

# Interim Highlights

## Agriculture & Agri-Business

### WV Wildlife Services (Nov.)

The West Virginia Wildlife Services Director discussed USDA programs with the committee during November's interim meeting.

Some of the major assistance programs WV Wildlife Services provides are:

- Protecting livestock from coyote and vulture depredation
- Protecting public health from wildlife borne diseases
- Protecting public health, livestock, and wildlife from raccoon strain rabies.

The Director told the committee that 20 counties have received assistance through Wildlife Services and they hope to serve all 55 counties as more funding becomes available. Primarily, funding is through the Department of Agriculture.

In the past year and a half, WV Wildlife Services has provided technical assistance to 1,000 farmers and producers. This assistance includes information, advice, equipment, and materials that help people resolve wildlife conflicts on their own.

Wildlife Services, according to the Director, provides direct assistance to help those who have complex wildlife problems that cannot be safely resolved by others.

The Director told the committee that Wildlife Services has done a lot of outreach this year such as trapping and removing predators, which he said, is very important in order for livestock to thrive.

Since Wildlife Services creation in 1996, livestock losses by predators have been reduced by 90 percent, the Director said. In one year, these programs have saved \$600,000 in the sheep industry alone.

### Interim Meeting Schedule & Agendas

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



Judiciary Subcommittee C interim meeting - December 7, 2008.

photo: Martin Valent

The Director told the committee that there are emerging issues that Wildlife Services are focusing on including the continuous loss of calves to predation and other unknown causes.

One suggestion to prevent predation is the use of guard animals such as a dog, donkey, or a llama. The Director stressed to the committee that guard animals are useful but must be trained.

The number one predator Wildlife Services is concentrating on is the coyote. Due to lack of research, it is unclear as to how many coyotes inhabit the state. The Director told the committee that a Research Coyote Movement study is in the works. This study will track the movements of a coyote, which will help Wildlife Services, DNR, and others understand them better.

The Director told the committee of his concerns with current "bounty hunters" killing coyotes throughout the state and also giving out a \$25 reward for each one killed. The bounty hunters have claimed that they could rid West Virginia of all coyotes.

Despite their predator status, the director did add it's been proven that some coyotes are beneficial to livestock. When a dominant male and female who have shown not to prey on livestock are together, they keep problematic coyotes away.



A rising predator causing problems for farmers is the Black Vulture, the Director said. Black Vultures have always been a rare sighting in the state but the number is now growing. These birds feed on both dead and newborn animals including lambs and calves. The Director told the committee that if a cow that has just had a calf sees the vultures, she would leave her calf unprotected.

Further information on Wildlife Services can be found at: [www.aphis.usda.gov/wildlife\\_damage](http://www.aphis.usda.gov/wildlife_damage).

**Repealing Terminated Programs (Dec.)**

The committee voted to repeal three outdated articles of the West Virginia Code, and sent the three on to the joint committee.

The first repealed article dealt with the regulating vinegars and was codified in 1927 as a result of improper labeling of apple vinegar. The Food and Drug Administration now regulates vinegars. The second article dealt with a provision enacted in 1923 that dealt with regulation of male breeding animals. This regulation is no longer being used. The third article dealt with the tree fruit industry self-improvement act of 1984 that is also outdated and no longer being used.

**Broadband - Select Committee E**

**Broadband Satellite Technology (Nov.)**

The committee heard presentations from three broadband providers regarding the use of satellite technology to provide high-speed broadband internet access to areas that can't currently receive it in West Virginia.

There are currently 226,500 unserved rural households in West Virginia that could make use of broadband service and each of the three companies represented expressed a desire and a commitment to work with state representatives to ensure service to every Mountain State citizen in need.

The Chairman of the Advisory Board for SkyWay USA explained its sky beeper technology that can be self-installed at home. Skyway has the least expensive model and has a coverage range that encompasses the entire state.

The Vice President for sales and marketing of Wild Blue

Communications explained how the companies high speed, two-way signal was great for the dial up customer that can't get DSL or cable internet. With Wild Blue, customers lease their equipment and pay a one-time \$149.99 installation fee. Professional installation is required. Wild Blue currently has 4,000 West Virginia customers with an 85 percent customer satisfaction rating.

The Business Development Executive of rural broadband for Hughes explained the company's commitment in providing satellite broadband to every home and business in West Virginia. While they currently have limited ties to the state, Hughes is being proactive to reach out to homes and businesses in West Virginia. Their direct dish-to-dish system allows them to reach the once unreachable customer.

**Enhancing Public Safety Communications (Dec.)**

Lawmakers met during the December interim meetings to hear from the Director of West Virginia's Division of Homeland Security and Emergency Management and from the WV State Interoperable Coordinator to receive input on the state's coordinated communications system.

The West Virginia Interoperable Radio Project (WV IRP) is a P-25 Digital UHF Trunked Radio System. Better put, the project's directive is a collaborative effort for sharing microwave communications being made by multi-agencies, local entities and the federal government to develop an infrastructure that meets the needs of all public safety agencies. The directive calls for cooperation and support of technical networking without interfering with individual agencies' need for autonomy within their own systems.

Primarily used by the State Police, the Department of Health and Human Resources (DHHR), the Department of Transportation (DOT), the National Guard, the WV Division of Homeland Security and Emergency (WVDHSEM) along with many other state and local partners, the project is designed to enhance public safety communications in West Virginia. Working together, the groups can draw down funding from a variety of available federal, state or local resources.

The IRP is administered by a steering committee that advises the Governor on statewide priorities related to the system. An interoperable working group (IWG) provides day-to-day governance of the IRP by continuing to review and update policies and technologies. This group consists



of a number of individuals from emergency service agencies, both state and local.

According to the director and coordinator, WV is phasing in several areas in which to build additional towers to cover microwave transmissions. The state's topography has proven to be a hurdle for the group.

A WV Tower Assistance Fund was established in 2006 and dollars distributed for tower use is under the authority of the Public Service Commission (PSC). Further expansion is being done through a variety of funding sources, i.e. a \$20 million legislative appropriation and a Public Service Inter-operative Communications Grant worth \$8.4 million. Fees taken from 911 services also add approximately \$83,333 a month.

Broadband services continue to be reviewed and vendors are submitting applications, the directors told the committee.

When asked if additional dollars were needed for the Tower Assistance Fund, the directors indicated an additional \$30 million would move the tower construction project forward at a faster rate.

On the federal level, a release provided to lawmakers from the Communications Workers of America (CWA) called for the incoming Obama administration to include broadband policies as part of the oft-discussed economic stimulus package. The group's specific requests called for "funding the federal Broadband Data Improvement Act...; to have Congress adopt specific tax incentives, loans and direct grants to stimulate investment in underserved areas...; and, to fund specific programs to stimulate broadband adoption by improving digital literacy."

Children, Juveniles & Other Issues, Select Committee A

**Social Worker Safety Bill (Nov.)**

House counsel briefed the committee on proposed legislation that would expand the applicability of penalties for assault and/or battery of a state worker while the worker is providing government services.

Lawmakers were adamant about ironing out the specific people this legislation would afford extra protection to as well better defining what constituted government services.

They want this legislation to expand to all employees dealing with the public who have the potential to be assaulted. Some lawmakers believe that expansion will be difficult given the fact that every government worker dealing with the public could potentially be a victim of random assault.

Lawmakers were in agreement that this legislation should be limited to those government workers in contact with the public, thereby excluding those that might get in a physical fight with a coworker. The intent is to make the penalties harsher for offenders.

Counsel pointed out the need to refine certain aspects of the bill, including whether or not ambulance service workers for volunteer firefighters would be covered seeing as how they are contracted by the state.

Lawmakers questioned whether social workers should be given this extra protection and the stiffness of the penalties. Counsel reiterated that the penalties under this proposed legislation are much more severe than the penalties for assaulting a non-government employee. The chair of the committee suggested further re-wording of the bill to iron out all of the many questions posed by lawmakers in this meeting.

**Social Worker Safety Bill (Dec.)**

During this month's meeting, counsel presented proposed legislation to the committee that would expand the applicability of penalties for assault or battery of a state worker while the worker is providing governmental services.

The current West Virginia Code mentions each type of worker who is protected from malicious assault and battery while on the job. Under the proposed legislation, broader terms would be used in order to guarantee that all health care and state workers are protected.

Any individual who commits malicious assault on any state or health care workers would be guilty of a felony that carries a sentence of three to 15 years under the proposed legislation.

The Committee moved the bill be introduced during next year's regular session.



Economic Development, Joint Commission on

Education, Joint Standing Committee on

**Department of Commerce (Nov.)**

Members of the commission heard a continuation from October from the Department of Commerce regarding a summary of economic achievements since 2005. Reiterating the previous meeting, the speaker repeated that since 2005, more than \$8.3 billion has been invested in state businesses including more than \$56 million in loans. These investments have resulted in a \$106 million surplus for the WV Department of Commerce and a net increase of an estimated 22,800 jobs.

The speaker responded to questions regarding the proposed coal to liquid plant that had been planned in the Northern Panhandle but fell through when one of the principals decided to invest in a project in China instead. The speaker told the committee that no money in tax incentives that were promised had been lost since for the incentives to be realized, the company had to invest an equal amount of money into the project.

The committee asked to be updated on any further projects such as this and for the Department of Commerce to make themselves available to the Commission for future meetings.

**Tourism Opportunities (Dec.)**

A representative from the Division of Tourism presented the commission with information regarding tourism opportunities in less developed counties.

One such area mentioned is the upcoming national sesquicentennial celebration marking the Civil War. The year 2011 will mark the 150th anniversary of the start of the Civil War. That will likely start a pilgrimage of history buffs and tourists to battlefields and other significant sites. West Virginia, having been created during that conflict, is considered a child of the Civil War and has many historical sites to consider and promote with the intention of drawing visitors to areas of the state with historical ties to the war.

The representative stated that the state has already enlisted Civil War Trails Inc. to help build a network of interpretive signs at key sites. More than 2,000 driving maps are downloaded from the company's Web site every week.

**Luke Lee Listening, Language and Learning Lab (Dec)**

The joint committee heard a presentation from the founder of the Luke Lee Listening, Language and Learning Lab. Located in Huntington, W.Va., the lab was founded in 2006 as the state's first auditory oral program for deaf children.

Ninety percent of children born hearing impaired are born to full hearing parents. The parents have a choice to make. They can raise their kids to communicate manually, using sign language, totally, which involves signing and speaking, or auditory oral which enhances listening skills and intelligent speech.

The auditory oral method takes the child out of isolation in how they communicate and allows them to flourish in a community and social setting. The process starts with a cochlear implant and an advanced hearing aid. The aids don't make the sounds louder; rather they stimulate the cochlear, which allows the child to hear normally. Once the children are able to hear they can then speak normally. The instructors at Luke Lee try to get children to imitate sounds. The instructors must work with children of different hearing levels, learning abilities and speaking abilities.

The process starts with a parent-infant program, which prepares the parent to care for their child's special needs and educates them about the cochlear implant and how it can be used to stimulate their child's hearing even if they are completely deaf. These implants have been a true breakthrough in the education of deaf children.

The program then moves to an intensive preschool classroom where these students must be taught differently than normal preschoolers. Unlike other students, deaf children can't pick things up just because they hear them. They must be taught directly.

The program also works to assist in mainstreaming these students into normal schools after they leave Luke Lee. As the only program of its kind in West Virginia, Luke Lee is a state resource for oral and deaf educators as well as teachers in rural areas. They provide this education free of charge to anyone who seeks it.

Every activity in the program has a specific goal tied into speech therapy and every child gets one-on-one speech



therapy daily. The program has only one full-time teacher but is also helped by a group of volunteers, many of whom are affiliated with Marshall University. The State Board of Education Office of Special Programs got Luke Lee started with a grant of just over \$80,000 a year for three years. The program expects to be self-sufficient after that time, and hopes to add two new staff members and one additional teacher.

This program has shown to be very effective in helping deaf students transition to normal schools and succeed when they are there. The goal is to improve both their hearing and speaking skills so that they can hear, communicate, and speak normally. Armed with these skills, there is no ceiling as to what these students can accomplish academically and in their careers.

The program is also very cost-effective. Research has shown that even if the schools paid for each deaf child's cochlear implant, which they don't, the lack of support services needed after the student graduates from Luke Lee would save the school system anywhere from \$30,000-\$200,000 per child, per year.

Following the presentation, the committee was briefed on various subcommittee reports.

## LOCEA

### **CTC Adult Learners Report (Dec.)**

A report regarding the recruitment and retention of adult learners was given to committee members by the Community and Technical College System (CTCS) during this month's interim meeting.

The CTCS, along with the Council of Adult and Experiential Learning (CAEL), produced a survey on how well the ten state community and technical colleges served adults. Using the results of the survey, the CTCS is working to assist each community and technical college in the development of institutional planning in order to increase the enrollment of adult students.

An initiative to promote higher education for adults, "Learn and Earn Program," was included in the report that would make higher education more affordable.

The program would allow students to take courses in a program and be employed through a co-op or apprenticeship program by a sponsoring company. While taking these courses, the student would receive a salary, 50 percent of which would be paid by the state while the other 50 percent would be paid by the employer. The state's share in the program would be approximately \$5 to \$6 million per year. This would allow 400 students to participate in the program at a salary of \$25,000 to \$30,000 per year.

An update on the Workforce Development Initiatives was given to the committee during this month's meeting. The report showed the various industries that are collaborating with community and technical colleges throughout the state.

### **Superintendent Report (Dec.)**

During LOCEA's second meeting of the December Interims, members heard a report given by the State Superintendent of Schools. In his report, the Superintendent focused on three areas: Professional Development, Teacher Shortages and Oversight of School Districts.

The representative stated that West Virginia is still lagging as it relates to Career Professional Development (CPD). Currently the state budgets around \$8 million dollars a year for CPD and the money is being used, specifically in regard to Advanced Placement professional development courses, which is one area he felt the state was doing well. He reiterated the need for the availability of more CPD courses around the state to lessen the burden on individuals and make training more accessible.

In regard to the teacher shortage, specifically in Southern West Virginia, he mentioned the idea of "Grow your own Teachers", whereby schools work to get students interested in the teaching profession at an early age. He stated this might help get students interested in teaching and staying in those areas after they graduate. Another idea he mentioned was collaborative programs between two and four year higher education institutions to offer programs tailored for the teaching profession for students starting in the 11th Grade of High School. This is often referred to as "Middle College".

Finally, the superintendent addressed the area of state control of education systems in several counties in West Virginia and how he is seeing good progress in some while identifying some potential trouble spots in others.



Lincoln and McDowell Counties are two under state control that are progressing and will resume self-control within the next year. McDowell County is going to construct a new school very soon.

On the other end of the spectrum, the Superintendent told the committee that Fayette, Mingo and Randolph Counties are looming trouble spots. Mingo County has the lowest college going rate among all the counties in the state and most of these school districts have what the representative labeled “leadership issues” as well as inadequate facilities. Many of these counties also face consolidation battles in the near future.

Higher Education - Capital Projects & Facilities

**Committee Report for SB 595 (Nov.)**

The committee received recommendations and a committee report on SB 595. The draft was very similar to the rough draft presented at the October meeting with only a few minor wording changes done to the document.

The draft bill is expected to be officially accepted by the committee at the December interim meetings and sent on to the Joint Committee on Government and Finance.

**Final Committee Report on SB 595 (Dec.)**

The committee received the final committee report that was virtually unchanged from the November draft. It was unanimously approved and recommended to the joint committee.

Education Subcommittee A - Public Education

**Improving School Health (Nov.)**

The Executive Director of the Office of Healthy Schools addressed the committee in support of a coordinated school health program. The director emphasized the importance of educating students as to their personal health and empowering them with the support and resources to make lifestyle changes if the need is there. She emphasized the need for children to be in an environment that promotes health and allows them to make healthy lifestyle choices when they are finished with their public education.

The director broke down the proposal for a coordinated school health program into three categories: instruction, services, and environment. The instruction involves physical education classes and would give the children skills to be physically active so that the behavior can become part of the child’s daily routine. The services category involves nutrition standards and trying to support health by allowing the students to make healthy choices. This involves not only providing nutritious food options but also promoting healthy behavior choices that help students deal with stress. The environment the students are in must promote and support the instruction and services categories and must have a specific message.

The staff of the schools must also be wellness role models and must be active with the students as well. The families of the students and the communities must be involved in these programs and emphasize healthy snacks, healthy food choices, and active lifestyles. The Center For Disease Control is behind these programs and recognizes a need for better coordination between service providers, doctors, teachers and community leaders.

A professor from the WVU School of Pediatrics provided support with evidence for why a coordinated school health program is needed in the state while also describing how higher education can support and provide assistance for public education.

The facts given were quite startling. House Bill 2816 mandates BMI measurements in schools and it has been determined that more children are overweight in West Virginia than ever before. In a study in which fifth grade children were screened most extensively, 27 percent were considered morbidly obese and of those, 23 percent were already showing symptoms of the early signs of asthma. Many of these children may develop diabetes and heart disease later in life if something doesn’t change.

The doctor sponsors camp “New You” on the WVU campus. It is a 10-12 day camp for kids ages 9-14 with a BMI over 85 percent. The doctor went over various programs and initiatives at WVU that could be used to promote a coordinated health program in West Virginia public schools. There was a slight decrease in childhood obesity rates last year in the state, a trend the doctor hopes can continue with further implementation of these programs.



**Healthy Lifestyles (Dec.)**

Members of this subcommittee heard an update regarding the Healthy Schools Initiative passed in House Bill 2816 of 2005. This legislation was enacted to promote healthy eating and exercise habits among West Virginia citizens. The bill set forth requirements related to physical education and health education courses offered in public schools.

The representative from the West Virginia Department of Education relayed the time requirements stated in Code as it relates to physical education classes. As an example, nearly 70 percent of elementary schools currently meet the requirements and many of the cases where schools don't meet requirements may be due to inadequate staff and/or facilities. However, schools have the option to petition for alternatives if they cannot meet the lawful requirements.

Also the representative mentioned that the Office of Performance Audits is the oversight agency to make sure these requirements are adhered to and followed. However, the office has no real enforcement powers and can take little to no action against a school not in compliance.

She went on to say that the biggest problems around the state in regard to complying with these requirements are that many schools lack adequate space and facilities in the event the activities must be held indoors. Also, physical education teachers are not being hired in the numbers needed at the Elementary level.

The committee promised to continue to examine ways they can enhance the Healthy Schools Act.

**Education Subcommittee B - Higher Education**

**Governing Boards (Nov.)**

The Chancellor of the Higher Education Policy Commission presented committee members with a Higher Education Governance overview during November's interim meeting.

According to the overview report, Governing Boards in most states originally grew because of state governments' desire for a rational system of postsecondary education governance instead of having multiple lobbying voices from presidents and other institutional advocates. Beginning as early as the 1960s, governing boards have played a major part in defining state priorities for higher education.

The Chancellor added in his report that, even though all governance boards are not identical, they do share a general set of powers and responsibilities including:

- Planning Agency - Provides statewide planning and coordination without the authority to compel learning institutions to follow suit.
- Advisory Coordinating Board - Serves in a review and recommendation capacity with little, if any, statutory authority.
- Regulatory Coordinating Board - Has the power to approve institutional budgets and programs
- Consolidated Governing Board - Serves in a regulatory capacity over issues that range from tenure and promotion to the determination and allocation of institutional budgets.

Today, all 50 states have governing and coordinating boards. West Virginia, along with 15 other states, has a Coordinating Board that has program approval authority.

Most states give the Governor the power to select members of the governing or coordinating boards, however, a public election is held in Michigan in electing members to the state's University of Michigan board.

According to the overview, once the members are selected, or elected, they serve an average of five years. Terms of service range from three years up to 12 years. The number of members chosen varies as well from five all the way to 53.

Some states have established cohort/peer training programs that educate the trustees about the nature of his/her responsibilities and the seriousness with which they should be undertaken.

A report was also given to the committee regarding a proposed emergency finance rule from the Council for Community and Technical College Education. The Council, under the passage of House Bill 3215 from this past regular session, was required to propose the emergency finance rule by Oct 1 of this year and must meet specific criteria such as:

- Provide an adequate level of education and general funding for institutions
- Establish a plan for strategic funding to strengthen support capacity of community and technical college education.
- Serve to maintain institutional assets, such a human and physical resources and deferred maintenance.

## Education Subcommittee C - Public School Finance

### **Funding Options to Raise Teacher Salaries (Nov.)**

During November's meeting, the Vice President of the Center for Business and Economic Research (CBER) at Marshall University presented the committee with a study on possible funding mechanisms to increase teacher and school personnel salaries.

The study compared West Virginia teacher salaries with other occupations requiring similar education and training such as accountants, registered nurses and computer programmers.

When compared to other surrounding states, West Virginia teachers are paid significantly less and the greatest pay disparity is for the more experienced/educated teachers. The median teacher wage in West Virginia, according to the study, is below \$40,000. In comparison, the average wage of an accountant working in the state is a little over \$40,000 and a registered nurse is almost \$50,000.

The study found that West Virginia is a low wage state and teachers as well as other occupations are almost always paid below the national average.

Some methods to increase teacher compensation were also mentioned in the study such as raising the state minimum salary scale used in the Public School Support Program (PSSP). This option would increase the level of funding school districts receive and also make sure that the money would be used solely for teacher salaries.

Another option mentioned would be to enact a statewide excess levy on property. The money collected from the levy would go into a "lock box" for distribution under the PSSP.

The study also included the option of designating a portion of an existing tax in order to raise teacher salaries such as the sales tax, since it is the most stable, sin taxes or utility taxes.

Other options also mentioned include competitive salary differentials, cost of living adjustments, year-round schooling and consolidation of school districts. .

Another study by the CBER that was submitted to the committee focuses on property tax exemptions and school finance, in the past eight years.

The report concluded that non-profit exemptions of property taxes in the state have shown the greatest increase in value compared to other exemptions, increasing 23.6 percent. Government exemptions were shown to have the largest tax loss in the study.

## Equal Pay Commission

### **Equal Pay Appropriation (Nov.)**

During November's interim meeting, the Equal Pay Commission was briefed by the Assistant Director of Employee Communications and Information regarding the proposed distribution of the Equal Pay Appropriation.

The Assistant Director, who first presented the proposed pay increments during October's meeting, told the commission members that the same criteria used last year to determine the pay increments were used again this year.

One career that would receive the largest pay increment is a Social Service Supervisor who currently falls 66 percent below the national pay grade. Other jobs were included depending on how far they fall below the national average.

The Commission's budget for this year was \$250,000. The Chair of the Commission told the other members that in order for the Governor to provide more funding there must be substantial data collected to show how much the extra money is needed. The Women's Commission, along with the Equal Pay Commission, will be looking in to what other states are doing to solve unequal salaries.

After the briefing, the Commission made a motion to adopt and vote for the funds' immediate inclusion in the budget.

### **Equal Pay Activities in other States (Dec.)**

Members of the Commission heard a report from Counsel regarding Equal Pay activities in other states during December's meeting.

According to the Nation Conference on State Legislatures (NCSL), there are very few states that have an Equal Pay Commission. Counsel told the Commission that West Virginia is way ahead of the curve on this issue compared to the rest of the country.



Counsel also looked at equal pay related bills that were introduced in other states last year and found that nobody wanted to deal with them.

The last issue Counsel researched was whether every state had an anti-discrimination law. All states except one, Alabama, have some form of anti-discrimination law but they differ in how they are enforced.

Finance, Joint Standing Committee on

**Hackett Group (Dec.)**

Members of the Joint Finance Committee heard a report from members of The Hackett Group regarding opportunities which exist within the state’s finance cost structure, technology leverage and organizational alignment to save money and streamline performance.

Using their own set of standards and metrics, the Hackett Group has determined that with a strategic statewide plan, unified leadership and an integrated technology plan, West Virginia could better improve both the effectiveness and efficiency with how they serve the citizens of the state and carry out the duties of state agencies.

For instance, their data shows that currently, resources are focused on manual processing rather than using more technological means, which has an impact on transaction costs and produces a higher rate of errors. In the area of procurement they recommend business process workshops, a professional development program and a comprehensive procurement transformation plan to increase productivity.

One final area they touched on in their report was human resources. By their data, West Virginia has significantly more full time employees, limited automation and a focus on transactional activities instead of strategic processes than other states in their peer group.

Finance Subcommittee B

**Communications Industry Tax Structure (Dec.)**

If a West Virginian makes a retail purchase of \$50, a six percent sales tax of \$3 is imposed. If that same person is buying communication services such as landline, wireless, cable

video or broadband Internet access, then sales taxes can be highly varied depending on services and the jurisdiction of the customer. As such, the Joint Standing Committee on Finance’s Subcommittee B is studying ways to simplify the tax structure for communications.

Using the 2007 Heartland Study, which takes a national look at the impact of communication taxes on consumers versus general retail purchases, and reviewing the current telecommunication tax structure in West Virginia, suggestions for telecommunications tax reform were received by the finance committee by the state Tax Department and Verizon.

The Heartland Study looked at 59 cities across the U.S. and found much higher tax on communications services as compared to the average sales tax of 6.61% on general retail purchases. Average communications rates were: 16.87 percent for wireline; 11.78 percent for wireless; 11.69 percent for cable video; and, 0.71 percent for broadband Internet access.

In West Virginia, taxes on telecom service could include: state sales tax; local excise tax of up to 2%; state 911 fee of \$3 on wireless or a local 911 fee on wireline that can be as high as \$4; and, a TRS fee of 10 cents.

The spokespersons called for a review of the Virginia Communication Tax Reform package to determine changes in the state system that would provide for simplicity on the bill for providers, fairness in tax equity, neutrality from competitive services and adequate resources.

Prior to 2007, Virginia (like West Virginia) had a telecommunications tax system based on monopoly phone days, the spokespersons told lawmakers. However, “after a multi-year collaborative effort between the state, local governments and industry, which included a comprehensive study of local and state revenues collections based on telecommunications taxes and fees, Virginia passed a model communications tax reform,” lawmakers heard.

A summary of the Virginia reform consisted of a multiple-year effort employed by partnerships between local and state governments and industry. The outcome went from a utility-based tax structure to a sales tax on a broad base of communication services.

The finance committee received recommendations from the spokespersons who asked for 2009 legislation which would require a comprehensive study of the state’s tele-



communications taxation system. The study should include the collection of information from local and state resources regarding taxes and fees.

The joint finance subcommittee also heard from a Marshall University Center for Business and Economic Research regarding feasibility studies regarding provisions in SB 751, which calls for the implementation of a new Special Reclamation Water Trust Fund and a temporary .074 tax per ton on “clean” coal mined.

A response to inquiries regarding bonding and bond pool information in regional states was provided to the committee by the researcher.

A bond pool for reclamation is mandatory in West Virginia, Maryland and Pennsylvania, of which the latter is planning on a phase out. In Kentucky, Virginia and Ohio, the pool is voluntary for qualifying companies. Criteria for qualifying companies consists of a variety of situations such as mining experience, reclamation record, bond release history and financial standing, among others.

The researchers outlined the pros and cons of bonding and explained full-cost bonding, incremental bonding, surety bonding, open area bonding and fiscal security of a bonding pool overall.

In addition, lawmakers sought information on areas where reclamation is in default and asked for what would be appropriate action to reclaim sites, particularly those with acid mine drainage.

The subcommittee will continue its review.

Finance Subcommittee C

**WV Highway Fund System (Dec.)**

During December’s meeting, WVU’s Bureau of Business and Economic Research (BBER) addressed the committee on a 2004 study regarding the future of West Virginia’s Highway Fund system and the BBER’s efforts to update the study.

According to the 2004 study, crude oil prices were estimated to reach \$30 a barrel by 2010. The Director told the committee that obviously that projection was off since crude oil reached \$70 a barrel in 2007 alone.

Due to the drastic hike in oil prices last year and the first part of this year, the BBER is now projecting that the Highway Fund system will have a deficit for fiscal year 2010 but an act of Congress will delay it a little longer.

Other causes for the loss of highway funds include the decline in vehicle miles consumption and the use of more fuel-efficient vehicles.

The Director told the committee that the BBER will be updating their 2007 report and will be examining other funding options while looking at how other states are responding to the financial crisis. The Director told the committee that they would receive a copy of the report upon its completion.

The committee also heard from the Department of Administration’s Executive Coordinator regarding the status of the “Leave Buy-Back Program.”

Passed during this year’s Second Special Session, the “Leave Buy-Back Program” allowed certain state employees the opportunity to cash in some of their sick and annual leave that they had accumulated.

The Executive Coordinator told the committee that a state employee must have at least 65 days accumulated and must also keep 50 days of leave. To date, \$37,204.70 has been paid and another \$634,561.86 is awaiting payment for 92 state employees.

According to the Executive Coordinator, the reason that all of the money has not been dispersed is because the Department of Administration can only send out money in July and December because of the current procedural rules that are in place. She also told the committee that any state employee who chooses to withdraw from cashing in their leave could do so up until their request is processed.

Forest Management Review Commission

**Forest Study (Nov.)**

The members of the Forest Management Review Commission (FMRC) heard a report from the Division of Forestry briefly outlining a yearly schedule of studies, which by January 2010 is hoped to provide an all-encompassing view of where West Virginia’s massive forests stand.



## Interim Highlights

A month at a time, the Division of Forestry will examine about a dozen topics affecting the woodlands. Forests blanket fully 78 percent of the state – and with 12 million acres, the timber industry makes \$4 billion a year and employs some 30,000 workers.

No such comprehensive study has been performed since 2001 and this one will be done with the help of the U.S. Forest Service, the West Virginia University Division of Forestry and Natural Resources, the Division of Natural Resources, the state Agriculture Department, the Department of Mine Reclamation and others.

By month, the topics DNR will pursue are:

December, the timber inventory; January, taxation of forestland; February, the primary forest industry; March, the secondary forest industry; April, forest ecology; May, threats to the forest; June, reclamation of damaged lands; July, urban forestry; August, regeneration of the state's forests; September, silvicultural guidelines for managing forests; October, forest management and wildlife; November, tree marking guides for hardwoods; and December, strategic plan for the sustainability of forests.

### **State Forest Inventory (Dec)**

The committee heard a presentation by the Director of Forestry. He discussed the state's forest inventory while outlining plans for the future. The director and his staff are coming up with new plans for the industry and preparing new reporting standards which will enable a comprehensive update of the state's forest industry each year.

The director emphasized that the most important job of the professional forester is planning. Foresters often don't use hard, concrete data and as a result, predictions are often incorrect. This is being addressed in West Virginia as the need to make accurate forestry predictions 50 to 100 years into the future becomes more important.

The director explained that forestry is about conservation and it is constantly changing. Methods can't be kept the same forever and it is particularly challenging in a state that is the second most forested in the nation in terms of percentage of acres.

The forestry inventory of West Virginia was first updated after World War II and has been updated every 10 years or so

since then. The first county-by-county inventory took place in 1989. A sample of 20 percent of that counties' inventory stock is used to collect data.

The director reported that despite the economic downturn, efforts between professional foresters, citizens and government workers has never been better as the industry attempts to come up with better ways to manage forestry. The industry needs more staff to properly harvest forests in some areas.

The data from seven years of fieldwork has been collected and will be in publishable form soon. The report will be broken up into total cubic feet, board feet and species. A percentage of forest that can be harvested will then be given.

The director also addressed a 15-20 percent decline in jobs and activity within the industry in the past year. Data regarding jobs lost from 2005-2008 within the 15th senatorial district was also distributed. This is a working document that shows a trend industry wide. The director hopes to do a similar analysis statewide in the coming years.

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

### **Performance Evaluation Reviews (Nov.)**

As the year comes to a close, joint standing committees are hearing from Government Organization and Operation Subcommittees to determine the status of their interim studies. These two committees are authorized to oversee the performance of state agencies and boards to ensure quality governance and efficiency.

This month, lawmakers received findings on a survey provided to the State Police, Licensing of Certified Professional Midwives, an audit of the WV Development Office, a report on state agency loans and one on the WV Children's Trust Fund.

In summary, the Legislative Performance Evaluation & Research Division (PERD) told lawmakers:

- State Police - personnel survey identifies several issues: inadequate law enforcement coverage; an unofficial contact policy; improper disciplinary actions taken against field troopers; and, improper transfer of field officers. In addition, the WV Concealed Weapon Law should be modified to comply with Federal law and to improve

security permits.

- Midwives - licensing certified professional midwives as proposed would not significantly enhance the health and welfare of the public compared to its costs.
- WV Development Office - the development office's Community Division provides adequate oversight of its grant programs.
- State Government Agency Loans - a listing of existing loans
- WV Children's Trust Fund - the WV Children's Trust Fund has a high percentage of administrative costs compared to annual collections.

A complete review of the performance audits conducted by PERD can be reviewed online at:

<http://www.legis.state.wv.us/Joint/PERD/reports.cfm>.

In addition to the performance reviews, the committee also heard an explanation of proposed legislation that would update the provisions in law regulating the practice of Occupation Therapy. Moved and approved by the joint committee for introduction in the 2009 Session, the bill:

- defines the scope of practice and supervision requirements
- removes the requirement for referral by a physician or other health care practitioner
- clarifies the qualifications and terms of board members
- provides immunity from civil liability for performance of duties in good faith
- specifies the powers and duties of the board
- clarifies persons and practices not affected by the act
- specifies the qualifications for application for licensure
- clarifies persons and practices not affected by the act
- specifies the qualifications for application for licensure
- clarifies the procedure for issuance of a license, limited permits and temporary licenses
- specifies the procedure for license renewal
- provides for reinstatement of lapsed licenses
- specifies the procedure for investigating complaints, providing due process and grounds for disciplinary action
- clarifies the procedures for hearing and right of appeal
- clarifies the rule making authority of the board
- provides for judicial review of board decisions and appeal to the Supreme Court
- clarifies the grounds for criminal proceedings
- specifies that a single violation of the act is sufficient to justify a penalty

- makes technical clean-ups

### **Performance Evaluation Reviews (December)**

During its December meeting, the joint government organization and operations committees continue receiving performance evaluations.

The meeting included further reports to the full joint committees, which included a performance review of the Division of Personnel and the Parkways, Economic Development and Tourism Authority.

The summarized legislative performance audit of the Division of Personnel noted the state lacks a comprehensive workforce plan.

The audit overview of the WV Parkways Economic Development and Tourism Authority revealed the retail activity at Parkways Authority Tourist Information Centers is an improper use of toll revenue and foregoes the opportunity to maximize revenues. The report also suggested having the Division of Tourism assume staffing responsibilities of the Tourist Information Centers along the WV Turnpike.

These findings, while disputed by some, have been noted and will be reviewed by the affected agencies, according to division spokespersons.

As well as hearing findings of the performance audits, lawmakers also were provided with an abstract of a proposed bill that may be considered during the 2009 Session. The proposal relates to the Board of Veterinary medicine, veterinary technicians and animal euthanasia technicians.

The proposal notes that if the following provisions are not followed, then it is unlawful to practice veterinary medicine, veterinary technology and animal euthanasia without a license:

- defines terms
- continues the Board of veterinary medicine and specifies the terms of office for board members (9 members - 6 vets, 1 vet tech & 2 citizen members)
- provides standards for the board
- provides scope of practice for veterinarians
- provides requirements for a veterinary technician
- provides requirements for certifications as euthanasia technicians
- provides a training programs for euthanasia technicians



- provides scope of practice for euthanasia technicians

A complete review of the performance audits conducted by the Legislative Performance and Research Division (PERD) can be reviewed online at:  
<http://www.legis.state.wv.us/Joint/PERD/reports.cfm>

**Government Organization - Subcommittee A**

**Green Buildings (Nov.)**

This subcommittee continued its discussion of green building standards.

A representative from West Virginia University told the committee going green could save money and improve productivity, but the time to make buildings environmentally friendly may be running out.

The speaker told the committee that the state must look at the green building concept from two approaches. The first entails an official mandate, or forced participation, and the second views the idea from incentives, such as tax breaks. Research has shown that moving into a green building concept has made workers healthier and, in turn, raised the level of productivity, and lowered insurance costs the speaker stated. Also, research has shown a domino effect when a company or government building goes green, since it uses less energy and pumps fewer pollutants into the atmosphere.

However, the representative mentioned that an exact measurement of the value of green buildings isn't in hand because there aren't lot of buildings in this state that are meeting these standards.

The representative agreed with members of the committee that the quality of management is one aspect that possibly should be examined, but told the committee that with great management in a great building productivity should go up.

The committee asked for further information regarding this issue and promised to continue examining this topic in the future.

**Community Action Agencies (Dec.)**

The committee heard a presentation on Community Action

Agencies and their mission to encourage and sustain self-sufficient communities in West Virginia. These agencies are involved in virtually every phase of public service including: employment, education, emergency services, housing, child development, senior services, and health.

Community Action Agencies have six main goals nationally and in the state of West Virginia. They are to help low income people become more self-sufficient, improve the conditions in which low income people live, give low income people a stake in their own community, make sure services to low income people are achieved, increase capacity to achieve results and strengthen family and support systems for low income people and vulnerable populations.

The four things these agencies do best are leverage funds, collaborate with groups and key stakeholders, advocate and institute programs and direct services. In West Virginia there are 1,534 organizations, 202 of which are faith-based, involved with Community Action Agencies.

This committee is currently discussing HB 4525, which would place the Weatherization Program under the control of the Division of Energy. These agencies are particularly important to weatherization efforts in West Virginia as 56,000 state households with income below 50 percent of the Federal Poverty Level paid 71 percent of their annual income simply for their home energy bills in 2007. As a result 1,300 homes were weatherized by these agencies that year, resulting in \$413 first year energy savings per household.

Currently there are approximately 2,600 West Virginians employed by community action agencies with a total 2007 payroll of just over \$40.5 million.

**Government Organization - Subcommittee B**

**Board of Veterinary Medicine (Dec.)**

During December's meeting, counsel presented the committee with proposed legislation relating to governing the West Virginia Board of Veterinary Medicine.

The legislation would add 4 new sections to the current Code including procedures for board hearings and right of appeal, judicial review of the board, criminal proceedings and penalties, and single act evidence of practice.



The committee moved the bill for further consideration to the Joint Committee.

Government Organization, Subcommittee's B & C (Joint Meeting)

**Professional Regulatory Boards (Nov.)**

Members of these two subcommittees met in November to discuss the structure of professional regulatory boards, specifically the Boards of Occupational Therapy and Veterinary Medicine.

Staff counsel detailed draft proposed bills relating to the restructuring of these Boards.

The draft bill for veterinary medicine would declare it unlawful to practice veterinary medicine, technology and animal euthanasia without a license. The draft also defines key terms used in the practice of veterinary medicine, among other provisions. Committee members were asked to review this bill and present any changes to the committee counsel for the next meeting.

The draft bill for occupational therapy updates provisions currently in practice and defines the scope of practice and supervision. The draft also clarifies the qualifications and terms of board members and provides immunity from civil liability for performance of duties good faith. The draft would also provide for judicial review of board decisions and appeals to the Supreme Court of Appeals, among other provisions. This bill also was presented to the committee so members could review and offer any suggestions and amendments for the next interim meeting.

Government Organization - Subcommittee D

**Gaming Division (Nov.)**

Counsel explained a draft bill to the committee regarding the creation of a new Gaming Division within the Department of Revenue during November's meeting.

The bill would abolish the Racing, Athletic, and Lottery Commissions and transfer their powers and duties, as well as the regulation of charitable bingo and raffle, to a new Gaming Division.

**Accredited Horses (Dec.)**

This subcommittee continued the discussion regarding the possible restructuring of the West Virginia Racing Commission, Athletic Commission and Lottery into one single entity.

This month the committee focused on draft legislation that would require that certain thoroughbred racing horses be registered with the Racing Commission.

The bill amend and reenacts certain sections of the State Code in regard to adding definitions as it relates to accredited horses and sires. The bill also seeks to make clear that eligible horses for money from the Thoroughbred Development Fund in the West Virginia Futurity stakes race would be available to stallions registered with the West Virginia Racing Commission in conjunction with the West Virginia Thoroughbred Breeders Association, which was the only group previously listed in code, under certain time requirements.

Government Organization Subcommittee C LOCHHRA (Joint Meeting)

**WV Partnership to Promote Community Well-Being (Dec.)**

"In West Virginia during 2008, we could spend as high as 19 cents of every state budget dollar on substance abuse," the WV Partnership to Promote Community Well-Being chairman told lawmakers.

Appearing with the spokesman was the director of the West Virginia Prevention Resource Center who shared the podium to inform lawmakers of the work and progress of the West Virginia Partnership to Promote Community Well-Being.

Created by Executive Order in 2004, the Partnership is the state's substance abuse prevention and early intervention planning body. It has been carrying out WV's implementation of a federal Strategic Prevention Framework grant for the past five years.

The two provided information about the "nature, extent and cost of substance abuse" in the state, highlighted the work and progress of the West Virginia Partnership to Promote Community Well-Being, and offered specific recommendations for legislative action needed to meet the challenges of stemming substance abuse.



## Interim Highlights

According to material provided to the committee:

- the annual cost of hospital care for substance abuse in WV is approximately \$45 million (\$2.5 million for emergency room visits alone)
- prescription drug costs related to treating substance abuse in WV totals nearly \$24 million
- in 2005, the FBI reports there were about 61,000 arrests in WV connected to alcohol and drugs costing state, county and municipal budgets about \$112 million a year
- half of the cost of criminal, magistrate and probation cases are attributable to substance abuse costing around \$11.5 million per year
- the estimated financial impact of substance abuse on the Regional Jail Authority, the Division of Corrections, and the Division of Juvenile Services is over \$110 per year

Other startling data indicated that productivity costs for individuals incarcerated would run around \$107 million; and in 2006, alcohol related highway crashes in the state resulted in a financial loss estimated at \$720 million a year.

“All told,” the data indicated, “substance abuse costs West Virginia more than \$1.8 billion per year.” This figure was obtained by hidden effects in departments and activities that typically do not have responsibility for substance abuse, e.g. law enforcement, corrections, courts, health care, child welfare, and schools, among many others.

The WV Partnership has designated four broad strategies for addressing substance abuse in WV: prevention, early intervention, treatment and recovery, the spokesmen told lawmakers. Currently, the state invests its own funds in only one strategy...treatment. The Partnership’s plan sees prevention, early intervention and recovery as a complement to the state’s treatment efforts.

It has taken its direction from a report recently adopted by the National Conference of State Legislatures entitled “Blueprint for the States: Policies to Improve the Ways States Organize and Deliver Alcohol and Drug Prevention and Treatment.” The report reads, “Every state should have a strategy that encompasses all the agencies affected by alcohol and drug problems. Responsibility for state and federal prevention and treatment funds should be held by an entity that reports directly to the governor and has direct access to the state legislature.”

As such, while the Partnership presently does not see itself as having to be established in Code at this time, it does

recommend the Legislature recognize the West Virginia Partnership to Promote Community Well-Being as the state’s designated substance abuse prevention, intervention, and recovery planning body. It suggests the body be maintained with enough staff and authority to provide needed leadership and direction.

It recommends the governor and Legislature become more involved with the Partnership to develop a statewide strategy.

It recommends the Legislature mandate a data-gathering system to monitor the social and financial burden substance abuse puts upon the state and it asks that the Partnership be the official state repository of the data.

It recommends the Legislature charge the Partnership to conduct a thorough review of legislation that controls alcohol and drug policies and to provide recommendations for updates to laws and regulation that would accompany the review.

It also recommended an investment plan:

- the governor designates the Partnership as the Single State Authority for substance abuse
- the governor puts the 20% prevention set-aside from the Federal Substance Abuse Prevention and Treatment Block Grant under the Partnership’s direction (about \$1.7 million)
- the Legislature invests 3.5% of the direct cost of substance abuse in WV (\$16.5 million annually)”... to bring the total annual allocation to the Partnership to \$18.2 million per year.

Lawmakers commended the Partnership and made further inquiries as to how it could treat people immediately and include family members in the treatment plans; requested a rough estimate on the actual dollar savings; and requested the Partnership to look further into additional federal grants, prison treatment programs, emergency room visits and hospitalizations to determine a funding stream.

### LOCHHRA

#### Perinatal Wellness (Nov.)

The Legislative Oversight Commission on Health and Human Resource Accountability (LOCHHRA) listened to a presenta-



tion by the Chair of West Virginia Perinatal Partnership on perinatal wellness during November’s interim meeting.

The West Virginia Perinatal Partnership is a project of the WV Healthy Kids and Families Coalition and WV Community Voices, funded by the Claude Worthington Benedum Foundation. The foundation has studied and made policy recommendations to improve West Virginia perinatal health.

Before providing the committee with possible policy recommendations for the upcoming regular session, the doctor thanked the members of the Legislature for being instrumental in helping improve important aspects of perinatal care for the state’s mothers and babies.

One of those improvements was the expansion of testing in newborns to all 29 metabolic conditions so potential life threatening condition can now be identified and treated early.

Legislation that makes it clear that a mother breast-feeding her infant is not committing an act of public indecency was another improvement supported by LOCHHRA.

LOCHHRA has also helped provide the Women, Infants and Children (WIC) Food and Nutrition program with \$20,000 during 2007 and 2008 to help in educating hospital and maternity nurses and other health care providers so that they can provide the best support for nursing mothers and increase the number of West Virginia babies who are breast-fed.

This year, the Perinatal Partnership listed concerns that they would like the Legislature to consider and also support taking maternity care to women in rural areas. Many areas throughout West Virginia are many miles away from the nearest hospital. This places an added burden on the mother because of the travel time and extra cost. In order to improve maternity care for women in rural areas, the Chair of the Perinatal Partnership provided two possibilities:

- Make Nurse Midwifery education available to our West Virginia nurses without sending them out of state. This can be done through a joint Master in Nursing and Midwifery Program with a school of nursing currently offering midwifery education
- Make better plans to take maternity care to women in our more rural areas through partnerships between our community health centers and traveling maternity and obstetrical providers.

Another recommendation by the Perinatal Partnership is the promotion of early identification of addicted pregnant women by supporting the Universal Maternal Risk Screening Act. In a one-year period of time, 103 infants were born addicted to some form of substance with a total cost of \$4,306,954.

The Universal Maternal Risk Screening Act was introduced during this year’s regular session but did not pass but the Chair of the Perinatal Partnership hopes it will be re-introduced during next year’s regular session.

The Act would help in the early identification and referral for treatment of mother and child, and would also provide protections from medical providers so that the information obtained is held confidential, and providers would be more likely to have the confidence of the woman needing treatment.

**Behavioral Health Commission Report (Nov)**

The committee received a final report on the Behavioral Health Commission from an associate from The Center for Entrepreneurial Studies and Development, Inc.

The report outlined the Commission’s goals. They plan to develop and implement a model of care that supports the integration of behavioral health and primary care, improves the availability coordination and accessibility of behavioral health services and focuses on prevention and early intervention in communities. Financially they plan to coordinate financing strategies for sustainable services in the future behavioral health system. To accomplish these goals they will cultivate, train and retain highly skilled behavioral health care workers and leaders who are empowered to enjoy a professionally rewarding career within a productive and supportive work environment.

The commission then listed 12 final recommendations and critical findings that will now be sent on to the joint committee.

**Health (CON) - Select Committee D**

**Certificate of Need (Dec.)**

In response to inquiries from Select Committee D in recent months, the director of the West Virginia Health Care Authority (WVHCA) delivered summaries of 10 years of Certificate of Need (CON) applications and of CON Stakeholder Meetings.



A CON “is a prospective planning process, setting the bar for the initiation of new health care services,” according to material provided to the legislative committee.

Applications to improve health care services are submitted to WVHCA, which determines if projects are needed, financially feasible and consistent with the State Health Plan. It is considered by WVHCA to be only one tool it uses in balancing cost, quality and access to health care in West Virginia.

From 1998 through 2008, the WVHCA received approximately \$3.2 billion worth of applications. Of those projects submitted, \$2.9 billion worth were approved. Of those dollars, only 55.1% was spent on capital projects. The remaining dollars were spent on corporate acquisitions through sales or ownership changes.

The 10-year total of hospital construction and equipment is approximately 16% of FY 2007’s gross patient revenue for WV hospitals. The 10-year total is only slightly (14%) higher than CAMC’s gross patient revenue for one year, the report indicated.

In addition the report noted, “for the past decade, West Virginia has had one of the lowest capital expense ratios in the nation, ranking 46th out of 51 (including Washington D.C.)” When asked if ranking low was a good thing, the WVHCA director said it was a good thing if the goal was to constrain the cost of hospitalization.

Also provided to the committee members were summaries of meetings conducted by stakeholders. These range from individuals representing regional and local hospitals, the WV Hospital Association, the Insurance Commission, Mountain State Blue Cross/Blue Shield, the Bureau for Medical Services, the DHHR and a myriad of other health care professionals who focus on a variety of medical conditions. The health care authority is also working with PEIA.

The WVHCA director told lawmakers that areas of review by CON stakeholders were divided. The health authority contacted as many stakeholders as were possible via email, meetings, conference calls, and acceptance of written comments. It also informed the stakeholders of the meetings through advertising, newsletters, its website and contact with all professional medical associations.

Meetings include discussions of additions, renovations, replacement beds, ambulatory care, behavioral health,

cardiac services, imaging, long term care and other health care services.

As of the December meetings, the health authority believes any CON concerns regarding existing standards. It is waiting to see if there will be changes in statute during the 2009 Session to continue its findings.

#### **Continuation of CON Deliberations (Dec.)**

During its afternoon meeting to continue researching West Virginia’s CON program, the committee heard from the President and CEO of the West Virginia Hospital Association (WVHA). According to the CEO, “one of the very first conclusions that our Task Force (the Association’s) reached after its initial meeting in April was the importance of retaining Certificate of Need in West Virginia.” He indicated the hospital association was unified in its position.

Members of the Association’s Task Force included representatives from small, large and mid-size hospitals, as well as hospitals that border non-CON states. He said of the 25 hospital CEOs, 16 of them were located in counties bordering the states of Kentucky, Maryland, Ohio, Pennsylvania and Virginia. Pennsylvania and Ohio are non-CON states with Ohio only having a CON procedure for long term care services.

He also told lawmakers the vast majority of CON projects are undertaken by hospitals since the private office practice of a physician is not subject to CON review unless they undertake the development of a diagnostic center or an ambulatory surgery center.

While the WVHA submitted a detailed explanation of its recommendations, it also provided a brief and broad overview of its recommendations for legislators to review:

1. Simplify the CON process
2. Address the “border hospital” issue by mitigating unfair competition in health care markets bordering non-CON states
3. Remove barriers to collaboration between providers
4. Assure equity and responsibility for cost, quality, and access for all patients.

In closing his presentation, the CEO told lawmakers he and his group “stand ready to work” on the CON procedure with both the subcommittee and the full Legislature.



According to the director of the Health Care Review Authority who returned to this later meeting of the legislative health subcommittee, all recommendations appear to be workable. All stakeholders will continue to collaborate in the coming months.

**Infrastructure - Select Committee C**

**DOT Revenue Sources & Highway Trust Fund (Nov.)**

The Secretary of the Department of Transportation (DOT) presented an analysis of the various revenue sources for the DOT, an analysis of the motor fuel tax and its revenues, and the status of the federal Highway Trust Fund during November's interim meeting.

The State Road Fund is projected to receive \$638,115 through the excise fuel tax, registration fees, highway litter control and sales tax. The total revenue will vary from year to year during the next five years hitting \$719,577 in 2011, and then dropping back down to \$649,356 by 2014.

According to the Secretary, approximately \$10,721,800 was transferred to the State Road Fund from the Motor Fuel Excise Tax Shortfall Reserve in order to cover August's revenue shortage. The Secretary also stated that all year-to-date revenues are \$889,000 above estimates.

During the month of August, it was feared that the Federal Highway Trust Fund would run out if Congress did not step in and put money in. According to a Washington Post story published in September, "The trust has been hammered because its main source of funding is the gas tax, which has not been increased since the Clinton administration. The high cost of gasoline has resulted in less consumption and, therefore, fewer dollars flowing into the trust fund." Shortly thereafter, Congress voted to take out \$8 billion from the United States Treasury General Fund and placed into the Highway Transportation Fund.

The Secretary also told the committee that the proposed federal Infrastructure Stimulus Bill would be a great asset to the DOH by providing \$120 million to West Virginia alone if passed.

**Transportation Infrastructure Bill (Dec.)**

The committee heard discussion from staff counsel on the

West Virginia Transportation Infrastructure Bill. The purpose of the bill is to utilize federal highway funds to give loans to government units for transportation infrastructure projects that are not in the state road system.

Many rural areas would benefit from this bill but it does not solely work to the advantage of those outlying areas. A bridge to be built over the Elk River in Charleston could be constructed under this bill. All transportation infrastructure projects would be eligible under this bill including port and port authority, airport and waterways.

A qualified eligible project under this bill would be selected by the Department of Transportation after it was approved for its loan. The bill is strictly for counties and municipalities that would not be eligible for funds under the state system. Many lawmakers representing rural districts said their areas could benefit from such a bill but expressed concern over how the counties would raise the money to pay back the loan given the current economic times. The most likely way for these eligible counties to raise money would be through a levy or bonding.

**Judiciary Subcommittee A**

**Severance Tax Effects on Natural Gas & Oil Industry (Nov.)**

The State Tax Commissioner addressed HB 4440 with regard to the severance tax on the natural gas and oil industry. He expressed his commitment to continue to address the many issues that have come up in the bill and his willingness to work with industry representatives to make sure the tax burden is not raised on the industry.

A representative speaking on behalf of the oil and gas industry thought the bill would be difficult to institute as presented and he is reluctant to support the bill unless more tax exemptions are added. The current law allows for tax exemptions for smaller, less producing gas wells but he noted that smaller wells are not reporting severance taxes.

The industry representative prefers the law as it is, saying as prices go up there is more severance tax and as they go down they pay less tax. Those wells producing more pay more taxes and have more of the burden. He introduced data in support of policy similar to Pennsylvania's where there is no severance tax on the industry.

### **Coal Severance Tax (Dec.)**

The Director for the Office of Fiscal Policy presented an overview of the methodology of disbursements of coal severance taxes to the state and also to counties during this month's meeting.

The Severance Gross Receipt Tax imposed on coal in West Virginia is 5 percent with 4.65 percent going to the state and the other .35 percent to counties, the Director said.

According to the Director, 75 percent of the proceeds from the Local Coal Severance Tax go to the coal producing counties. The amount each county receives is based upon the share of total statewide production and the location of the coal. The other 25 percent of the proceeds from the tax are distributed to all other counties and cities.

At the end of this year's distribution period, \$22.1 million was distributed to West Virginia's 30 coal producing counties.

Revenue from the Local Coal Severance Tax has risen dramatically since 2006 and is projected to reach almost \$40 million next year. For fiscal year 2008, the Coal Severance Tax expenditures were:

- General Revenue— \$258.3 million
- Workers' Comp Debt— \$112.4 million
- Local Finance— \$27.4 million
- Infrastructure— \$21.3 million

The General Revenue Fund Appropriations from the Coal Tax are as follows:

- 47% to K-12 Education
- 22% to DHHR-CHIP
- 12% to PS/Judicial
- 12% to other education
- 2% to commerce
- 5% to other

## Judiciary Subcommittee B

### **Election Day Registration (Nov.)**

The director of the Democracy Program spoke to the committee about the possibility of instituting Election Day registration in West Virginia, outlining the many positive results Election Day registration has had in the nine other states that use this resource.

The director described election day registration as devoid of fraud and noted that there is ample evidence to suggest that it encourages more Americans to vote that otherwise wouldn't, particularly among younger voters. The director said that with Election Day registration you could typically expect a five to six percent increase in turnout and that once people vote for the first time they are 80 percent more likely to vote again.

As for concerns about voter fraud, the director said a mere 40 instances of illegal registration were proven out of 200 million votes cast, providing evidence that same day registration is almost completely unrelated to voter fraud. As opposed to mail-in registration forms, a voter trying to manipulate the system finds it a lot more difficult to be deceitful when standing face-to-face with a clerk at the courthouse.

Even with so many obvious positives outlined, county clerks in West Virginia vehemently oppose the idea, but might be receptive to a compromise of allowing registration in the early voting period, as is done in North Carolina. The Wood County clerk spoke on behalf of the state's clerks, outlining a number of reasons why clerks dislike the idea, including confusion at the polls on election day, more work on election day, and a struggle to find additional poll workers, specifically in areas that are already understaffed as it is.

Many lawmakers are in favor of the proposal and some were struck by the level to which the clerks were opposed to it.

### **Joint Parenting Study (Dec.)**

The committee heard a series of presentations from family law attorneys, family court judges, social workers, and a representative from Men and Women Against Discrimination.

The committee heard a passionate and often heated debate on joint parenting. The basis of the discussion was to decide if a child is better off with one parent as the primary care giver, with the other parent getting visitation every other weekend and every other holiday as is done under the current system, or if it is better to have equal time parenting.

The chair of the West Virginia State Bar Family Law Committee argued that since stability is the number one factor for a child following divorce, that the child is better off with one parent as the primary care giver. His contention was that things should stay as close to normal as possible for a child following divorce and that having one parent handling the



majority of the duties would be the best way to accomplish this. The chairman disagreed however with the widely used visitation model. He believes that once custody is determined visitation should not default to every other weekend and every other federal holiday. Instead, he believes there should be some analysis done as to what is best for the child with regard to visitation.

The representative for Men and Women Against Discrimination believes the whole model for custody based on stability and what has worked before is flawed. He contends custody based on past parenting does not work because when divorce occurs the entire nature of the relationship changes. Therefore, why presume what has worked in the past would work in the new situation?

He also believes that protective orders of domestic violence are being abused as leverage for custody. When one is accused of domestic violence, whether convicted or not, the very suspicion makes it very hard for that parent to obtain custody. Making it worse he believes is the fact that most magistrates generally error on the side of caution and grant these protective orders. To conclude, the representative said that rating parents in importance from primary to secondary is not a good framework for legislation.

One family court judge that spoke requested strongly that no changes to the current system be made to the current system, stating that the ratio of time spent with children before divorce should be the guiding principle in custody disputes. The judge believes the most important need of a child following divorce is stability and if a child is constantly moving back and forth between parents, it is impossible to meet that need. The judge also believes that shared parenting works best when the parents get together and set up the time spent rather than artificial time allocation set up by the courts.

The Executive Director of the National Association of Social Workers believes shared parenting with equal time protects the interest of the children because it provides for meaningful contact with the child from both parents. The executive director believes it also provides stability before, during and after divorce by allowing parents to come up with, in a joint fashion, the best solution for them and their kids. According to the director, any court-appointed system, be it the current system or the joint parenting model would take away from the parents' ability to come up with a reasonable solution themselves.

## Judiciary Subcommittee C

### Judicial Elections (Dec.)

During December's interim meeting, Judiciary Subcommittee C heard from speakers regarding judicial elections in West Virginia.

In recent years, West Virginia's judicial system has come under scrutiny over concerns that judges are being bought.

A recently elected Circuit Court Judge told committee members that the current process of selecting judges is not working. "West Virginia has basically become the poster boy for unfair courts," the judge said. He also told the committee that a recent poll by the U.S. Chamber of Commerce ranks West Virginia 50th in the nations in fairness and in regulatory environment.

Instead, he offered up the possibility of West Virginia using merit selection of judges. This process would give a small panel, which would be elected by the voters, the authority to place judges on the bench. Every four years, there would be a retention vote to determine if the judge was doing a good job. If the judge were proven to not be doing an adequate job, the Governor would have the authority to choose his/her replacement.

According to the judge, this selection process would not remove all of the politics in the selection of judges but it would take out the millions of dollars being spent on the current judicial campaigns.

The President of the West Virginia Association for Justice and who is also a member of the West Virginia Bar Association addressed the committee on West Virginia's judicial elections.

Like the Judge who spoke before him, the President of the WV Association for Justice feels that the role of money, especially from third party organizations, and its impacts upon the electoral process is a serious problem in judicial elections. Figures released from this year's Supreme Court campaigns totaled \$3.1 million, which does not include other party and organization funding.

The President of the Association for Justice, however, believes that the merit selection option may not be the best way to choose judges. A poll recently released showed that



75 percent of the population believes that the public should elect judges. Merit selection would limit the voters' ability to do this.

Parks, Recreation & Natural Resources Subcommittee

**Deer Alert Systems (Dec.)**

Lawmakers heard a report from a representative of the Division of Natural Resources regarding high-tech devices installed to warn motorists when deer and other large animals are nearing the highway. He stated that he gathered data on 22 such systems in Europe and a dozen either in trial or already tested in North America, mostly in western states. His study of these systems showed that they were experimental in nature and expensive, and their use in other states needs continued examination.

The representative explained a variety of devices that use either a broken beam approach or motion sensing technology, including one that measures vibrations in the ground, to trigger flashing lights in signs positioned along highways. That way, motorists know to either slow down or stop, avoiding a costly and possibly fatal encounter with a large animal.

It was reported to members that one in 63 accidents in West Virginia involve a run-in with a deer, but that doesn't take into account the single car accidents caused by a motorist swerving to avoid hitting an animal. The committee was told that of all the methods examined, one method that proved the most effective was the installation of a large fence with a 300-foot break so deer could roam in certain spots with motion-sensing detectors.

The committee suggested that any legislation regarding this issue include the insurance industry as stakeholders because they would benefit from a decrease in deer-car collisions, costing them less in claims.

Select Committee on PEIA , Seniors & Long-term Care

**Updates on Various Programs (Dec.)**

Three program managers from the Bureau for Senior Services updated the committee on the Personal Options Program, the Lighthouse Program and the Families Alzheimer's In-home Respite (FAIR). There was also a brief discussion

regarding changes in the PEIA plan for policy year 2009-2010.

Regional Jail & Correctional Facility Authority, Legislative Oversight Committee on

**Continued Rise of Prison Population (Nov.)**

The Legislative Oversight Committee on Regional Jail and Correctional Facility Authority asked questions of the Division of Corrections Director regarding his interim report which again shows that the prison population continues, and will continue, to rise in the next few years.

The report states that the Division of Corrections "is currently operating at capacity with over 1,100 prisoners being held in Regional Jails waiting for bed space to become available and if no further prison beds are constructed/added, the jail backlog will grow to approximately 2,200 inmates by the end of 2012." The current prison population is 6,124 and is projected to reach 7,810 by 2015.

The committee also heard from the Director of the Southern Appalachian Labor School (SALS). SALS, located in Fayette County, is a non-profit organization working in areas of education, health, economic development, and housing.

One of SALS's programs is the YouthBuild Project, which helps disadvantaged young people between the ages of 16 and 24 obtain much needed GED diplomas. SALS's programs have been also beneficial to those individuals who have been, or are in the process of being, released from prison get back on their feet.

The Director of SALS asked the committee whether there is interest in establishing a pilot program specifically focused on transitioning released prisoners back into society. The committee did not make a definitive answer but will be looking into the possibility of this program.

The Executive Director of the Regional Jail Authority told committee members that the construction of the Rubenstein Center is on schedule and will be set to open August of next year.

**Proposed Legislation on "Trustee Fund" and "Good Time Credit" (Dec.)**

During December's meeting, the committee on Regional



## Interim Highlights

Jail and Correctional Facility Authority was presented with several pieces of draft legislation submitted by the Division of Corrections and the Director of the Regional Jail Authority to examine before next month's meeting.

One of the pieces of legislation relates to trustee accounts and funds, earnings and personal property of inmates.

Under current West Virginia Code, the Commissioner of Corrections is authorized to establish a "Trustee Fund" at each institution under their jurisdiction. This fund contains all monies sent to or earned by an inmate and would be deposited in one or more responsible banks in accounts designated to be a "Trustee Fund." At least 10 percent of all money earned during the inmate's incarceration and would be paid to the inmate when he/she is released.

The proposed legislation would permit the Commissioner to apply any monthly interest which would have been credited to a released inmate's account be placed in the "Inmate Benefit" funds. This fund, as stated in the Code, was set up for the benefit and welfare of inmates incarcerated in state correctional facilities and for the benefit of victims.

Under this same piece of legislation, the Inmate Benefit fund could be used for restitution of any negative balance on an inmate's trustee account for inmate medical co-pay, legal related postage and legal copies.

Another piece of legislation brought forth to the committee would make changes to the current "Good Time Credit" which allows any person convicted of a criminal offense and sentenced to confinement be granted commutation from their sentence for good conduct.

The proposed bill would add a subsection giving one day of good time to inmates serving six months or longer for each rehabilitation program completed.

### Veterans' Issues - Select Committee B

#### **Veterans' Mental Health Issues (Nov.)**

During November's interim meeting, West Virginia's only Mental Health Officer addressed the committee on the mental health issues plaguing returning soldiers.

The Officer first told the committee that there needs to be

more mental health officers and that she would like to have at least two enlisted mental health specialists assigned to help her.

The first issue mentioned was early prevention and reducing the stigma of mental health. She told the committee that recruiting for mental health providers, more yellow-ribbon events, and military mental health providers in the community could also help with early treatment. The officer also suggested advertising available resources because many returning soldiers know they exist, but don't know how to utilize them. She also said that the programs available through the VA couldn't be advertised under federal law.

Another issue is the need for more community based mental health resources that are familiar with Combat PTSD/Stress and are trained to treat it. Mental health issues are worse in the National Guard and rural areas. Only 1/3 of the veterans are using the services provided. There must be more mental health resources for the soldiers' family members because the mental health issues that impact veterans impact income and family members, the Mental Health Officer stated. This is very important because families are not eligible for VA health care services.

Some other issues brought forth by the Mental Health Officer to the committee included prescription drug overdose, transportation from rural areas to health care resources and employment opportunities for returning soldiers.

The Office of Veterans Education and Training Programs administrator addressed the committee on the changes made to the federal GI Bill, which goes into effect August 2009.

There are currently 3,000 veterans who receive VA benefits at more than 100 schools or training facilities. Payment rates for attending vary from \$317 to \$1321 a month depending on the Veteran's type of eligibility, rate of pursuit, and length/place of service.

Those who have served 90 days on active duty after September 11, 2001 are eligible under the new GI Bill, which provides a monthly housing allowance, tuition and fee payment and book allowance. The administrator told the committee that the amount each veteran would receive varies depending on their length of service.

The VA will cover tuition and fees up to the highest undergraduate tuition charged by a public institution in the state,



which is currently \$6,152 at West Virginia University in the Bio-metrics program.

The administrator told the committee that theoretically the new GI Bill covers the entire cost of attending college. However, some Veterans will have to pay some tuition and others will not. Actual amounts will vary from one veteran to the next.

The new GI Bill also creates an opportunity to help veterans cover some of the tuition charges in excess of what the VA can pay through the "Yellow Ribbon Program." The school the veteran wants to attend may voluntarily elect to cover what they cannot pay. In turn, the VA would match what the school covered.

The veterans coordinator at Marshall University addressed the committee on Marshall's veterans programs.

Implemented at Marshall in August of 2006 in order to show additional support for its veteran population, the Veterans Association provides tutoring, emergency cash loans, faculty mentoring, and coordination with service organizations such as the Veterans of Foreign Wars and the American Legion.

Marshall's coordinator told the committee that veterans face problems on campus such as lack of understanding by the administration and faculty over veteran's issues.

The coordinator mentioned some recommendations to the committee such as Veterans Mentorship Program, a veterans advocate on campus, and the implementation of the Supportive Education for the Returning Veteran (SERV) program.

### **New Veteran Cemetery (Dec.)**

West Virginia's Division of Veterans Affairs Director updated committee members on the progress on the state's new Veteran Cemetery, to be located in South Charleston, during December's meeting.

The Director told the committee that there have been problems getting a road to the proposed area. Cost estimates to build the road have been between \$4 million and \$7.5 million dollars. He added another \$2.5 million option had been recently put on the table. The road leading to the cemetery would begin at the entrance of the State Police barracks, which has been agreed upon by the State Police.

DOW Chemical, who donated the land for the cemetery, increased the acreage from 300 to 350 in order for the more cost effective plan to work, the Director said.

Although a formal plan has not been made, and will not be made until March of next year, a blueprint of the cemetery was shown to the committee and showed that phase one of the project would have 7,400 plots.

The Director also told the committee that spouses, as well as one child, may be buried in the cemetery but would have to pay the \$300 deterrent fee.

Completion of the cemetery, at the earliest, will be 2011 at a cost of \$13.5 million, which is the most expensive cemetery the VA has agreed to fund, according to the Director.

## **Volunteer Fire Departments - Select Committee F**

### **Allowing VFDs to Sell Fireworks (Nov.)**

This select committee heard from a representative representing volunteer firefighters regarding a proposal made to the committee to have VFDs make money selling fireworks in the community during the summer in preparation of Independence Day. The proposal would allow all Consumer Product Safety Commission (CPSC) approved fireworks to be used in West Virginia including rockets, roman candles, shells and firecrackers and for the proceeds to go toward funding for the VFDs.

As previously stated in August, currently 18 states allow all CPSC-approved fireworks.

A 10 percent fireworks fee in addition to the regular six percent sales tax is proposed and could be used to fund special needs such as a volunteer firefighter pension fund. Currently Indiana (five percent) and Texas (two percent) have a special tax on fireworks.

Using the 2006 numbers in which \$815 million dollars worth of fireworks were sold nationwide, approximately \$12.6 million would be projected to be sold in West Virginia in 2009, according to a previous speaker.

The representative of the VFDs stated they would not support the selling of fireworks as a fund-raising activity for fire departments, noting that it would be hypocritical for them



to sell fireworks and then have to respond to a possible accident involving those fireworks. The speaker instead wished the focus would remain on other ways to better recruit and retain firefighters, noting that a huge surge occurred following the 9/11 attacks but that increase in interest has severely dropped off and many of those members who joined at that time have moved on.

Another idea presented to the committee was to require individuals who wish to become a career firefighter to first volunteer for three years. Also, more options for college credits, perhaps at community colleges around the state, tied into the experiences of volunteer firefighting would help retention and make volunteering a more appealing option for some West Virginians.

**Non-FireFighting VFD Members (Dec.)**

Lawmakers from this select committee heard a report regarding how many people are listed as active members of volunteer fire units but have never fought fires. The committee was told that some members merely perform clerical duties or other tasks at stations.

A representative for the volunteer fire departments told the committee that a lot of members have aged and they can no longer do the physical work required. They remain active simply in the sense they still belong to the department.

However, when it relates to workers' compensation rates, they are figured when premiums are set. The representative stated that auxiliary fire personnel such as members who only sell hot dogs to raise funds for the station pay the same rate as those fighting fires

The committee asked for a definition of an "active member" since no distinction is applied to those actually engaged in battling fires and others whose tasks are limited to the firehouses.

The committee was told by a representative from Brick-Street Insurance, a private company which covers these departments, that she would get the figures from the State Fire Marshal's office and the Insurance Commission on the number of firefighters who actually fight fires versus those who only perform other duties.

A member of the Sissonville Fire Department told the committee that only Delaware and Pennsylvania impose differ-

ent categories to separate actual firefighters from others in volunteer units. He also stated the Legislature needs to conform to the federal Hometown Heroes Act enacted in the aftermath of the 9/11 terrorist attacks so volunteers are covered for heart attacks and strokes. Those conditions were not applied to volunteers in a bill last session.

**Interim Committee Meetings**

January 11 - 13, 2009

February 8 - 10, 2009

*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.

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

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

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