds at too high a price in order to appear tough on crime. Uniform schedules would set guidelines to keep this from happening.

### Interim Meeting Schedule & Agendas

Please visit West Virginia Legislature's Web site:

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





## State Water Resources, Joint Legislative Oversight Commission on

As dealt with in interim meetings in the past, the Public Service Commission (PSC) is concerned with the problem of failing water and sewer systems. They are not getting better, they are getting worse. As such, lawmakers are beginning comprehensive studies regarding the state's failing water systems, as the purpose of the committee is to look broadly at the problem of failing water and sewer utilities.

In material provided to the committee by the PSC, projected numbers of current failed systems include 102, systems projected to fail in five years total 116 and those projected to fail in 10 years included 218. The final tally in estimated cost to repair amounts to \$647 million.

However, the PSC's date is inconsistent with the reports the Bureau of Public Health (BPH) made to the Governor on the WV Public Water System Capacity Development Program (CDP), according to other material provided to the committee.

The Bureau of Public Health is designated to carry out the provisions of the federal "Safe Drinking Water Act" and to assure the state's approximately 1,100 public drinking water systems provide a reliable supply of safe drinking water to approximately 1.4 million West Virginians. It is the public entity which implements and enforces state and federal drinking water regulations.

To cover all sides of the concern, lawmakers in July began gathering background data from all stakeholders. The July meeting consisted of facts and figures on which to build a foundation of discussion.

The committee heard from the director of the Office of Environmental Health Services (OEHS) Environmental Engineering Division under the oversight of the Bureau of Public Health. An overview of the agency's programs associated with drinking water treatment and sewage treatment in West Virginia was provided.

In a Power-Point presentation, the OEHS director focused on the successes of the Eastern Wyoming Public Service District (EWPSD) who worked cooperatively with a variety of public, federal, private and county agencies and businesses to protect and save a portion of the water supply in southern West Virginia.

According to the success story, the Wyoming County Circuit Court placed five systems in receivership following a petition of the PSC. The Logan County Public Service District (LCPSD), located in the adjacent county, volunteered to serve as receiver and operator these failing systems.

Four systems were consolidated as EWPSD with the LCPSD managing and operating the systems under a single contract between the two PSDs. Using the Drinking Water Treatment Revolving Fund Loan, an abandoned mine land grant, a small cities block grant, a grant from ARC and the state Economic Development Authority and Infrastructure and Jobs Development grants, the failing Eastern Wyoming PSD is up and running with the US Environmental Protection Agency's 2006 Award for Sustainable Public Health Protection under its belt to boot.

Another informational Power-Point slide show provided to the committee covered the regulation of small waste water systems. Put together by the Department of Environmental Protection (DEP) the presentation focused on privately owned systems. Listing DEP regulations, permits and inspections as part of the agency's oversight on privately owned systems, the material provided also indicated problems associated with smaller systems, statutory solutions, proactive measures and other information relative to the water systems.

In the coming months, the committee will review proposed legislation regarding failed water and failed sewer utilities and other questions surrounding utility services.

## Technology, Joint Committee on

The committee was presented a report by a representative of the Performance Evaluation and Research Division (PERD) of the West Virginia Legislature regarding the State Agency Grant Award (SAGA) program. SAGA was created in 2005 when legislation was passed requiring all state agencies that award grants to be accountable to the Legislative Auditor through informational reporting. The law places responsibility on the grant-awarding state agency to provide the requested grant information so that it can be reviewed by the Legislative Auditor. If a grant recipient does not comply with the reporting requirements, it can be debarred from future awards, either by recommendation of the state agency or by the Legislative Auditor.

The report found that only a few state agencies are in compliance with the grant award reporting requirement. The cause for this non-compliance could not be determined, although the Legislative Auditor e-mailed all agency heads informing them of the grant reporting requirement on April 9, 2007.

A second report was given by a representative from the Governor's Office of Technology, who discussed standardizing email addresses and phone numbers throughout state government. Wire upgrades in the State Capitol Complex are going to be



a barrier to improving on state government’s phone systems. A policy is needed for all state agencies to abide by so wiring will be easier to identify and replace in the future.

**Veterans’ Issues - Select Committee B**

The committee first heard from the Director of the Huntington VA Medical Center. He reported their facility as having 80 beds and serving about 30,000 veterans. They see roughly 1,000 patients a day across their four locations. Recently they have begun a series of home-base primary care programs. There is a team of nine people that screens patients and can provide services to those homebound persons who live within a 50-mile radius of one of the medical centers.

The center has also added programs to help veterans battle addiction problems and to provide additional help in securing jobs.

For those coming home from active duty and thus becoming veterans, recently the Seamless Transition Team has been started. This is a program designed to integrate returning soldiers back into society by making sure they have access to the health care and additional services offered by the state. Often times, veterans are outside of West Virginia upon their return to the country and aren’t aware of the services provided to them if they come back to the state.

Much of the remainder of the presentations focused on the problem of Post Traumatic Stress Disorder (PTSD), not only for the actual suffering it entails for those afflicted, but also the tendency for those who are suffering from it to be unwilling to admit as much. This is a far-reaching affliction, with 1/3 of all returning veterans who are receiving treatment from the Huntington Medical Center having been diagnosed with PTSD. Accordingly, the number of mental health professionals employed has increased dramatically over the last one and a half years with every VA Hospital in the state now having a full-time suicide prevention worker.

The Associate Vice President for Rural Health, who gained an interest in Veterans Affairs through her personal involvement, reported that rural areas have historically higher percentages of veterans. She reiterated the sentiments about PTSD, saying additionally that the statistics chronicling them aren’t accurate as several of those suffering aren’t aware that that is their affliction.

She continued, pointing out that a major problem in the treatment of veterans is that there are no mental health profes-

sionals doing their training in VA facilities and suggested that rotations of health students should include training in the social sciences and rural health care.

The meeting closed with a presentation from the Charleston VA Center, who reported again on the difficulty in dealing with PTSD sufferers. He recalled one man, who when asked to identify a major thesis if he were to write a paper on the subject, said “I don’t even know how to define it to myself.”

**Workforce Investment for Economic Development, Legislative Oversight Commission on**

The committee first heard an ad hoc, informal report from the Chancellor of the Community & Technical School System, during which he expressed the need to get more people in apprenticeship programs to achieve their college diplomas.

Following, was a report from a representative of the Department of Commerce, who gave a review of the audit. She reported that the One-Stop facilities had overspent a total of \$6.5 million dollars over the seven regions in the state, though there is no intimation of fraud, she stressed. She continued that corrections have been made to make sure this doesn’t happen again and that the facilities don’t spend more money than they’ve actually been given grants for.

The Workforce Investment Boards (WIB), she reported, are not directly responsible for their overspending. Rather the federal government collects from the state (of WV) and it is left to the state to collect from the WIBs. This process is carried out in this way because that is how the federal government prefers to do it, as it is easier for them.

The representative went on to give a more general report on the One-Stops in the state, saying specifically that she is very proud of the facility in Beckley and points to it as a superlative example of how they should be run and what they can offer. To convey point, she related an anecdote about a man who was extremely embarrassed about his teeth. At the One-Stop he went to, because of the layout of the individuals facilities, a woman in one office was able to personally take him to a place where he could receive dental services - instead of sending him somewhere across town where he would be reluctant to go.



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## Interim Committee Information

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

## Bill Status

For bill history information and full bill text of all Legislation from the 2007 Regular Session, please go to the West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Bill Status" link.

## The West Virginia Legislature's Office of Reference & Information

Building 1, Room MB 27  
State Capitol Complex  
Charleston, WV 25305  
(304) 347-4836

Charlene Glagola  
**Director**

Drew Ross  
**Deputy Director**

Dee Spelock  
**Resource Manager**

Zach Kessler  
Joe Merial  
**Public Information Officers**

Dave Martin  
**Web Administrator**

Randy Cain  
**Webmaster**

John Tice  
**Graphic Designer**

Martin Valent  
**Photographer**

July 27 - 29  
August 19 - 21  
September 9 - 11\*  
October 7 - 9  
November 16 - 18  
December 9 - 11  
January 6 - 8, 2008

## 2007-2008 Interim Committee Meeting Dates

**Note:** All dates are subject to change.

\* *Held in Martinsburg, WV*