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# Interim Highlights

## Agriculture & Agri-business

### Hunting on Private Property

Generating \$1 billion plus a year in West Virginia, hunters and fishermen should have more access to private lands, the Director of the Division of Natural Resources (DNR) told lawmakers during the July meeting of Agriculture and Agribusiness. To accomplish this request made by many constituents to the DNR, incentives for land owners to allow hunting on their property may be required.

With the issue of private property owners' liabilities on landowners' minds, private hunting clubs have come into fashion throughout the state. Established dues and liability waivers protect the landowners but the clubs also restrict the number of hunters or anglers who have access to the land.

Small land owners are not the only property owners who are concerned with liabilities. A large timber company found it effective to lease its land to a private hunting club thereby absolving itself from liability while the club helped manage the deer population - which was eating into the company's profits.

While assisting the landowners, the clubs also diminished the number of hunters and anglers having access to the land from approximately 1,000 to a select 200. According to the director, making more acreage available to sportsmen equates to financial gains for the state in tourism dollars and assists the state in managing its flora and fauna.

In citing examples of private land management, the director told lawmakers, Pennsylvania gives immunity from liability to landowners.

Montana has a block program in conjunction with the state. Property owners establish a two-part application. The sportsman applies to the landowner who, in turn, sends the application to the state. The state reimburses the owner with a cash incentive. In this plan, landowners have the ability to limit the number of people using their property yet receive money for those who are granted permission by the owner to use it.

Wyoming has county development boards (CDB) working with county commissions. The partnership places ads marketed toward landowners inviting them to offer their lands up for sportsmen. The landowners can restrict types of hunting (deer, turkey, dove, etc.) and the CDBs and county commissions keep a listing of the hunting areas and the numbers allowed to hunt.

The development boards serve to promote the areas' amenities, such as restaurants, motels, etc., to interested sportsmen.

Michigan and Wisconsin work with tax breaks on land and with the removal of liability of hunting clubs.

Kansas promotes "walk-in" hunting areas to limit off-road vehicles and any liability associated with them. The state approaches farmers, assesses their property and pays based on the quality of the land and the interest it generates.

In closing his address, the DNR Director told lawmakers he was approaching them to generate ideas on how to better enhance the 1.5 million acres available for sportsmen's use in the state.

Lawmakers mulled over ramifications relative to reductions in property taxes, means for landowners to deny access to hunters and how to list willing landowners and other proposals.

## Broadband - Select Committee E

### "Dead Spots"

The Director for the Consumer Advocate Division of the Public Service Commission spoke to committee members regarding "dead spots", or no cell service areas, throughout West Virginia and possible options in fixing the problem.

While wireless carriers are regulated by both the federal and state governments, state jurisdiction is very limited. The Federal government has jurisdiction over the placement and construction of wireless towers. The director provided options that the Legislature could legally do without breaking Federal law.

Changing the phrase "dead spots" to "significant service gaps" was one recommendation from the director. Under federal law there is a distinction between the two. A "dead

### Interim Meeting Schedule & Agendas

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spot”, under federal law, “is a small area within a service area where the field strength is lower than the minimum level of reliable service. “Dead spots are then assumed to be normal occurrences under this definition. ”

A “significant service gap” usually impacts a large number of users, or a prominent transportation route or commercial areas. If West Virginia states that there are a number of “dead spots” in the state, the Federal government, which has jurisdiction over the construction and placement of wireless towers, assumes that towers are not needed since “dead spots” are common occurrences. However, a ‘significant service gap’ establishes the need for better wireless service.

Another option the director presented to committee members was the reallocation of E911 funds. The money collected from the \$3 monthly fee included on all wireless bills is placed into the E911 fund. Last year the fund generated \$31 million. More than \$27 million was sent to county emergency centers statewide while \$1.5 million went to Homeland Security and the State Police received around \$1 million. That leaves \$1 million for the building of new cell towers. This may seem like enough, but the director was quick to point out that the estimated cost of one cell tower is \$500,000.

The development of “model” zoning ordinances/citing plans for local governments were another low-cost option presented by the director. Zoning, according to the director, “would establish uniform criteria for identifying unserved areas with significant service gaps.”

Committee members also heard from the Director of West Virginia’s Homeland Security and Emergency Management on the progress of the Broadband Deployment Council.

The director informed the committee that the list of appointees is on the Governor’s desk and is waiting on his approval. If all names on the list are approved, the Council will meet before or during August interim meetings.

The director also answered questions regarding the number of cell towers built in West Virginia during the past year. A total of 11 towers have been built because of the partnership of his agency with businesses and local governments.

## Economic Development, Joint Commission on

### Future of Clean Coal Technology

During July interims, members of the Joint Commission on Economic Development heard arguments from both sides of the debate over the future of clean coal technology.

A representative from the Division of Energy spoke in favor of investing in clean coal technology. He said as the price of oil rises, coal would grow as an energy resource. Increased global demand for energy sources would also increase the importance of coal, he said. Technology that allows the use of coal with minimal environmental impact would further increase this demand.

West Virginia is in prime position to benefit from raising demand for coal, the speaker said. The state’s 32.7 million short tons of demonstrated coal reserves are the third largest in the nation, behind only Wyoming and Illinois.

The speaker said the Division of Energy is taking several steps to facilitate clean coal efforts. One such initiative is developing a list of potential sites for coal-to-liquid (CTL) facilities. CTL production, he said, is set to take off in a few years and will further increase the demand for West Virginia coal. He also said the division is examining geological opportunities for carbon capture and storage to reduce greenhouse gas emissions from coal-based power plants. Furthermore, he said coal gasification could play a role in increasing the supply of usable natural gas.

The representative added that clean coal technology is just part of the equation for helping offset high energy costs. Another important aspect of fixing the problem is increasing energy efficiency, he said. Ways to increase efficiency include using Energy Star-compliant appliances and constructing more energy-efficient houses and buildings.

A representative from the West Virginia Environmental Council told lawmakers that coal is not and cannot be clean. She presented data on the energy efficiency of CTL technologies versus traditional energy sources. Gasoline and diesel fuel were about 80 percent energy efficient, while CTL processes were only about 50 percent energy efficient.

The speaker also said CTL technology produced more pollution than gasoline and diesel technology, even if carbon sequestration is used. She added that carbon capture and storage technology is at least 10 years away from being viable.

The representative added that coal cannot be mined cleanly. Increased demand and production would mean more mountaintop removal, she said. She also noted that an increase in mining operations would lead to the creation of more coal impoundments, which can fail and cause environmental damage and loss of life.

The speaker highlighted other potential ways to decrease the nation’s dependence on foreign oil. One such way was



to decrease the speed limit, thus reducing fuel consumption. She said several other surrounding states, like Virginia and Pennsylvania, already set speed limits at 65 mph. She also suggested tying vehicle property taxes to that vehicle's fuel economy instead of its book value.

The representative also suggested investing in renewable forms of energy. Besides the environmental benefits of such technology, renewable energy efforts create more jobs than nonrenewable efforts, she said. She outlined several ways the Legislature could encourage investment in renewable energy, including tax incentives for solar water heaters and panels.

Another suggestion the speaker made was the creation of a feed-in tariff law. This law would require larger energy providers to purchase renewable energy at an above-market price from smaller providers in order to encourage investment in renewable energy infrastructure. Feed-in tariffs are already in effect in several other countries as well as California.

## LOCEA

### Proposed Peer Institutions

At its first meeting of July Interims, the Legislative Oversight Commission on Education Accountability (LOCEA) received a list of proposed peer institutions from both the Higher Education Policy Commission (HEPC) and the Community and Technical College System (CTCS). The HEPC Chancellor said the peers were to be used for more than just funding comparisons but also for comparing other aspects, such as graduation rates, faculty salaries and presidential salaries. LOCEA approved the full list of peers.

The chancellors of HEPC and CTCS also gave monthly reports at the meeting. The CTCS chancellor outlined in his report the system's goals and potential ways to reach and support them.

One such goal is the development and expansion of online course offerings at CTCs. The demand for such courses, the chancellor said, will increase as the cost of gasoline makes students more hesitant to commute. He noted that North Carolina colleges lost enrollment recently due, in part, to rising fuel costs. The chancellor suggested hiring additional adjust faculty, conducting training sessions for faculty and determining which courses are in high demand as some of the ways to achieve this.

Increasing adult enrollment is another major area of emphasis, the chancellor said. Possible ways of doing this, he said, include conducting state-level and regional workshops on

adult student recruitment and retention as well as restructuring courses and programs to accommodate the schedules and needs of adults.

Other areas of focus the chancellor outlined include increasing overall retention and graduation rates, improving the college-going rate in West Virginia, and collaborating more with the private to access the needs of employers throughout the state.

The HEPC chancellor's report provided an overview on the state's participation in Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. The U.S. Department of Education awarded the HEPC with \$18 million for GEAR UP, a six-year program designed to help middle and high school students prepare for and pursue a college education.

The GEAR UP grant will provide money for programs and services for low-income West Virginia students who have been identified as being at risk of not pursuing a post-secondary education. About 13,000 students will participate in the project at schools in Boone, Clay, Lincoln, McDowell, Mingo, Roane, Summers, Webster, Wirt and Wyoming counties.

The chancellor's report outlined five goals for the state's GEAR UP plan: increasing the academic performance and preparation for students; increase the number of low-income, at-risk students who are prepared to enroll and succeed in college; increase the high school graduation rate and participation of students in post-secondary education; increase students' and families' knowledge of post-secondary institutions, admissions requirements and financial aid; and ensure effective, efficient and the most appropriate use of resource through collaboration with partners committed to GEAR UP goals.

The HEPC chancellor also talked about another federal grant the commission had received. The College Access Challenge Grant Program (GACGP) is aimed at increasing the number of low-income students who are prepared for college through the use of matching grants. West Virginia will receive \$448,769 for two consecutive years through the grant program. This money, the chancellor said, will be used to establish a web portal to provide information about applying and attending college.

The LOCEA's second July meeting, members heard from the state school superintendent about 21st Century Skills. He said the teacher and principal training process was going well, but there was still progress to be made. He also said market research showed that many parents were unaware of what the 21st Century Skills Initiative fully entails. The



Department of Education, the superintendent said, was able to secure federal money to start a project to better inform the public about the program. This project will be deployed over the next eight months, with requests for proposals now being accepted. The speaker emphasized that no state money will be used.

Education Subcommittee A - Public Education

**Mentoring Programs**

Members of this subcommittee heard a presentation regarding teacher mentor programs. A representative for the School Administrators Association of West Virginia presented a review of the K-12 mentoring programs for the committee.

The representative stated that mentor programs benefit all stakeholders. He also mentioned a study which was recently completed which indicated that beginning teachers who were provided with multiple supports, were less likely to move to other schools and less likely to leave the teaching occupation after their first year. The study also stated that in order to remedy novice teacher turnover there have been a rapid growth of teacher mentoring and induction programs.

The report concluded that as states increasingly hold their teacher preparation programs accountable for the success of new teachers, higher education institutions need to work with school districts to ensure that induction is high quality and well designed. Partnering of K-12's with Higher Education means greater alignment between what is taught in schools of education and what occurs in the classroom. Long term policy support for teachers induction programs and adequate funding at the state level can help teachers realize their full potential, keep them in the profession, promote greater student learning and save money.

The representative stated that changes in our society require educators to meet increasingly complex challenges. Mentoring programs are one important mechanism for advancing the teaching profession as a whole.

Education Subcommittee B - Higher Education

**Financial Aid Changes**

The Vice Chancellor of the Higher Education Policy Commission addressed lawmakers about proposed legislative rule changes regarding financial aid. The rules were to be discussed at the August meeting of the HEPC, after which

point they would be sent out for a 30-day public comment period.

If approved, the first rule would eliminate the requirement of filing a separate state-level application to receive a Higher Education Grant, a need-based grant awarded by the state. The rule would specify that filing of the federal Free Application for Federal Student Aid (FAFSA) is sufficient to apply for this grant. The rule also would make changes to the Higher Education Grant application process to reflect the elimination of the separate state-level application.

The other proposed financial aid rule would update the commission's rules regarding the Medical Student Loan Program. This program provides a forgivable loan for medical students who, upon graduation, work in a medically underserved region or a specialty that has a shortage of physicians in West Virginia. House Bill 4443, passed during the 2008 Regular Session, increased the maximum amount that may be forgiven from \$5,000 per year of service to \$10,000. The proposed rule would reflect this change.

The rule would also remove the requirement that students be from West Virginia. However, in-state students would be given priority, and out-of-state students would have to remain in West Virginia after graduation in order to have the loan forgiven. The out-of-state student provisions were already in law but were not previously reflected in the program's legislative rules.

Education Subcommittee C - Public School Finance

**Vision 2020 Goals**

The Department of Education's Assistant Superintendent spoke to committee members regarding the development of the State Board of Education's plan to establish goals and objectives for 2020.

According to the assistant superintendent, there are already goals established by the West Virginia Department of Education but both them and the West Virginia Board of Education are working together to revise their state goals so they match the goals established in the Vision 2020 bill.

The assistant superintendent also pointed out to the committee that the goals already in place by the Department of Education are quite similar to those found in Vision 2020.

## Finance Subcommittee A

### Funding for Convention and Visitors Bureaus

Members of the subcommittee discussed the issue of providing funding for convention and visitors bureaus. In 2007, the Legislature passed a bill that allowed municipal and county-level CVBs to receive half their local hotel and occupancy tax revenue.

A representative from the Association of Convention and Visitors Bureaus said this has led to several CVBs existing only to receive this funding instead of actually promoting their locality. According to the representative, the association supports the accreditation of CVBs in order to receive tax revenue.

This accreditation would include accountability standards to ensure that CVBs are fulfilling their purpose. These standards, the speaker added, would give CVBs some flexibility while trying to make sure they are efficient and effective. CVBs that fail to maintain these standards would have their funding removed. The representative said he hoped to present a draft bill implementing an accreditation process by the end of the year.

A speaker from the West Virginia Municipal League told the subcommittee that accreditation was not the solution. There are several unanswered questions about what accreditation standards would look like, such as whether a full-time employee would be required. Instead of private accreditation, the representative said CVBs should be audited by a state agency, such as the Tax Department or the State Auditor. He added that if there are CVBs that are exploiting the law, they need to be identified.

## Finance Subcommittee B

### Lottery Gaming Revenues

Representatives of the Lottery Commission updated lawmakers on the 2008 Revenue Report and 2009 Projections.

In response to questions during June's meeting, an explanation of racetrack benchmarks and revenue distributions were provided.

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## Finance Subcommittee C

### Transportation Funding

Committee members heard from the Cabinet Secretary of the West Virginia Department of Transportation regarding the current status of funding. According to the secretary, due to declining revenues and the increasing costs for construction materials, there has been a shift from road building to the maintenance of existing highways and bridges.

The main source of funding for the Department of Highways is West Virginia's Road Fund, which includes monies from the state's gas tax. High gas prices have reduced the number of motorists on the road thus little by little dwindling the Road Fund. The secretary projects that the fund will decline from the current \$660 million to \$648 million in 2012.

Another problem facing the funding for West Virginia's roads and highways is the decline in federal road funds. The secretary told committee members that West Virginia depends on federal funding to maintain the state's highways. The decline in funding is projected to be around \$25 million and could be larger if the federal government does not approve legislation that would offset deficits in federal highway fund collections. If the legislation does not pass, federal funding would be cut by \$119 million.

The price of materials has risen tremendously since 2003 such as asphalt pavement, which has risen in price by 81.6 percent and industrial steel has risen by 134.7 percent.

One possible solution to offset the decrease in funding has been the creation of toll roads but with little success according to the secretary.

The committee also heard from a representative of the organization West Virginians for Better Transportation, or WVBT. This group's mission is to educate individuals on the importance of transportation in West Virginia.

The representative informed the committee that late last year WVBT held numerous statewide meetings highlighting transportation needs and West Virginia's challenges to meet those needs due to expected funding constraints and possible shortages. At the conclusion of the meetings, a report was created and sent to various leaders and organizations including the Governor and all members of the Legislature.

The WVBT representative told the committee that at these meetings there were developed three major points for consideration in moving forward and fixing the state's impending transportation crisis. Those three points were:



- Looking at existing and new funding options for transportation
- Examining what other states are working on
- Working together to get all regions and the public's involvement in developing a long-term plan

The WVBT representative told the committee that there is simply too much discussion and too little action occurring, and that money alone will not solve the problem.

## Forest Management Review Commission

### Gypsy Moth

Members of the Forest Management Review Commission (FMRC) were told that after a two-year lull, the gypsy moth is back across much of West Virginia, amid a threat of losing federal dollars to combat its voracious spread through the lush hardwoods.

When told of a tentative federal budget proposal to cut out states' gypsy moth treatment money, the members of FMRC agreed to ask West Virginia's congressional delegation for help in restoring the funds.

Through September, the federal budget is providing enough money so that it absorbs 10 percent of the cost, while the state puts up a like amount and landowners pay 80 percent of the spraying.

A representative of the Plant Industries Division within the state Department of Agriculture told the Forest Management Review Commission that any interruption of operating cash is critical since the treatment program is a year-long effort. Treating a forested land costs about \$13.41 per acre, and if the federal government bows out of the picture a 50-50 program in which the state and landowners share equally is envisioned.

Since 1985, the toll on West Virginia hardwoods has been estimated at \$41 million. It was stated that the moths attacked the state without let-up through 2002, then came a two-year respite, but within the past few years the insect has reappeared.

The federal budget contains \$369,000 through September, but a preliminary budget for the next year proposes an elimination of gypsy moth treatment funding, he said. If the federal government ends the funding and the state follows suit, landowners would be saddled with 100 percent of the costs.

## Higher Education Capital Projects & Facilities

### Possible Secondary Bond Pledge

Lawmakers are investigating the possibilities of taking a secondary bond pledge off the students' tuition money.

Addressing the Committee on Higher Education Capital Projects and Facilities were the Vice Chancellor of the Higher Education Policy Commission (HEPC) and West Virginia Council for Community and Technical College Education (WVCCTCE) as well as the Co-Interim Director of Finance and Facilities, HEPC.

A brief history of higher education capital financing provided by the presenters:

#### Before 1969

- paid by the WV Board of Education and the WVU Board of Governors

#### 1969-1989 - Board of Regents

- all students paid via "tuition fees" except free standing Community Technical College students and WVU Medical School students, even though the latter two received capital funding

- project funding included bonding, maintenance and cash

- bond funding, educational and general facilities were paid from pooled registration and tuition fees; auxiliary facilities were paid for from pooled fees and special institution and user fees

- bond issues from a series of bonds from 1975 to 1989 amounts to \$201.4 million, pay-off date: 2012. The revenue source comes from student fees.

- maintenance funding was centrally funded. In the 1970s, a \$4.5 million appropriation was provided by the state along with periodic state appropriations. In the 1980s, there was a switch to "registration fees" and "tuition fees" for maintenance as well.

- maintenance allocations prior to 1985 were paid for on a project-by-project basis; post 1985, funds were allocated utilizing a building renewal formula in which \$103.8 million was allocated between 1985 and 1992.

#### 1989-2000 - University/College Systems

- bonding done as a system

- bond issues; complete series from 1996 to 2000 equals



\$137.6 million

- revenue source: student fees but each institution became responsible for its own debt service
- pay off date: 2027-2031
- maintenance funding utilized excess “registration fees and tuition fees”
- allocation...in the late 1990s, maintenance funds stopped being allocated utilizing building renewal formula; institutions kept their own money.

### **2000-Present - HEPC/CTCS**

- bonding done with some state appropriations
- capital fees; institutions began to sell more bonds
- maintenance is less of a system issue
- project management is primarily an institution issue

#### Institution Bonding Debt Examples:

Fairmont State University and Pierpont Community Technical College - \$127.1 million debt, \$5.86 million annual debt service costing full-time students \$991

Marshall University and Marshall Community Technical College - \$126 million in debt; \$8.11 million in annual debt service; \$617 per full-time student

WVU - \$63 million in debt; \$23.69 million in annual debt service; \$930 per full-time student

At the conclusion of their presentation, university and college officials offered a variety of solutions:

- dedicate state funding for major CTC construction and renovation projects, consistent with SB 682 (2008)
- provide a debt subsidy to CTCs that were formerly administratively linked
- provide significant state support for four-year institution bonding
- provide state funding for all or a portion of maintenance costs and/or ensure that institutions generate sufficient revenues to do so consistent with standard building renewal formulas
- allow HEPC and CTCS staff to play a greater role in capital project management at smaller institutions than it does at larger institutions.

A motion was made and adopted by the committee to form a subcommittee to look at a deferred maintenance group and determine how many dollars are needed. The subcommittee is to report its findings in October.

Suggestions regarding the study include a review of long term capital fees on a system-wide basis; how to handle

the costs in the future, how part-time, full-time, in-state, out-of-state fees vary, a review of fiduciary bonding calling for responsibility by school authorities.

## Government Organization - Subcommittee A

### **Green Building**

This committee met in July to continue the discussion surrounding House Concurrent Resolution 87 (HCR 87) relating to the adoption of green building standards in West Virginia. This month a representative from the forest products industry gave their point of view regarding this issue.

The representative stated that their industry feels it is a win-win situation because it promotes environmental protection and makes good economic sense. The Leadership in Energy and Environmental Design (LEED) Green Building Rating System, developed by the U.S. Green Building Council (USGBC), provides a group of standards for environmentally sustainable construction. From 1994 to 2006, LEED grew from one standard for new construction to a comprehensive system of six interrelated standards covering all aspects of the development and construction process. LEED also has grown from six volunteers on one committee to more than 200 volunteers on nearly 20 committees and nearly 150 professional staff.

LEED was created to accomplish the following: Define “green building” by establishing a common standard of measurement; promote integrated, whole-building design practices; recognize environmental leadership in the building industry; stimulate green competition; raise consumer awareness of green building benefits; and, transform the building market

However, the forest products industry feels that LEED contains flaws that may discourage the use of wood in some instances, which in turn puts West Virginia manufacturers at a disadvantage because it does not recognize tree farms and discriminates against West Virginia landowners. The representative feels that it is designed to advantage the concrete and steel industries.

The representative also suggested that instead of using LEED the state could better be served by using a set of best practices to make homes more energy efficient developed by the National Association of Home Builders (NAHB) Research Center.

In conclusion, the representative stated that government policies regarding these issues should promote competition



and any rating system that is used should recognize renewable resources as well as recycled materials. Also, using wood should be considered building green.

**Government Organization - Subcommittee C**

**Professional Employer Organizations**

In July, the subcommittee continued its study of professional employer organizations and the impact of House Bill 4079, which regulates such organizations. PEOs provide administrative services for smaller employers by hiring an employer’s workers and then leasing them back under contract to the employer.

A representative from the Department of Commerce told members that the new statute provides the department sufficient tools for handling labor disputes involving PEOs. The law is flexible enough, he said, for the department to determine on a case-by-case basis who the employer is for the purposes of disputes.

In addition, the speaker said the contract between the employer and the PEO would be a starting point for the possibility of split liability. The speaker used the example of a wage-hour dispute. In such a case, it is not important whether the PEO or its client pays, so long as the employee ends up receiving his or her wages. This would be case where the contract would serve as a starting point, the speaker said.

Members also heard from a representative of WORKFORCE West Virginia, which provides unemployment compensation. The speaker said there had been no confusion so far over the establishment of unemployment premiums. WORKFORCE WV treats the PEO as the employer, the speaker said.

**Health - Select Committee D**

**Roadmap to Health Project Updates**

Committee members were updated by all four working group chairs for Health Care Reform in West Virginia; Roadmap to Health Project.

The Chair for Administrative Simplification informed the committee that the group had met four times. Currently, the work group has identified and had begun work on various issues including:

- Provider Credentialing

- Consumer Friendly Hospital and Physician statements
- Explanation of benefits from payers
- Member identification cards issued by payers
- Prior authorization requirements of payers

The goal the workgroup is hoping to streamline and simplify processes followed by payers as well as discussing the pros and cons of utilizing a nationally recognized uniform credentialing form instead of or along with the home grown form developed in and by West Virginians.

The workgroup also informed the committee that the door remains opened for other interested and knowledgeable parties wanting to join. The Health committee was then updated by a representative from the Chronic Care Information System workgroup. One goal of the work group is to coordinate with the other groups to avoid the duplication of issues being looked in to. Usage of electronic medical records by doctors and providing for smaller hospitals are two issues being looked at by the workgroup. According to the representative, the group is merely at the investigation process, like the others.

The Chair for the Health System Redesign workgroup was next to address the committee regarding the group’s progress as well as the issues that are their main focus. Currently, the Chair referred to the group as a “big research project” in order to create a model that will make sense. One success is the good input from various groups including payers, individuals and doctors who have been attending the meetings. However, the Chair stressed that small business representatives are lacking and are very important in the process. One of the focuses of the workgroup will be to look into what other states are doing regarding their health care systems.

The Wellness and Prevention workgroup was last to update the committee on its current progress. Areas of focus for the group include physical activity, nutrition, smoking, safety and immunizations. According to a representative for the workgroup, the focus was limited to three main issues but members of the group thought other issues should be included.

As was the case with the other workgroups, Wellness and Prevention is currently in the research phase. They have begun compiling policies and laws of not just West Virginia Code and focus on one topic during each meeting instead of discussing all of them at once. The next meeting will be focusing on physical activity. The workgroup’s next steps will be to define the problem and begin to prioritize recommendations based on the areas of focus.



## Interim Highlights

Committee members were also updated on the status of “The Roadmap to Health Project” website. Some features of the website will include:

- Volunteer Signup/Profile Creation
- Blog from Dr, Kenneth Thorpe, Ph.D.
- Forum Discussion
- Ability to host podcasts and videos

The website is set to debut before September Interim meetings.

### Health (CON) - Select Committee D

This select committee heard a presentation regarding on going efforts to keep costs down and ensuring patient safety when considering loosening the state’s health care regulations. A representative from the state Health Care Authority discussed the state’s regulation system involving medical imaging devices. The state Health Care Authority regulates 22 services through the certificate of need, which health care providers must obtain before offering certain procedures, opening new facilities or spending more than \$2 million for building costs or equipment purchases.

In comparison with the 36 other states that issue certificates of need, the median number of regulated services is 17, according to the National Conference of State Legislatures.

The subcommittee discussed three studies provided by of the Health Care Authority. The studies, two of which were national in scope and the other focused on Tennessee, reported that states with certificates of need typically have lower costs and lower mortality rates from some medical procedures than states without.

Committee members questioned whether or not the studies might not tell the full story. They pointed to a cost study by Ford Motor Co., General Motors Corp. and DaimlerChrysler that were not released in full, but in brief statements that amounted to little more than news releases.

The representative responded by saying that the statements were valuable for showing that certificates of need are supported in the private sector.

Much of this debate centers on Computed Tomography (CT) Scanners. CT scanners, which can cost as much as \$1.5 million and help diagnose heart problems, cancer and other diseases at earlier stages, were only permitted in hospitals up until last year. The Health Care Authority has since agreed

to grant licenses to some outpatient centers.

The committee plans next month to look at data on whether the certificate of need policy is hurting health care providers in West Virginia’s border counties.

### LOCHHRA

A representative from the state Bureau for Behavioral Health and Health Facilities spoke to legislators about issues regarding overcrowding at the state’s mental health facilities.

To help combat the problem, the bureau will add 20 beds at Mildred Mitchell-Bateman Hospital in Huntington. The bureau, the representative said, also has bedding contracts with Highland Hospital and the Appalachian Regional Hospital system and is looking at adding beds at Pinecrest Hospital.

According to the speaker, the state is also in the process of constructing four centers for forensic patients. These are patients who are committed to a mental health facility because of a criminal offense. These centers will be located at Huntington, Marlinton, Wood County and a site to be determined.

However, the representative said that only adding more beds would not solve the problem. Community supports could help prevent patients from having to enter mental health facilities, he said. Another suggestion the representative made was adding staff and reducing the amount mandatory overtime and back-to-back shifts in order to more effectively help patients.

The representative emphasized that the problem has to be rectified soon, or else the state would be faced with increased diversion costs, increased system costs, liability and employee issues and even worse overbedding issues. A comprehensive approach – including strategic partnerships, community supports, facility expansion, staff reforms and other potential solutions – is the only way to prevent this, he said.

### Infrastructure - Select Committee C

#### Recruitment and Retention of Highway Engineers

The committee continued its discussion about the recruitment and retention of highway engineers. The state Secretary of Transportation addressed the committee about the



problem during July interims.

Pay scales for public highway engineers are significantly below those in the private sector, the secretary said. The secretary added that, in May, the Department of Administration approved an increase in starting salaries for engineers from about \$32,500 to \$40,000. However, shortages are only not affecting civil engineers, but also other staff such as maintenance workers and attorneys, he said.

Increased starting pay is not the only effective tool for recruitment, the secretary said. He noted that emphasizing the scale of highway projects, the largest engineering projects in the state, makes the job more attractive to young engineers.

A representative from the Division of Personnel told the committee that pay is not the only way to recruit and retain engineers. Flexible scheduling policies would provide a family-friendly work environment that would improve retention, the representative said. Paying for licensing would help recruitment efforts, she added.

The representative also noted that current law allows agency directors to provide one-time monetary incentives for areas with critical staff shortages. This incentive, which was implemented this year, is currently used solely for recruitment. She said that it could be expanded to retention as a way to keep engineers from leaving.

## Judiciary Subcommittee A

### E-filing

A representative from the Secretary of State's office presented information to committee members regarding the current process of the current five- step legislative rule-making process and how many copies are printed for one rule. With this information, the representative pointed out to the committee that the current rule-filing process is costly, timely and sometimes inaccurate.

For the 125 rules currently filed this year, the cost is around \$81,250 just to file them. Filing rules is also tedious on employees with some working hours and sometimes day making sure that the necessary copies are made for filing. This does not include the time to format rules, proofreading and posting to the Internet, which requires one full time employee alone.

According to the Secretary of State's Office, E-filing would save West Virginia time and money. If online filing of rules

were allowed in the state, agencies, the Legislature, LRMRC staff and the public would have instant access to all Rule filings and could eliminate wrong versions of rules being filed.

There are currently six states using E-filing and tend to be more successful when using web-based applications which are custom written.

The problem with e-filing is the cost for the service is not in the Secretary of State's budget and would need a Legislative appropriation. The cost for the program is approximately \$400,000.

### Carbon Storage Issues

The Director of Project Development for the Mingo County Development Authority addressed leakage issues regarding carbon storage to committee members.

With the ongoing question of whether West Virginia should consider carbon storage as a possibility in decreasing carbon emissions, leakage remains the primary concern.

According to the director, There are potential environmental and human health risks when considering carbon sequestration. Issues such as project sight selection, new geological and geophysical data sets are important in making sure that leakage does not occur as well as.

Another important issue is cap rock integrity, which the director said, is important in making sure a "blowout" or leakage occur. Effective monitoring and verification such as 3D and 4D seismic, Electrical Resistance Tomography, soil surveys and water samples are necessary for the public's safety and also for proper crediting.

The director told the committee that carbon sequestration is occurring in West Texas where 25 million metric tons of carbon dioxide have been injected. There is a 99 percent probability that the carbon dioxide is going to stay put.

Senior Research Leader for Battelle Energy Technology also spoke to committee members regarding carbon sequestration. One concern has been leakage into the freshwater supply. The Battelle researcher informed the committee that carbon dioxide is injected 12,000 feet underground whereas the freshwater aquifer is typically less than 100 feet underground.

A diagram of a typical injection well was also shown to the committee and displayed all of the safety mechanisms and leakage barriers that are put into place including a grout wall that lines the well.

### Judiciary Subcommittee B

#### Licensing Mini Trucks

Committee members heard from various speakers regarding the feasibility of providing for the motor vehicle registration and licensing of mini trucks.

Representatives from the Division of Motor Vehicles, or DMV, told committee members that as far as they knew, mini trucks do not meet safety standards under current code therefore could not be registered. The original purpose these mini trucks were imported from Japan was to be used as off-road vehicles.

The Mayor of Davis, WV, who personally owns a mini truck spoke in support of licensing them for highway use because he felt they were just as safe as a regular truck and get exceptional gas mileage anywhere from 42 to 48 miles per gallon.

One concern regarding the mini trucks is speed. Usually, these vehicles only reach 25 miles per hour. However, if the governor, which is attached to every mini truck, were removed, the speed would increase to 60 miles per hour.

Last to speak to the committee was a representative for the State Police who agrees with the DMV. The State Police consider mini-trucks are solely for farm husbandry under current state code. This allows mini-trucks to be used around farms but prohibited from highways.

### Judiciary Subcommittee C

#### Data Mining

Looking into all aspects of health care reform in West Virginia, lawmakers heard from spokespersons from the American Medical Association (AMA), West Virginians for Affordable Health Care (WVAH), IMS Health and the National Physicians Alliance regarding the practice of data mining.

Data mining is a process in which medicines prescribed by physicians end up in the hands of drug sales representatives. Essentially, a doctor writes a prescription, which then is filled at a retail pharmacy. Pharmacy chains collect the data entered by their outlets and store it in a central location. Data also comes from other sources, such as hospitals.

Data mining companies buy the data, with patients' names encrypted, from pharmacies and other sources, including the AMA's Physicians' Masterfile. The Masterfile is a data-

base that enables the companies to match prescriptions to individual doctors by name. Drug companies purchase the prescribing information and use them for marketing as well as other purposes.

While drug companies account for the majority of the sales, other purchasers include federal health officials, academic researchers, biotechnology companies and medical device companies.

While drug sales representatives approach physicians with the information and the intent to persuade them to purchase a particular brand, the AMA allows physicians to "opt out" under a program in which their identifying information is still made available to drug companies but not to drug sales representatives.

According to the AMA spokesman addressing the legislative committee, the "opt out" program is heavily promoted to doctors in the state. Material provided to the committee indicated the AMA developed the Prescribing Data Restriction Program (PDRP) which gives "physicians the option to decide for themselves whether they would like to keep their prescribing information from pharmaceutical representatives. To date, almost 15,000 doctors have chosen to use this easy, online tool to opt out (70 have chosen to do so in WV)."

In his presentation, the WVAH spokesman said as of October 2007 the PEIA Finance Board determined that Express Scripts was not to release PEIA data. The opt out was perceived to protect physicians from sales appeals. Some of the appeals are coupled with gifts, which the spokesman believes should be limited. He noted collecting data could continue for purposes of studying chronic care, best practices, quality initiatives and common procedures but the sale of information to sales representatives would not lower drug costs.

The IMS, one of the nation's leading healthcare information organizations (HIO), spokesperson told lawmakers removing the data would not lower costs since marketers would continue to reach the public through advertising. He also provided the committee with information which read "prescribing information is used not only by pharmaceutical, biotechnology and medical device companies, but also, providers, government agencies (US Food & Drug Administration, the Department of Defense, the Drug Enforcement Administration, the Centers for Disease Control and Prevention), academia and researchers to monitor and manage the safety of medications, implement drug recalls, rapidly communicate information to doctors about innovative new treatments and conduct public health studies."

The spokesman said IMS has been in business for 54 years



and wished to seek a collaborative relationship with the state. He said the flow of merchandise has been under the direction of a survey of doctors whose thought processes have been adhered to carefully. He also said any legislation to restrict information may have unintended consequences and may open constitutional issues

Also appearing before lawmakers was the spokesperson for the National Physicians' Alliance. Small in numbers (15,000) compared to the AMA membership (270,000), the alliance opposes receiving gifts or money from sales representatives. The group's data noted that in 2004, the pharmaceutical companies spent \$27 billion on marketing with 85% directed toward doctors nationwide. The group "supports a legislative ban on the sale of physician prescribing data for commercial and marketing purposes", according to material provided by the organization.

Lawmakers continue to review this contentious issue with some believing restriction of data mining will have adverse affects on research and others believing the cost of drugs can be restricted under certain conditions.

**Parks, Recreation & Natural Resources Subcommittee**

**Hunter Related Accidents**

During 2007, 31 hunter related accidents occurred throughout the state, a Department of Natural Resource's (DNR) Law Enforcement spokesman told lawmakers. He appeared before the committee to provide an update on programs designed to reduce the accidents.

Nine hunters fell from tree stands, six falls were fatal; seven hunters were mistaken for game, none fatal; five were self-inflicted, one fatality; two slipped and fell, none fatal; three had heart attacks, two fatal; another suspected of having a heart attack, not fatal; one cut himself with a knife, non-fatal; one was shot while another was unloading a firearm, fatal; one stood up in the line of fire, non-fatal; and, one was hurt by an equipment malfunction, non-fatal.

The DNR maintains hunting statistics so it can design its safety courses appropriately. Because of the number of falls from tree stands, training courses stress the use of safety straps when climbing into and out of the stands. According to the spokesman, most accidents occur during the ascent and descent of hunters.

Other programs stress targeting, identification of game and proper firearm handling. Training programs attempt also to address health and vitality of hunters, particularly if carrying

game out of the woods. The spokesmen told lawmakers that ATV safety is not listed but is addressed during classes.

Presently, there are 64 classes offered in public schools state-wide. One thousand seven hundred and fifty six students are enrolled with 1,633 reaching certification.

Of the 281 public classes offered, 6,059 people are enrolled with 5,687 reaching certification. Sportsmen and women are looking for certification because of a 1989 law that allows for reciprocal agreements among states.

If a person is born after January 1, 1975, then he or she must be tested to receive a hunting license. To cut down on the time required, some alternative courses are offered on the internet.

Because of the reduction in hunting accidents in recent years, the DNR spokesman told lawmakers the agency is planning on scheduling more classes, recruit more participants and increase the numbers of school classes.

Classes conducted in schools are set up by the county boards of education upon approval of the principals. The DNR noted that oftentimes, physical education and science teachers provide instruction so that the class can be taken during the day to assure bus transportation to and from school for the program's students.

In follow-up questioning, lawmakers inquired as to the use of drugs and alcohol relative to the accidents and were assured by the DNR official that full investigations and autopsy results are collected. However, there is no mandatory testing by law.

Should DNR officers believe there was use of alcohol at the scene, they would act on probable cause and follow procedures as in done in any criminal case.

Responding to alcoholic behavior on the water, the DNR spokesman noted officials will stop a boat if they, again, have probable cause.

In closing statements, the official noted the safety division is down by 13 officers and attributes the problem to low pay and transfers into local police departments.

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

## Select Committee on PEIA , Seniors & Long-term Care

### Long-term Care for Aging Citizens

During its overall study of health care in West Virginia, the Legislature is reviewing developments and proposals regarding long-term care for aging citizens. The Select Committee on PEIA heard from the Director of the WV Geriatric Education Center (WVGEC) during its July meeting.

According to the director, geriatricians are specially trained to work with other members of a health care team to prevent and manage treatment of disease and disability in later life. Geriatricians are not necessarily health care providers.

In revealing statistics, the education center indicated while 80 percent of deaths occur over the age of 65 and that almost all medical schools and 62 percent of pharmacy schools provide exposure, only 20 percent of medical students received education in palliative care and training. Findings also indicate the 39 percent are prepared to address patients' fears and about half are unprepared to address their own.

Forty-one percent of family medicine residents feel unprepared to counsel patients and 43 percent of internal medicine residents feel unprepared. Only 2.7 percent of geriatric medicine fellows feel unprepared to care for dying patients. Geriatricians (GECs) assist in working toward the end of life care.

The WVGEC presentation informed lawmakers that there has to be an "improvement in training of health professionals in geriatrics, curricula in geriatrics should be developed and disseminated, support and training should be provided to medical school faculty, continuing education should be provided to professionals who do provide care to elders, and interdisciplinary clinical training in geriatrics should be made available in nursing homes, senior centers, ambulatory care centers and acute hospitals, including rural examples of such sites."

Additional problems include Title VII funding provided. No funding is included in the federal budget for 2009-2010, according to WVGEC.

Also before the committee were spokespersons from the Director of the Research and Grants Administration of the CAMC Institute. According to the director, collaboration has been established by CAMC and WVU-Charleston division to regionally target improved geriatric education. Endowed by the Arthur B. Hodges and CAMC Foundation, formal training programs are planned. Recruitment programs include geriatric fellowships, geriatric nurse practitioner programs and geriatric pharmacy residencies.

A consortium of private foundations, made up of a broad group of experts, have been working for 15 months to determine the future health status and utilization of training, to establish the best use of the workforce, to retain and recruit GECs and to improve public programs supporting each of these goals. Their findings are included in the Institute of Medicine Report - "Retooling for an Aging America. Building the Health Care Workforce."

Some of their findings in 2006 indicated that 80 percent of the elderly have one or more chronic diseases. Currently, 12 percent of the aging population consist of 26 percent of physician office visits, 35 percent of hospital stays, 34 percent of prescriptions and 38 percent of emergency medical responses.

In addition, according to the study, there is an inadequate workforce to deal with the growing number of aged patients. For instance, in 2005, West Virginia's 65 years and older population was 277,800. One hundred forty three geriatricians were needed but only 45 were certified. The projected numbers for 2030 of 65-year-old citizens is 426,443 calling for a need of 219 certified geriatricians.

Battling negative stereotypes of older adults, low pay, high costs of training and little opportunity for advanced training, the hopes of recruitment of GECs look slim. Retention of direct-care workers is slacking as well since there is a 71 percent turnover of nurse aides, personal and home care aides ear \$8.54 an hour as opposed to the national average of fast food counter attendants who earn \$7.76 an hour. Direct care workers also are more likely to lack health insurance and use food stamps, according to the material provided to lawmakers.

Recommendations were provided to the committee but the report had no indication of how to finance the following:

- all licensure, certification and re-certification requirements should include competence in care of older adults
- state and federal governments should increase training requirements for direct-care workers
- a model for informal caregiver training should be developed
- increase incentives for health care professionals and direct-care workers

In August of 2008, a geriatrics workforce pilot study for Kanawha County funded by the Claude Worthington Benedum Foundation is to be implemented. A statewide survey is to be conducted in 2009. The study will be directed toward employers and workers in the field to receive specific answers to this significant health care issue.



Lawmakers plan to review other states' actions on senior care. They also will investigate what Medicare and Medicaid will support and are interested from input from citizens throughout the state. Certification programs were suggested via local technical and community colleges.

Funding for senior centers also was on the committee's agenda. The executive director of the Cabell County Community Service Organization (CCCSO) told the committee that while senior centers have assisted an aging population for the past 40 years, discretionary funds are becoming more limited. According to the spokesman emergency funding is very important for a center to operate more efficiently. Some funding must be made for vans, gasoline, roofs leaking, etc., according to the director.

## Pensions & Retirement, Joint Standing Committee on

### **New Retirement System for Correctional Officers**

The feasibility of establishing a new retirement system for correctional officers and another for emergency medical services personnel was on the agenda for the Joint Committee on Pensions and Retirement.

Retaining and recruiting correctional officers is a problem for the Division of Corrections, according to the Commissioner. He told lawmakers that if correctional officers presently in the Public Employee Retirement System (PERS) were able to retire earlier than PERS allows, the incentive might lure officers into corrections and keep them on board.

The committee is studying House Concurrent Resolution 52 (HCR 52), which calls for a study on the creation of a new retirement system for correctional officers. The resolution cites stressful and dangerous working conditions and compares state officers with federal "Bureau of Prison officers who complete 20 years of service in a position covered by 'hazardous duty' law enforcement provision are eligible to retire at age 50.." (House Bill 4574 introduced in 2008 provides the plan but was not passed during the session.)

When questioned by lawmakers on where the funding would come from, the commissioner said perhaps the personnel would give a greater contribution and bring in an extra fee schedule. In addition, the Regional Jail Director told lawmakers that the Authority would seek the advice of an actuary in the coming months.

With 1200 uniformed officers, 800 regional jail officers and 200 in juvenile services, the number of individuals to be covered would be, on average, 2,200. Members on the

committee also called for information regarding military service, a percentage tracking and projections of numbers in the future.

Lawmakers also heard from legal counsel for the Public Employees Insurance Agency (PEIA) in a discussion relating to SB 650, introduced during the last legislative session.

The director of the Consolidate Retirement Board answered lawmakers' inquiries regarding repurchases of some PERS service. She indicated that EMS work done on private employer services could not be purchased since rules of repurchasing must be kept in each retirement plan since each plan is different.

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

### **"Pocket Parolees"**

During this month's meeting, the committee was updated on the number of "pocket parolees" by the Corrections Commissioner. A pocket parolee is an individual who has been paroled but is not released due to the lack of a permanent home plan. As of July 23, West Virginia has 127 pocket parolees. Eleven of these parolees have been held more than a year after being paroled. Of the remaining 116 parolees, 18 have been held less than 30 days while the others have been held at least 60 days. To house one parolee costs West Virginia around \$56 a day.

The Corrections Commissioner expects the number of pocket parolees to shrink in the near future due to changes being made in how an individual is paroled.

## Veterans' Issues - Select Committee B

### **Educational Programs for Veterans**

West Virginia presently provides more than 2,600 educational programs for veterans but getting the word out to returning soldiers has become a challenge, according to the Chancellor of the West Virginia's Higher Education Policy Commission (HEPC) who addressed the Veterans committee in July.

The Office of Veterans Education and Training (OVET), under the oversight of HEPC, is charged with ensuring "high quality, well-managed education and training programs for West Virginia veterans, other VA-eligible persons, National Guard members and reservists." While it is estimated that 8,000 and 10,000 West Virginians are eligible for tuition breaks



under the federal GI Bill only half are taking advantage of the opportunity.

OVET's functions call for it to approve programs, visit facilities, provide technical assistance, ensure outreach and liaison activities within the higher education system. It works with the federal Veterans Association to lower the rates of errors and overpayments to the schools, to ensure successful student outcomes and to seek out more veterans to participate in the earned educational benefit plan.

Presently, it offers programs in 45 colleges and universities, 48 non-college degree schools, 76 apprenticeship and on-the-job training programs and one flight school.

According to material provided to the committee, about 4,300 students receive VA educational benefits in West Virginia. The Montgomery GI bill covers 2,500 active duty students, 1,070 guard and reservists and 730 dependents of those veterans who may be deceased or totally disabled.

Amounts of money for educational benefits could be less than listed below depending on the type of program the veteran selects:

Montgomery GI-Bill/Active Duty - \$1,321/mo.  
Montgomery GI-Bill/Selected Reserve - \$31/mo.  
Reserve Education Assistance Program - \$528 to \$1,056 depending on the location  
Dependents Education Assistance/full-time - \$881/mo.  
VA Vocational Rehabilitation - \$521 for a single veteran also including tuition, books and supplies

Under the existing GI Bill, students are bringing in approximately \$36 million annually to the state's higher education institutions. To enhance those dollars, the committee is looking at ways to lure out-of-state students who also could benefit from the GI Bill.

A new GI Bill, the Post-9/11 Veterans Educational Act of 2008 promises to bring sweeping changes. It is in effect for educational training after August 1, 2009. While the existing GI bill allows for on-the-job training and apprenticeships, the new bill will apply to those who have served at least 90 since Sept. 11th. Depending on length of service or disability, benefits can cover up to full tuition at in-state college tuition rate, a monthly housing allowance and fees for books and supplies.

The veterans education office pledged to find better ways to communicate with veterans, to help school officials connect with returning veterans, to better understand their needs and situations, to designate "veterans counselors" on major campuses and to recruit veterans.

Following OVET's presentation lawmakers indicated concern over the numbers of trained personnel who are available to servicemen and women to help with service related trauma. While WVU and MU have full-time and part-time advocates respectively, OVET is seeking advocates in the state's smaller colleges and universities.

Also, notification letters explaining the educational opportunities to veterans should be sent out later than the standard 60-90 days after discharge one lawmaker noted. Soldiers are still acclimating to their homecoming and may discount the idea initially. The time-line for the benefits is 10-years following their discharge.

### Volunteer Fire Departments - Select Committee F

#### **Retention and Recruitment of Volunteer Firefighters**

Continuing its study on the retention and recruitment of volunteer firefighters, lawmakers heard from spokespersons from the Association of Counties and the County Commissioners Association who provided information on volunteers from a county level perspective.

Working from a survey taken by the County Commission Association directed toward county management, the representative told lawmakers responses were not as clear as expected. Because of the limited response time, she will continue to secure further information.

Questions on the survey inquired as to whether a VFD operated under a Fire Board of Commission, if a fire service fee supplemented their revenues, the number of VFDs in their county and if the county provided the departments with financial assistance.

Because the committee is seeking input from all stakeholders, individuals not scheduled on the agenda were granted an open floor.

Providing another option for recruitment and retention was a retired firefighter from Harrison County. He noted that one county in Maryland had a countywide fire region. Prior to being certified as a full-time firefighter, an individual was required to serve as a volunteer for one year. Unsure of the result in recruitment, the spokesperson will continue to follow up.

Also speaking out was the President of the State Firefighters Association who told lawmakers a recruitment and retention roundtable would provide a forum for discussion during the group's annual convention in Charleston. They will look at



the length of service plan, workers compensation premiums and the question of being included in the EMS retirement plan. A suggestion was made that volunteers provide some monthly payment into the plan to be covered.

Also a past president of the State Firefighters Association offered incentives, such as providing baseball tickets or a ski week-end if volunteers serve a certain number of hours. He also suggested changes in civil service laws and creating a certain certification procedure.

State Water Resources,  
Joint Legislative Oversight Commission on

**Coal Industry’s Position of Water Mitigation**

The president of the West Virginia Coal Association talked to the commission about the coal industry’s position on water mitigation. This process is meant to reduce the damage to streams and watersheds caused by mining operations.

The president outlined the types of damage done to water resources during the mining process. Damage is unavoidable, he told the committee, regardless of type of mining being performed. A major reason for this, he said, was that the definition of “stream” for water mitigation purposes is very broad, covering any flow of water, large or small, seasonal or permanent.

Both the state and federal governments handle water mitigation regulations. The Army Corps of Engineers, under the oversight of the U.S. Environmental Protection Agency, administers federal guidelines for water mitigation. At the state level, the state reviews projects authorized by the Corps of Engineers to ensure compliance with water quality standards. The state can then deny these projects, certify them or certify them with mitigation.

Before 2002, the Corp did not require federal mitigation for mining-related permits. Instead, the Corps relied on state mitigation plans. Now, the Corps requires mitigation according to federal guidelines. While these guidelines did not replace the preference for on-site, in-kind replacement of impacted resources, they created opportunities for non-traditional forms of mitigation.

The association president then outlined some concerns the mining industry has about mitigation requirements. He said the state needs to avoid conflicts with the Corps’s mitigation requirements. He said the proscriptive state mitigation approach hampers the industry.

The speaker emphasized that on-site, in-kind mitigation

should remain a priority for the state. However, he noted that it is rare that all mitigation can be accomplished on-site. He said having more options would give the industry more tools in the toolbox for mitigating damage to water resources.

The commission next heard from a representative of the West Virginia Land and Mineral Resource Council. The council, according to the representative, consists of large landowners with mineral rights.

The representative said landowners want to be involved with the mitigation process and share their input with the mining companies. Landowners, communities and coal companies should work together to implement the best form of mitigation for a given situation, she said.

The representative added that on-site mitigation should be the priority, but agreed that this is not always possible. She said the council supports non-traditional mitigation after all on-site possibilities have been exhausted.

Workforce Investment for Economic Development,  
Legislative Oversight Commission on

**WORKFORCE WV Update**

A representative from the Workforce Investment Board reported to the commission on the improvements and successful collaboration among each division of WORKFORCE WV. To date, 496,000 individuals have used services provided by the agency. That number has doubled in the last five years. A total of 180 employers have used these services as well. The most significant improvement has occurred within the fiscal department. The board is now in the process of building more consistency in all branches of the agency.

The Executive Director of WORKFORCE WV also provided the commission with further information on improvements the agency has made including the fiscal clean-up of the \$ 6.5 million deficit or misspending. One step at a time, the deficit is now within \$50,000 of settlement.

WORKFORCE WV has met or exceeded all programmatic standards established by the U.S. Department of Labor. The Unemployment Compensation Division of the agency ranks in the top ten states for federal performance standards. Other successes and improvements of WORKFORCE WV include:

- Consolidation and reorganization of WORKFORCE WV operations to improve efficiencies and reduce cost.
- The development of a budgetary process, which has re-



sulted in a yearly savings of \$300,000.

- Awarded a \$1.6 million grant for Disability Program Navigators
- Received a \$210,000 grant from the Benedum Foundation to initiate a statewide WorkKeys assessment program.
- Initiated efforts in creating a comprehensive database of potential job applicants with other state agencies.
- Beginning process of creating a virtual job fair.

WORKFORCE WV has helped 75 employees from the Eastern Panhandle who were laid-off earlier this year find employment. The agency is also working with those employees recently laid-off at DialAmerica's South Charleston office by providing them with information and services to find a job.

The director informed the commission that business and industry are critical points that need to be worked on within the agency and their number one concern remains services. ▲



### 2008 Interim Committee Meetings

- August 24 - 26
- September 7 - 9 (Bridgeport)
- October 12 - 14
- November 16 - 18
- December 7 - 9
- January 11 - 13, 2009
- February 8 - 10, 2009

*All dates are subject to change.*

### 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 1993-2008 Regular and Special Sessions, 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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