



# WRAP-UP

The Newsletter of the West Virginia Legislature

Vol. XIV, Final Regular Session Issue

March 17, 2003

## State Economy Stabilizes Amid Fiscal Shortfalls

Facing a \$250 million shortfall in West Virginia's FY 2003-2004 budget, lawmakers set a goal to deliver a balanced budget as they strived to find ways to drive the Mountain State toward economic recovery.

With a flat growth in tax revenue and a downturn in investments coupled with other strained debt obligations, the 76th Legislature addressed a delicate balancing plan not seen since 1989. The solution at that time for the governor was to push through a \$300 million tax increase when the state needed to stay afloat.

Sixteen years later and affected by a national economy showing no signs of a sustained recovery, lawmakers saw no other recourse but to implement a tobacco tax. An increase from an existing tax of 17 cents on a pack of cigarettes to 55 cents a pack will provide a match of three-to one in federal Medicaid funding. This health-related tobacco use deterrent for youth is expected to provide approximately \$240 million which will go into the general revenue fund. No other tax packages were implemented.

As a result of an extended eight-day session to address solely the budget, lawmakers approved \$3.034 billion in general revenue monies bringing the state's total budget to \$8.114 billion. This figure is an increase of 4.32 percent over FY 2003.

Adding to the strain of balancing the budget, many contentious issues also were on the legislative table this year.

Not since 1987 have lawmakers had to address a crisis in medical malpractice; but, 2003 proved to be a year in which significant changes were made to stem some problems with the medical crisis.



The gavel dropped on Sunday, March 16, signifying the end of the 76th Legislative Session, which was extended for the purpose of working on the state budget.

*photo: Martin Valent*

Another medical measure that cleared hurdles regarded informed consent for terminations of pregnancies. And, a measure designed to regulate the trucking of coal also passed the approval of lawmakers.

At the close of the 2003 Session, state leaders have made diligent strides forward in stabilizing the state's economy, protecting many health care programs, reinforcing the effectiveness of the state's higher education institutions, protecting pension plans and making reforms in election laws, to name a few positive achievements.

Not all issues that came before the Legislature in this strained fiscal year met with a consensus of its membership; but, as with any organization, problems are only corrected after careful deliberation, cooperation and compromise coupled with a strong resolve to provide long-term solutions.

*This final version of WRAP-UP for 2003 includes brief summaries of bills passed during the regular sixty day session.*

Readers interested in obtaining copies of bills, should phone:

**1-877-565-3447**

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### 2003 Statistics

Total Number of Bills Introduced - 1,882  
House Bills Introduced - 1,219  
Senate Bills Introduced - 663

Total Number of Bills Passed - 258  
Senate Bills Passed - 120  
House Bills Passed - 138

# Bills Passed Both Bodies

2003

*The following information has been provided by House Budget Analysts Hallie Mason and Loarie Hanna*

During an eight-day Extended Budget Session, which adjourned March 16, 2003, the West Virginia Legislature passed a joint conference committee version of House Bill 2050. This legislation approves the spending of West Virginia's state funding for Fiscal Year (FY) 2004.

The state's total budget for the upcoming fiscal year is around \$8.114 billion, an increase of over four percent from last year's total. The General Revenue account, which covers most of the operations of familiar departments of state government and where most of the tax dollars collected from citizens of West Virginia are deposited, totals \$3.034 billion. The General Revenue fund has seen an increase of just over one percent from FY 2003.

The Conference Committee for House Bill 2050 has provided West Virginia with key funding in many different areas, an accomplishment in itself amid a national recession and limited revenue flow. To help keep our state budget balanced, Governor Wise enacted a 10 percent spending reduction for all state agencies, except the Department of Military Affairs and Public Safety (MAPS). With the concern of our nation and state focused on homeland security and emergency response, MAPS budget was left untouched. The Governor also mandated a three percent reduction for Personal Services, generating a \$17.10 million savings for the Governor to redistribute. Also, all agencies absorbed increases in relation to Public Employees Insurance Agency (PEIA), Board of Risk and Insurance Management (BRIM) and Public Employees Retirement System (PERS) premiums. This totaled more than \$14 million in General Revenue funds. The revenue sparked by the passage of Senate Bill 105, an increase in the tobacco tax from 17 cents to 55 cents, will provide \$60 million of new revenue, plus a three to one match in Federal moneys totaling approximately \$240 million for expenses associated with the Medicaid program.

## **The major points of the compromised legislation are as follows:**

- Contains \$250,000 for "Pay Equity Reserve" - to help bring pay equity between genders within state employee positions.
- Funds growth of \$4.2 million in Step 6 of the School Aid Formula and funds the \$4.2 million for the Local Share. Step 6 of the School Aid Formula relates to foundation allowance for other current expenses, substitute salary costs and faculty salaries.
- Funds the Computer Basic Skills and SUCCESS for \$8 million (decreased by \$6 million from last year's budget). A supplemental appropriation passed this session provides an additional \$2 million for these programs bringing the total to \$10 million.
- Includes Trauma 3 Centers within the Trauma Assistance line item, adding \$180,000 of funding.
- Increases payments to county, federal and regional jails by \$1 million to total \$8.3 million.
- Includes \$50,000 for a new Hardwood Alliance Zone. Hardwood Alliance Zones were developed to help market and promote the wood industry.
- Medical Schools receive \$5 million in budget cut restorations. Sixty-three percent of this funding has gone to WVU, 30 percent to Marshall University and seven percent to the state's Osteopathic Schools.
- Higher Education is provided with \$1 million toward Internal Peer Equity and \$663,351 for Research Challenge Grants.
- The Department of Natural Resources (DNR) has been provided with \$100,000 for Gypsy Moth Suppression.
- Legislative Initiatives for the Elderly (LIFE) - a Senior Citizens Legislative Program administered by the Bureau of Senior Services, received \$1 million.

## **The Legislature found some Special Revenue funding to provide:**

- \$5 million to the Stonewall Jackson State Park
- \$500,000 to the Hatfield-McCoy Recreational Area
- \$500,000 for Soil Conservation projects
- \$1.2 million for McDowell/Wyoming County Flood Reparations
- \$1.2 million for the West Virginia State College Land Grant match
- \$8.1 million to be placed into the Rainy Day Fund - a fund established for natural disaster relief and emergency services for a new balance of \$65.8 million.

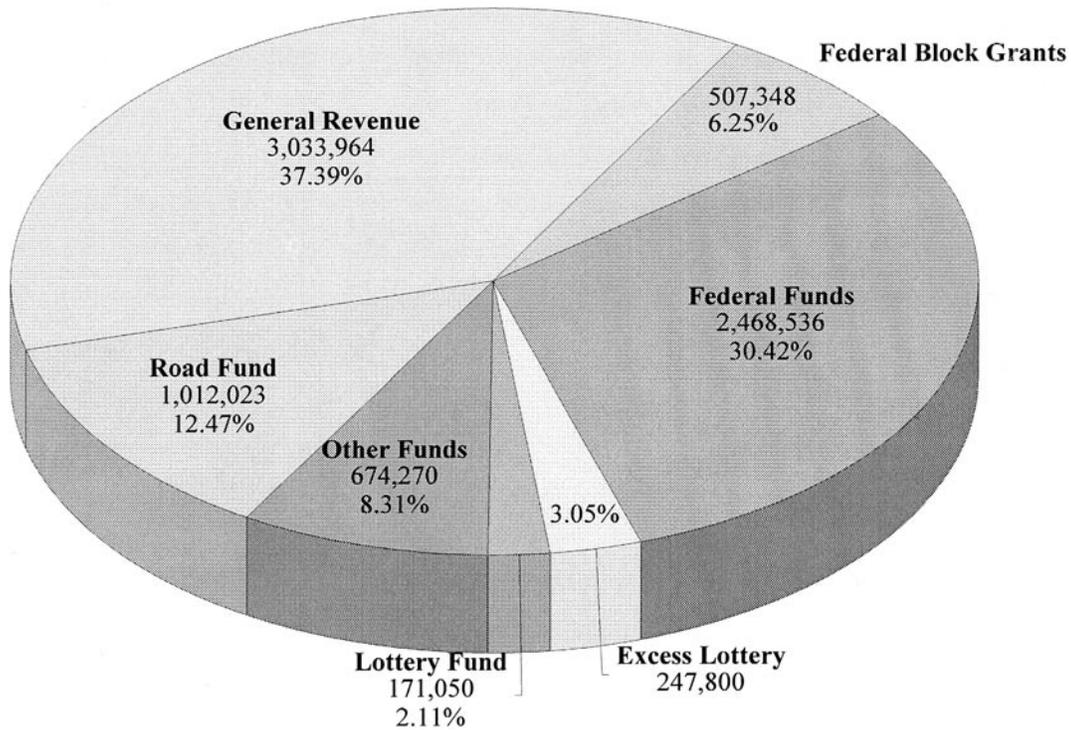
The Legislature also averted a cash flow crisis which could have occurred between the State Excess Lottery Fund and the General Revenue Fund. With the harsh winter pounding much of the Mountain State, a projected deficit in excess lottery collections would have caused a \$9 million deficit in the amount transferred into the General Revenue Fund for FY 2003 operations.

In the difficult economic times we are facing, enacting a balanced budget and focusing our resources on providing cost-effective public policies are crucial to the economic success of the state. The West Virginia Legislature was able to balance a budget without severely cutting valuable

# HB 2050 Conference Report

## Budgeted Expenditures FY 2004

(in thousands)

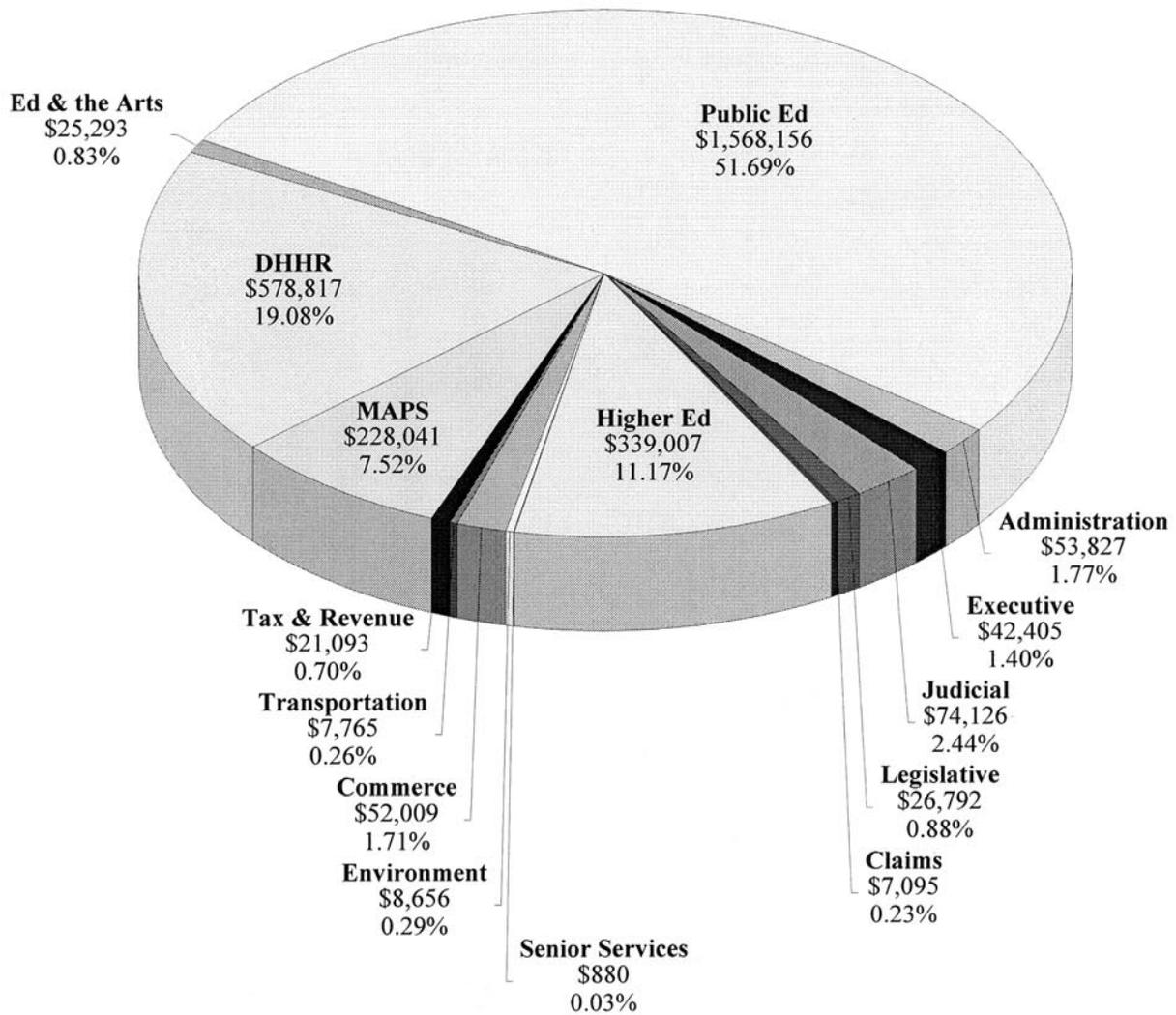


**total: \$3,033,963,648**

# HB 2050 Conference Report

## General Revenue, FY 2004

(in thousands)



**total: \$8,114,991,293**

*The following abstract has been provided by Senate Judiciary Counsel Connie A. Bowling*

## COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2122 Relating to medical professional liability generally

The Act provides for both economic relief for health care providers and tort reform in malpractice actions.

### Civil justice reform

**Elements of proof** The Act specifies that in order to proceed on the “loss of chance” theory at trial, the plaintiff must show a greater than 25% chance of an improved recovery or of survival.

**Filing procedures** The Act requires the plaintiff in a malpractice action to send to every potential defendant a list of every health care provider the plaintiff anticipates joining as a defendant, along with the notice of claim and expert certification.

**Expert witnesses** The Act requires an expert witness to be licensed in a field in which practitioners diagnose and treat the type of injury suffered by the plaintiff. The Act also disqualifies an expert whose license has been revoked in any state within the prior year and creates a rebuttable presumption that an expert who meets all other statutory qualifications and who devoted, at the time of the malpractice, 60% of his or her professional time to active clinical practice or teaching in the field is qualified as an expert. However, both parties may impeach the witness’s qualifications, and the trial court retains jurisdiction to determine competency on other grounds.

**Cap on noneconomic damages** The Act imposes a \$250,000 per occurrence base cap on noneconomic damages but permits the cap to be lifted to \$500,000 per occurrence where the damages are for noneconomic loss due to wrongful death; permanent physical deformity, loss of use of a limb or loss of a bodily organ system; or permanent physical or mental impairment that prevents the patient from caring for himself or herself independently.

The Act provides for an annual increase in the cap equal to the consumer price index to account for inflation, but only up to 50% of the applicable cap. The Act excludes from the benefit of the cap, any provider who does not carry at least \$1 million of malpractice insurance (per occurrence). If for any reason the cap is held invalid in court, the previous \$1 million cap is automatically reinstated.

**Several liability** The Act eliminates joint liability for defendants in medical malpractice actions so that each defendant will be liable only for the percentage of fault attributed to him or her by the trier of fact. The maximum recovery from any one defendant is his or her pro rata share of the verdict and post-judgment interest.

Initially, the Act prohibits consideration of the fault of any person not a defendant at trial (“empty chair”). After being reduced for collateral source payments, the verdict is reduced by the amount of any pre-verdict settlement before the amount owed by each defendant is determined. Upon creation of a patient injury compensation fund or other mechanism for compensating plaintiffs who, because of the elimination of joint liability, would not be able to collect their entire verdict for economic damages, the prohibition against the jury considering the fault of the “empty chair” expires, and the jury can allocate fault by considering all possible tortfeasors.

The Act specifies that it is not intended to eliminate or diminish any defenses or immunities otherwise available under the law. The Act further provides that it is not intended to prevent the defendant from being held liable for acts of an agent, but liability based on ostensible agency is eliminated where the provider has at least \$1 million in malpractice insurance coverage.

**Reduction of verdict for collateral source payments** The Act changes the current rule which prevents the jury or the judge from considering payments from sources other than the defendants for expenses which are covered by the verdict.

“Collateral source” is defined as:

- any federal or state act, public program or insurance which provides payments for medical expenses or disability benefits (including workers’ compensation and Social Security disability benefits);
- any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy, or other health care services or provide similar benefits;
- any group insurance which provides medical benefits, income replacement or disability coverage to the extent that someone other than the insured, including the insured’s employer, has paid all or part of the premium;
- any contractual or voluntary wage continuation plan provided by an employer or otherwise, or any other system intended to provide wages during a period of disability.

Sources of benefits that are not collateral sources include life insurance; private disability or income replacement insurance paid for entirely by the plaintiff; benefits for which the source has a right of subrogation or reimbursement from the plaintiff; the assets of the plaintiff or his or her immediate family; Social Security benefits other than disability benefits; or a settlement between the plaintiff and another tortfeasor.

The Act permits the judge, after verdict, but before judgment, to hear evidence regarding collateral payments received from other sources. A deduction from collateral payments is allowed for any premiums the plaintiff has paid for the benefits. The remaining, or "net," collateral source payments are then deducted from the verdict before determining each defendant's proportional share. Collateral source payments may be deducted only from the portion of the verdict representing that category of damages, i.e., medical payments may only be deducted from the portion of the verdict representing damages for medical expenses. Reduction of verdict may not exceed plaintiff's economic losses or the amount of collateral source benefits actually paid.

Future payments from collateral sources may be considered if the court determines:

- the collateral source has a previous contractual or statutory obligation to pay the benefits;
- it is reasonably certain that the benefits will be paid; and
- the amount of future payments is readily reducible to a sum certain

**Third party claims** The Act precludes a non-patient from suing a physician for an act of a patient which harmed the non-patient unless the physician's acts were intentional or in reckless disregard of the consequences and reasonably foreseeable. The Act specifies that it is not meant to prevent recovery by the personal representative for wrongful death or by spouse or children for loss of consortium due to injury to the patient.

**Trauma care** The Act puts a \$500,000 cap on all damages resulting from good faith treatment of an emergency condition necessitating admission of the patient to a designated trauma center. The cap is not available for intentional misconduct or reckless disregard of the consequences; acts after patient is stabilized; acts not related to original emergency condition; or clear violations of standard triage and emergency treatment protocols.

The Office of Emergency Medical Services (OEMS) will determine whether a particular facility is a "designated trauma center" according to rules to be proposed by DHHR. OEMS is required to promulgate a written protocol of standard triage and emergency treatment procedures for trauma center care and for lifting the cap where there is a clear violation of those protocols.

## Economic relief

**Credit against provider tax** - The Act creates an additional credit against the provider tax equal to 10% of physician malpractice premiums between \$30,000 and \$70,000 and 20% of any annual premiums in excess of \$70,000. The credit is available only to physicians other than those insured by BRIM 1. The credit is available only for taxable years 2002 and 2003 and is expected to result in tax savings to physicians equal to \$10 million (in addition to the estimated \$15 million tax savings resulting from the existing provider tax credit under WV Code § 11-13P-1, et seq.). A carryover is allowed for any credit not used in 2002. The Tax Commissioner is to propose necessary legislative rules.

**Bankruptcy homestead exemption** - The Act increases the homestead exemption from \$25,000 to \$250,000 per household for debtor physicians who (1) have at least \$1 million in malpractice coverage and (2) filed bankruptcy in part because of a malpractice judgment.

**Physician's Mutual Insurance Company** - The Act provides for the creation of a private Physician's Mutual Insurance Company ("Mutual") to be capitalized with a transfer of \$24 million from the Tobacco Settlement Medical Trust Fund (Trust Fund) to a new special account, named the "BRIM Physicians' Mutual Insurance Company Account" (Account). This money will be transferred to the Mutual by BRIM if all the assets and liabilities of the BRIM 2 program are also transferred to the Mutual before July 1, 2004. If the Mutual has not accepted the BRIM 2 assets and liabilities by July 1, 2004, the money in the Account will revert to the Trust Fund. Pending the Mutual's repayment of this money to the State, the Trust Fund will be replenished from the diversion of insurance premium taxes from the General Revenue Fund.

In addition, the Act provides for a one-time \$1,000 assessment on physicians and a one-time \$2,500 assessment on insurance companies to be used for the Mutual's capitalization and surplus.

The BRIM board is responsible for setting up the Mutual. On July 1, 2003, a provisional board of directors, consisting of the BRIM board, the Dean of the WVU Medical School and five physician directors to be elected by the Mutual's shareholders, will take over control of the Mutual to oversee the transition period during which the BRIM 2 assets and liabilities will be transferred to the Mutual. By November 1, 2003, the provisional board is required to approve contracts, let by competitive bidding, with third-party administrators and other service providers for the first year of the Mutual's operation.

The provisional board will cease to exist on July 1, 2004, at which time a board elected in accordance with statutory requirements

# Bills Passed Both Bodies

2003

and the Mutual's by-laws will take control of the Mutual. July 1, 2004, is also the deadline for the transfer of assets and liabilities of BRIM 2 for physician providers and of the Funds in the Account. On that date, BRIM's authority to write medical malpractice coverage ceases, except for providing tail insurance to non-physician providers not transferred to the Mutual.

The Mutual will have to repay any debts owed to the State, including the money transferred from the Trust Fund through BRIM, before declaring a dividend.

## Miscellaneous provisions

**Patient Injury Compensation Fund study** The Act sets up a board, composed of the BRIM chair, the Insurance Commissioner and a gubernatorial appointee, to study the feasibility of establishing and funding a Fund to compensate malpractice victims who, because of several liability and the cap on economic damages in trauma care cases, are not able to recover all of their economic damages. The board is to report its findings and recommendations at the December 2003 interim meetings.

The Act provides guidelines and a framework for the board's study, including a requirement that the Fund, once established, is to be administered by BRIM; that the Fund be actuarially sound; and, requirements for eligibility and allowing BRIM to invest moneys in the Fund. BRIM is directed to propose rules for the establishment, implementation and operation of the Fund.

**Insurance Commissioner** The Act prohibits predatory rates or reduced rates designed to capture a portion of the market in this State.

**Disciplinary action** The Act requires the Board of Medicine to investigate any doctor who has had three malpractice judgments or any number of judgments and settlements totaling five within a five-year period. The Act also requires any physician or osteopath who has had more than three disciplinary actions against him or her (for different incidents) to practice under supervision of another physician or osteopath for a period of time to be specified by the appropriate licensing board.

**EFFECTIVE DATE:** From passage

**DATE OF PASSAGE:** March 8, 2003

**ACTION BY GOVERNOR:** Approved, March 11, 2003



The state capitol building serves as the nerve center for all Legislative operations.

*photo: Max Hunt*

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**The West Virginia Legislature's  
Reference and Information Center**  
State Capitol Complex  
Building 1, Room MB 27  
Charleston, WV 25305  
(304) 347-4836

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## Abortion

**Senate Bill 170** creates the Woman's Right-to-Know Act and requires informed consent for abortions. A woman who wishes to have an abortion must, except in the case of an emergency, wait 24 hours before the procedure so the physician can inform her of certain aspects of the abortion. The physician must inform the woman of the medical risks involved if she has an abortion, the medical risks if she chooses to carry the child to term, and the probable gestational age of the fetus or embryo at the time the abortion is to be performed. A physician who willfully violates any part of this bill will be subject to a written reprimand from the Board of Medicine for the first violation and revocation of his or her licence to practice medicine for the second offense.

## Actions and Suits

**House Bill 2406** grants members of the National Ski Team immunity from civil liability. The immunity will be granted when a ski team member provides emergency aid or assistance, without compensation, to a person who is injured or ill at the scene of a ski resort rescue operation, outdoor emergency rescue operation or while in transport to a medical facility. Also, the bill states the ski team member must have acted in good faith to be eligible for this immunity. The bill explains what is not considered "compensation" for the purposes of this legislation, such as access to a recreational facility, complimentary lift tickets, food, lodging, or other gifts or discounts that may be offered.

## Advertising

**Senate Bill 430** provides certain restrictions on outdoor advertising. There can be no billboards greater than 672 square feet, although cutouts and extensions would still be allowed, but they cannot exceed 30 percent of the signs' area. Stacked, or vertical, signs would not be allowed, and no more than one sign structure is permitted at one location. These rules do not apply to existing billboards.

## Agriculture

**House Bill 2696** removes certain limitations on the Commissioner of Agriculture to increase certain service fees. Current law states that fees can only increase to double the amount

established in 1984. This measure removes this requirement and allows the Commissioner to establish and propose legislative rules pertaining to the fee increase.

**Senate Bill 627** renames the Guthrie Center, owned by the Department of Health and Human Resources, the Gus R. Douglass Agricultural Center at Guthrie.

**Senate Bill 493** eliminates the Agriculture Commissioner's duties in relation to the West Virginia Rural Development Council.

**House Bill 2190** authorizes farm use vehicles with current inspection stickers to operate between sunset and sunrise. These vehicles cannot travel further than 25 miles between land tracts. No person charged with the offense of operating a vehicle without a farm-use exemption certificate may be convicted of the offense if he or she produces in court, or in the office of the arresting officer, a valid farm-use exemption certificate for the vehicle in question within five days.

**House Bill 2414** requires all mares to be bred back to an accredited West Virginia stallion registered with the West Virginia Thoroughbred Breeders Association. In addition, each pari-mutuel thoroughbred horse track is allowed at least one restricted race per two racing days. Thirdly, the existing criteria related to breeder requirements to qualify for the West Virginia accredited race fund is changed. Finally, West Virginia accredited thoroughbreds will have preference in all races at certain thoroughbred race tracks.

**House Bill 2694** relates to the regulation of bees. This bill authorizes the Commissioner of Agriculture to seize infected bees and bee equipment. The bill also establishes the expiration date for certificates of registration and strengthens the Commissioner's inspection and quarantine powers. It also clarifies the manner of dealing with abandoned apiaries and interstate movement of bees, makes technical corrections and modifies penalties.

## Alcohol

**Senate Bill 535** creates provisions for mandatory carding and liability protection for all purchases of nonintoxicating beer, wine and liquor. The bill will also provide that persons with Class B liquor licenses who have installed a transaction scan device will not be subject to criminal penalties or civil liability when an employee selling alcohol does not check for identification. These provisions are only enacted if the license holder can provide a copy of a written policy requiring employees to verify the age of all alcohol purchasers. This would hold the employee responsible.

**Senate Bill 112** allows farm wineries to manufacture, serve and sell certain wines, including dessert wines made by natural fermentation and port. Also included are sherry and Madeira wines that contain no more than 22 percent alcohol by volume and have matured in wooden barrels or casks.

**House Bill 2868** authorizes the Alcohol Beverage Control Commissioner to establish standards for the use of scanner technology for the verification of the age of purchasers of alcoholic beverages. It also authorizes the Commissioner to enter into contracts for the sale, licensing or promotion of scanner technology that has been developed by the agency. Scanner technology is defined as devices designed to capture information on the back of driver's licenses which verify the age of the person purchasing alcohol.

**Senate Bill 384** repeals the section of the West Virginia State Code requiring the office of the Alcohol Beverage Control Administration be "at the state capitol" where it is the "regular place of meeting of the commission." The bill clarifies that the Office of the Alcohol Beverage Control Commission should remain in Kanawha County.

## Animals

**House Bill 2753** imposes felony charges for engaging dogs, cats, pigs, cows or horses in animal fighting venues. The bill also protects

### Locating Bill Status

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wild animals, game animals, fur-bearing animals and animals not native to West Virginia. Those convicted of a felony charge under this new law will face a \$1,000 to \$5,000 fine and a one to five year prison sentence.

**House Bill 2301** provides, through a maintenance bond, funding for necessary care of animals seized because of allegations of neglect. Under this bill, the owner of a seized animal must post a maintenance bond within five days for the reasonable and necessary care of their animal pending a hearing. If the expense for the care of the animal exceeds the posted bond, then a lien is placed against the animal and must be satisfied before the animal is returned to the owner. Upon conviction, interest in the animal transfers to the human officer for disposition in accordance with accepted standards and practices.

**House Bill 2965** allows any state agency which utilizes the services of a dog or horse to transfer ownership of the animal to any person, handler or state agency who wishes to adopt it, including placement in a humane society. The bill also notes that the transfer of the animal shall be accompanied by documentation that holds the state harmless from liability.

**Senate Bill 205** modifies the criminal intent requirement for animal cruelty crimes and increases the fines. Additionally, it creates a felony offense for intentionally torturing or maliciously killing animals, and it mandates persons convicted of animal cruelty be prohibited from possessing, owning or residing with animals for varying periods of time depending on whether the person is convicted of a misdemeanor or felony.

## Banking and Affiliates

**House Bill 2794** increases the service fee for worthless checks. A person who passes a worthless check is required to pay a fee of \$25 instead of \$15.

**House Bill 3089** requires that a financial institution that keeps trust fund deposit accounts for real estate brokers notify the Real Estate Commission if any checks drawn against the account are returned, only if they are returned because the account has insufficient funds. The financial company must also certify that it does not require a minimum balance in order for the broker to maintain an account with the company. Although there are misdemeanor

penalties that apply to other similar sections of the code, these fines and penalties would not apply if the financial company failed to notify the Real Estate Commission of the returned check.

**Senate Bill 190** requires the Commissioner of Banking to conduct a yearly examination of the records of any financial institution that has a federal composite rating of three, four or five, or has assets of \$250 million or more. For all other depository financial institutions, the Commissioner must make inspections every 18 months.

**House Bill 2441** requires any bank wishing to operate in West Virginia to have at least \$4 million in capital stock. The bill also authorizes the Board of Banking and Insurance to require more than \$4 million in capital stock if a bank's operating volume makes it necessary. Previously, the law required banks to have only \$1 million in capital stock to operate.

**Senate Bill 191** eliminates the requirement for a formal hearing with the Commissioner of Banking in cases where a state-chartered credit union decides to convert to a federal credit union or a credit union chartered in another state.

**Senate Bill 192** requires that a bank holding company intending to change its status to a financial holding company, through the Federal Reserve System, give the Commissioner of Banking notice of the intended change by submitting copies of the federal filings. Also, when the Commissioner of Banking considers it necessary, he or she may examine any bank holding company that has acquired a West Virginia bank and if the cost of an examination in connection with an application, is in excess of the initial fee, may assess the bank holding company examined for the excess cost.

**House Bill 2480** increases the amount of penalties the Commissioner of Banking may obtain. This bill also allows the Commissioner to spend funds to promote consumer awareness of issues related to residential mortgage lending.

**House Bill 2514** permits the West Virginia Board of Banking and Financial Institutions to prohibit a director, officer or employee from participating in the affairs of any other financial institution, until further order of the Board. This bill extends the power of the Board

to ensure, if it has suspended or removed an individual from one financial institution, it can prohibit that individual from moving to another financial institution.

**House Bill 2443** allows the Commissioner of Banking to increase the frequency of calculating banking assessments. The assessments, which are currently being done annually, will now be done semi-annually. The Division of Banking assesses regulated industries for fees for the Commissioner's Assessment and Examination Fund.

**Senate Bill 189** permits out-of-state banks to comply with notice requirements for establishing branch banks in this state by having the bank file an additional copy of its branch application with home state regulators. This bill revises the mandatory \$250 fee for opening a branch bank by stating that the Commissioner may charge up to \$250.

## Boards and Commissions

**House Bill 3084** restructures the Support Enforcement Commission. The restructuring pertains to membership, duties and powers. The bill reduces the nine member Commission to eight members and repeals the restriction that only five members can be of the same political affiliation. A practicing family law judge is added to the Commission as well as an obligor, obligee and the Commissioner of the Bureau for Children and Families. Positions on the Commission are reserved for the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Tax and Revenue, a member recommended from the West Virginia Judicial Association and the Secretary of the Department of Administration. Eliminated from the duties of the Commission are the promulgation of legislative rules and the direct undertaking of legal or policy research related to obtaining and enforcing support orders and establishing paternity. Additional duties of the commission are to apply for grants, form partnerships with state institutions of higher learning, and conduct federally required review of the child support formula every four years.

**House Bill 2357** allows the State Aeronautics Commission to expend state funds for educational purposes for the Civil Air Patrol. Current law allows the Commission to spend funds for educational purposes but is limited to the purchase of Civil Air Patrol Aviation

Education Training aid books, materials and equipment.

**House Bill 2797** authorizes the Division of Motor Vehicles (DMV) to reimburse members of the Motor Vehicle Dealer Advisory Board and the Motorcycle Safety Awareness Board for necessary expenses. The members are entitled to reimbursement of travel and other expenses assumed while participating in legitimate board activities in accordance with the guidelines of the Travel Management Office of the Department of Administration or its successor agency.

**Senate Bill 414** clarifies that the Real Estate Commission may determine the terms of reciprocity agreements with other states. The term reciprocity is used to denote the relationship between two states when each state extends privileges to the citizens of the other state, on the condition that its citizens enjoy similar privileges from the other state.

## **Senate Concurrent Resolution 35** Pension Debt

Senate Concurrent Resolution 35 allows the Governor to sell general obligation bonds up to a principal amount of \$3.9 billion dollars which would be applied to help pay off the state's ever growing pension debt.

State retirement funds for teachers, public employees, troopers, judges and deputy sheriffs were underfunded by \$5.85 billion as of last July. That amount is equivalent to twice the size of the state's budget.

Presently the state is in its ninth year of a 40-year plan designed to pay off teacher and trooper retirement obligations, which account for nearly \$4 of every \$5 in state pension debt. In 2004, the state plans to put \$339 million, or 10 percent of its general and lottery budgets into the teacher and trooper funds. By the year 2034, the payment is expected to be \$600 million.

It is believed that selling general obligation bonds during a period of a historically low interest rates could help the state save \$1 billion in pension costs over the next 30 years. In addition, the sale would allow the state to retire the pension debt by 2024, or 10 years early.

## **Bonds**

**House Bill 3117** requires contractors bidding for public works construction projects to submit valid bid bonds with their proposals and to direct how public bids are received. This will standardize the bidding procedures for the state. Under this bill, a contractor who withdraws a bid will be unable to bid for the next public works project.

## **Child Safety**

**House Bill 2910** establishes the "Amber Alert" system to be utilized to rapidly disseminate information regarding abducted and missing children. This system authorizes the broadcast media, upon notice from the State Police, to transmit an emergency alert to inform the public of a child abduction. The program is a voluntary, cooperative effort between state and local law-enforcement agencies and the broadcast media. The "Amber Alert" system will be established and maintained by the Department of Military Affairs and Public Safety (MAPS). The legislation declares, given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover abducted children, it is fitting and proper, and within the public interest, to establish such a program for West Virginia.

## **Child Welfare**

**Senate Bill 364** strengthens the multidisciplinary team approach in juvenile cases and child abuse and neglect cases. The bill clarifies the law to specify that foster homes are not behavioral health facilities. The bill also prohibits 18 through 20-year-olds from being returned to Division of Juvenile Services custody after serving an adult jail sentence.

**Senate Bill 635** clarifies foster care services in connection to behavioral health. This bill requires the Supreme Court of Appeals, in order to eliminate needless state funding of out-of-home placements where federal funding is obtainable, to develop and distribute form court orders by July 1, 2003. These court orders execute the West Virginia State Code section that allows the disclosure and transfer of juvenile records between agencies.

**House Bill 3018** increases the amount of time the Department of Health and Human Resources (DHHR) must retain Child Protective Services' records. Under this bill, the DHHR is required to retain reports of serious physical abuse, sexual abuse or assault for 30 years after they are

prepared. After this time period, which was changed from six years, these documents will be destroyed.

## **Claims**

**House Bill 3019** allows the Legislature to declare certain claims against the state and its agencies a moral obligation and allows payment of these claims with public monies. The totals, as to type of funds and amounts of awards in the bill, are:

General Revenue Funds.....	\$6,196,672.92
Special Revenue Funds.....	\$902,865.01
Federal Revenue Funds.....	\$4,147.61
State Road Funds.....	\$700,257.01

**Senate Bill 428** finds and declares certain claims against the state and its agencies to be moral obligations of the state and directs the Auditor to issue warrants for the payment. This bill directs payment of certain claims made by those who have provided services to state agencies who have not been paid because had the claims been paid, the agencies would have unlawfully spent more than their authorized appropriations. The claims were predominantly against the Division of Corrections for medical services for inmates.

## **Communications**

**Senate Bill 436** directs the Public Service Commission (PSC) to implement the findings concerning a 211 System. The 211 System would be a toll-free information and referral source for Human and Social Services available to individuals by dialing "2-1-1." The PSC would be permitted to implement the system by legislative rule.

**House Bill 3199** updates the Tel-Assist Program, a program designed to provide telephone service to low-income individuals at a less expensive rate. A "low-income" individual is someone who receives Medicaid, Social Security Insurance, food stamps, Federal Public Housing, or other income-related federal or state assistance. This broader definition means more people will be able to apply for the lower telephone rate. Companies who participate in the Tel-Assist

Program are eligible for a tax credit.

## Consumer Protection

**House Bill 2948** allows consumers to discontinue foreclosure sales and retrieve expenses of work completed. The bill would limit the expense recovery to publication costs, appraisal fees, title checks not exceeding \$200, and certified mailing costs. The bill also requires that real estate loan holders in default be provided with a notice of all default charges assessed in a 12-month period.

## Contractors

**Senate Bill 440** creates the Contractors Notice and Opportunity to Cure Act. It limits the claimant's right to file suit against a contractor until an alternative dispute resolution process is undertaken. Specifically, a person may not offer anything of value and a manager or board member of an association may not accept anything of value to promote or dissuade an action against a contract. It establishes a misdemeanor penalty for accepting or offering anything of value.

**Senate Bill 375** allows contractor license holders to apply for license transfer to a new business entity in which the person is the principal owner, partner or corporate officer. In addition, a license holder is permitted to hold a license for only one business entity during a given time period.

## Corporations and Business Entities

**House Bill 3108** makes all business entity filing requirements consistent with the corporation requirement under the new corporation laws. This bill removes the prohibition against churches incorporating. This bill also requires county and business class codes to be on the annual returns filed with the Tax Department and makes all business entity (LLC, LLP, Voluntary Assoc. and Business Trusts, Partnerships) filing requirements consistent with corporations requirements under the new corporation law.

## Corrections

**Senate Bill 424** allows the Governor to authorize the Corrections Commissioner to transfer convicted offenders from the United States to the country of their origin, pursuant to a joint treaty. The Commissioner may take any action necessary to initiate West Virginia's participation in the treaty; however, no transfer

can occur until the inmate is informed of his or her rights in his or her native language.

## Counties and Local Bills

**House Bill 3070** provides that a mass convention of a political party to elect delegates to the state convention be held in the county instead of the various magisterial districts. The meeting place in the county will be as central and convenient as can be selected, and all recognized members of the political party are entitled to participate in any mass convention and in the selection of delegates. All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates are chosen, and the county executive committee shall meet for a hearing and make a determination within 10 days after the holding of a county mass convention.

**House Bill 2001** requires county commissioners to order the county clerk to make military discharge records generally inaccessible to the general public. The only persons entitled to review the records will be the person who is the subject of the record, the guardian of the person, the executor or administrator of the estate of the person (or the next of kin), an attorney representing one of the named exceptions, or an agency in the course of performing its official duties. Where time is of the essence, the clerk may accept the sworn affidavit of a person representing himself or herself to be among the enumerated exceptions.

**House Bill 3050** authorizes the Jefferson County Commission to convey 32.145 acres of

## Sunset Legislation:

- HB 3195** - Changing agency termination dates according to West Virginia Sunset Law
- HB 2486** - Continuing the Public Employees Insurance Agency
- HB 2554** - Continuing the Marketing and Development Division of the Department of Agriculture
- HB 2555** - Continuing West Virginia's membership in the Southern Regional Education Compact
- HB 2670** - Continuing the Office of Judges until July 1, 2009
- HB 2750** - Continuing the Office of Health Facility Licensure and Certification
- HB 2751** - Continuing the Department of Health and Human Resources
- HB 2752** - Continuing the Bureau for Senior Services
- HB 2803** - Continuing the Board of Barbers and Cosmetologists
- HB 2778** - Continuing the West Virginia State Police
- HB 2779** - Continuing the Personal Assistance Services Program
- HB 2829** - Continuing the Division of Culture and History
- HB 2830** - Continuing the Division of Natural Resources
- HB 2831** - Continuing the Records Management and Preservation Board
- HB 2864** - Continuing the Office of Explosives and Blasting
- HB 2879** - Continuing the West Virginia Commission on Holocaust Education
- HB 2888** - Continuing the Board of Osteopathy
- HB 2889** - Continuing the Board of Examiners of Psychologists
- HB 2916** - Continuing the State Geological and Economic Survey

- SB 163** - Continuing the Driver's Licensing Advisory Board
- SB 164** - Continuing the Office of Coalfield Community Development
- SB 165** - Continuing the Commission for National and Community Service
- SB 166** - Continuing the Oil and Gas Inspectors' Examining Board
- SB 281** - Continuing the Department of Environmental Protection
- SB 282** - Continuing the Division of Motor Vehicles
- SB 283** - Continuing the Public Service Commission
- SB 284** - Continuing the Division of Purchasing within the Department of Administration
- SB 415** - Continuing the Environmental Quality Board
- SB 416** - Continuing the Massage Therapy Licensure Board
- SB 417** - Continuing the Commission for Deaf and Hard-of-Hearing
- SB 418** - Continuing the Investment Management Board
- SB 469** - Continuing the Contractor Licensing Board
- SB 470** - Continuing the Manufactured Housing Construction and Safety Board
- SB 471** - Continuing the Board of Pharmacy

land to the Jefferson County Fair Association. The land will be used as fairgrounds to hold a Jefferson County Fair. The bill stipulates that if the property is used at any time for any other purpose, it reverts to the possession of the County Commission.

## Courts

**Senate Bill 213** restricts actions taken by nonresidents in West Virginia courts. Nonresidents may not bring an action in a West Virginia court unless a substantial part of the acts asserted in the claim occurred in this state. Exceptions will be made in cases where jurisdiction cannot be maintained in another state, but where current West Virginia residents are involved.

**Senate Bill 178** makes clarifications to the law pertaining to the subject matter jurisdiction of the Family Court. It implicitly indicates the court has jurisdiction of child and spousal support, as well as distribution of property. Current code only uses the term "support" and does not delineate between spousal and child support. The bill also allows the family court judge to hear actions for payment of attorney fees. It primarily cleans up deficiencies that occurred with recodification of the law relative to family law.

**Senate Bill 432** removes the provision requiring magistrates to set payment plans when collecting magistrate court fines in certain cases. These payment plans include the number of payments to be made, the due dates of the payments and the amounts due for each payment. Under this bill, persons may speed up the payment schedule by paying additional portions of costs, fines, fees, forfeitures, restitution or penalties.

## Crimes

**House Bill 2705** allows the Governor to join the Interstate Compact for the Supervision of Adult Offenders, an updated version of the Interstate Compact for the Supervision of Parolees and Probationers, which was created in 1937. The new compact standardizes many of the rules for the movement and return of adult probationers and parolees as they move from state to state. West Virginia is the 35th state to enter into the Compact.

**Senate Bill 39** makes false fire alarm calls a felony. (A false alarm is a felony if someone is injured, a person's property is damaged, or if it is done to divert attention from another

crime) The penalty is one-to five years and/or a \$5,000 fine.

**House Bill 2865** upgrades the criminal offense of damaging or destroying real or personal property owned by a railroad company or public utility. This bill amends the provisions to increase the penalties for the malicious damaging of public utility or railroad property, and extend those penalties. Further, the offense becomes a felony if the damage or destruction results in bodily injury to another person.

**Senate Bill 654** extends supervised release for certain sex offenders to a maximum of 50 years. In addition to this sentencing, the defendant will still be required to carry out any other penalty or condition prescribed by the court. The supervision release will begin upon the expiration of a probation period, an incarceration sentence or parole supervision. Persons sentenced to this supervision period will be subject to the same conditions as a person under probation, if the defendant attends appropriate offender treatment programs or counseling.

**House Bill 2092** instructs the Governor's Committee on Crime, Delinquency and Correction to carry out extensive research on West Virginia's criminal sanctioning process for adult offenders. The objective of this research is to promote a broader understanding of the state's criminal justice system. The Committee is required to report its findings to the Governor and Legislature on or before Jan. 1, 2004.

**House Bill 2814** increases the penalties for failure to yield the right-of-way from a \$100 fine for a first offense, \$200 fine for a second offense, and \$500 fine for a third or subsequent offense; to, a \$200 fine for a first offense, \$300 fine for a second offense, and \$1000 fine for a third or subsequent offense.

## Domestic Relations

**House Bill 2500** clarifies that courts may continue orders of protection in relation to domestic violence while certain court proceedings are pending. The bill allows this continuation of an order of protection during the pendency of divorce, separate maintenance or annulment.

**Senate Bill 453** establishes the Domestic Violence Fatality Review Team. This 18-member team will work under the authority of

the Chief Medical Examiner and was created to review deaths resulting from suspected domestic violence. The team must review the death of any adult where domestic violence may have had a role, as well as compile statistical data on causes of domestic violence fatalities, promote public awareness of deaths from domestic abuse and provide training for state agencies on how to deal with domestic violence situations.

## Drugs and Drug Paraphernalia

**Senate Bill 354** relates to operating or attempting to operate a clandestine drug laboratory. The bill states that a clandestine drug laboratory means any property, real or personal, in which a person assembles chemicals or aids in the development of producing methamphetamine, methylenedioxymethamphetamine or lysergic acid diethylamide. Any person who operates or attempts to operate a clandestine drug laboratory will be guilty of a felony and upon conviction be sentenced to two to 10 years in a state correctional facility, and/or fined between \$5,000 and \$25,000.

## Economic Development

**Senate Bill 558** creates the "County Economic Opportunity Development District Act." This will allow certain cities to create Economic Opportunity Development Districts. These districts can only be developed after public hearings on the subject have been held and approval for the project has been granted by the Council for Community and Economic Development and the Legislature. The districts can be financed through the use of sales or service taxes.

**Senate Bill 626** renames the Works Act to "West Virginia Works," and makes a few substantive changes. The bill removes certain criteria for evaluating the success of the program and sets the maximum length of time a participant may receive benefits. The bill also reduces the work exemption for parents of newborns from 12 months to six months and reduces the child-support pass-through to \$25.

Sanctions for third violations of provisions in the Works Act are reduced from six months to three months. The new bill also removes language authorizing the program to allow at-risk families to retain a portion of their

assistance when their earnings fall below the federal poverty guideline.

**Senate Bill 657** relates to the Capital Company Act. The bill provides for the extension of tax credits for those who invest in economic development and technology advancement centers. This tax credit will apply to those centers which are organized to partner with institutions of higher education. For the fiscal year beginning July 1, 2003, \$3 million will be made available for this credit, up to \$2 million in tax credits may be applied in a fiscal year for all qualified West Virginia small business investment companies, and up to \$1 million may be applied in a fiscal year for all economic development and technology advancement centers.

## Education

**Senate Bill 522** covers a variety of areas relating to improving the governance of public education and other public education related matters. These include: the school calendar, the State Board and Superintendent, county boards, appropriations for basic skills and success, job sharing and local school improvement councils. Brief summaries covering these areas are listed below.

### School Calendar

- reduces the number of faculty senate meetings to six, one to be scheduled on the day designated for the opening of school prior to the beginning of the instructional term
- schedules the remaining five faculty senate meetings on five newly created Instructional Support and Enhancement (ISE) days during the months of October, December, February, April and June
- requires each of the five instructional support and enhancement days to include a two-hour block for instructional activities that require teacher involvement or supervision, a two-hour block for a faculty senate meeting and the remainder of the day for professional activities
- requires instructional activities for students to be in accordance with a policy established by the school. The school will arrange appointments with students for instructional activities to assure proper supervision. However, no specific number of students is required to attend and transportation of students is not required. Examples of these activities include mentoring, tutoring, counseling, student research projects, community service, career exploration, parent teacher conferences, home

visits, college and financial aid workshops and college visits

- lists examples of professional activities for teachers to include professional development, curriculum team meetings, and IEP meetings determined on a local level. ISE days are also a scheduled work day for service employees
- allows the primary statewide assessment program to be scheduled as early as April 15th for the 2003-2004 year only and prohibits earlier than May 15th in future years
- clarifies that Continuing Professional Development (CE) days are to be the last non-instructional days used to reschedule canceled instructional days if 180 days of separate instruction are not met
- authorizes county boards to increase the length of an instructional day to make-up lost instructional days in excess of the available non-instructional days and to avoid using the CE day as a rescheduled instructional day
- deletes the requirement that a minimum percentage of students, as defined by the State Board, be present in order for the day to be counted as an instructional day

### State Board and Superintendent

- provides that the state board president may serve an unlimited number of terms, but no more than two consecutively
- clarifies that the superintendent serves at the will and pleasure of the State Board
- requires an annual evaluation of the state superintendent
- rewrites the provision that allows the State Board to address cases where a county superintendent who holds a first class permit cannot complete the requirement for an administrative certificate within three years because the courses are not available
- requires the State Board to establish rules to exclude certain student absences for accountability purposes, such as excused absences, absences due to disciplinary actions, and absent students for whom judicial remedies have been sought

### County Board

- modifies the restriction that county board members may not serve in any public office to allow service on boards where the individual does not receive compensation and whose primary scope is not related to the public schools
- allows a county board member or prospective member to request an opinion from the Ethics Commission on whether serving on the board would conflict with serving in another elected

or appointed position

- requires county board members to receive training on school performance issues
- authorizes county boards to lease school property no longer needed for school purposes
- modifies residence requirements to allow county superintendents to be a resident of the county or of a contiguous county in the state
- modifies health requirements for county superintendents to be similar to the requirements for teachers
- requires annual evaluations of county superintendents
- requires county superintendents to report promptly to the county board when schools fail to meet the standards for improving education and any other issues affecting schools, programs and initiatives
- requires county boards to file policies to promote school board effectiveness with the State Board and requires county boards to review those policies annually
- requires county boards to perform annual self-assessments
- allows county boards to conduct meetings in facilities within the county other than the county board office
- adds specific authority that county boards may contract with or engage outside legal counsel

### Appropriations for Basic Skills and Success

- modifies the restriction that the funds appropriated for Basic Skills and Success programs be expended directly to allow, with State Board approval, for the expenditure of the funds for the installation, set-up, internet hook-up and wiring to be made through contractual agreements with county boards and Regional Educational Services Agencies (RESAs)

### Job Sharing

- authorizes service personnel to participate in job sharing arrangements
- requires that any job-sharing agreement must be in writing and include specific arrangements such as assignment of benefits

### Local School Improvement Councils

- allows county boards to meet with a quorum, rather than the full membership, of local School Improvement Councils. An alternative may be established for counties with more than 20,000 students or 12 schools
- requires training for local school improvement councils to meet the guidelines established by the State Board

*(This summary was provided by House Education Senior Program Analyst David Mohr and Senate Education Counsel Hank Hager.)*

- prohibits more than one parent who is employed by a school from being a member of the local school improvement council

**House Bill 2083** authorizes county boards to enter into job sharing agreements with any of its employees by removing a prior restriction to professional employees only. Additional criteria for job sharing agreements are also established. The agreements must be in writing; they must designate specifically the one employee entitled to public employees insurance coverage; and, the employee not designated is not eligible regardless of the numbers of hours worked. Also, the issue of retirement benefits must be considered and any provision in the agreement relating to retirement benefits may not cost the retirement system any more than if a single employee were filling the position. And, the parties must consider the issue of termination of the agreement as well as any other criteria they consider appropriate.

## **Senate Bill 522**

**House Bill 2051** relaxes the requirements for receiving the Higher Education Adult Part-time Students (HEAPS) grant; provides a 10 percent set aside for certain noncredit and customized training programs and provides that grants be available for approved distance education throughout the calendar year, subject only to the availability of funds.

**House Bill 2953** continues the Prepaid Tuition plan and the Tuition Trust Fund for all current prepaid tuition contract holders, but closed the program as of March 8, 2003, to any new contracts until new contracts are authorized by further legislative enactment. The Chairman of the Board of Trustees of the College Prepaid Tuition and Savings Program must report to the Governor, the President of the Senate, the Speaker of the House and the Unclaimed Property Administrator on the actuarial status of the Prepaid Tuition Trust Fund on or before December 1, 2003, and each subsequent year. The report must include information on the projected unfunded liability. Also, beginning this year, up to \$500,000 annually may be transferred from the Unclaimed Property Trust Fund to the newly created Prepaid Tuition Trust Escrow Account in the State Treasury to offset any actuarial deficits disclosed in the December 1 report and, if needed, for the Program's current obligations.

**Senate Bill 180** allows funds left over from certain expenses paid out of the School Board Authority's School Building Debt Service Fund to be used by the Authority for other school improvement projects financed on a cash basis. In addition, the measure includes other school building authority related provisions, as well as a provision relating

to introductory vocational-technical courses in middle school grades. Another provision authorizes the Authority to reserve up to \$500,000 for an additional year to allow time for a county to complete financial planning for a project prior to the allocation of funds. The county has 18 months to solidify the project budget and meet its obligations or the reserve expires and the funds will be reallocated in the next funding cycle.

**House Bill 2983** relates to the Teachers' Retirement System (TERS). This measure enables the Consolidated Public Retirement Board (CPRB) to establish the interest rate for members of the Public Employee Retirement System (PERS) who transfer into the TERS. The current interest rate is six percent for transfer. The bill also changes language pertaining to eligibility for loans. Current law states that members are not eligible for more than one loan in any given year. This measure states that a member is not eligible for more than one outstanding loan at a time.

**House Bill 2984** establishes a one-year window for a member of the Teachers Retirement System who received Workers' Compensation temporary total disability benefits to purchase, by lump sum payment from personal funds, up to five years service credit for the time the

## **Supplemental Appropriations:**

**HB 3206** - Supplemental appropriation to the Department of Tax and Revenue - Tax Division

**HB 3207** - Supplemental appropriation to the Department of Military Affairs and Public Safety - Division of Juvenile Services

**HB 3208** - Supplemental appropriation to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units

**HB 3209** - Supplemental appropriation to the Department of Military Affairs and Public Safety - West Virginia Parole Board

**HB 3210** - Supplemental appropriation to the Department of Military Affairs and Public Safety - Division of Protective Services

**SB 215** - Supplemental appropriation to the Department of Health and Human Resources - Health Care Authority

**SB 637** - Supplementing, amending, reducing and increasing items from the State Road Fund to Department of Transportation - Division of Motor Vehicles

**SB 638** - Supplemental appropriation to the Department of Military Affairs and Public Safety - Division of Corrections, Parolee Supervision Fees

**SB 639** - Supplemental appropriation to the Department of Transportation, Division of Motor Vehicles, Driver's License Reinstatement Fund

**SB 640** - Supplemental Appropriation of Federal Funds to the Department of Military Affairs and Public Safety, Division of Veterans' Affairs

**SB 641** - Supplemental Appropriation of Federal Funds to the Department of Administration, Children's Health Insurance Agency

**SB 642** - Supplemental Appropriation to Department of Health and Human Resources, Division of Human Services

**SB 643** - Supplemental Appropriation to Bureau of Commerce, Division of Natural Resources

**SB 644** - Supplemental Appropriation of Federal Funds to Department of Military Affairs and Public Safety, Division of Corrections

**SB 645** - Supplemental Appropriation of Federal Funds to Public Service Commission, Motor Carrier Division

**SB 658** - Supplemental Appropriation to Department of Health and Human Resources, Division of Human Services, James "Tiger" Morton Catastrophic Illness Fund

**SB 659** - Supplemental Appropriation to State Board of Examiners, Licensed Practical Nurses

**SB 660** - Supplemental Appropriation, Reductions, Amendments and Increase of items from the State Road Fund to Department of Transportation, Division of Highways

**SB 661** - Supplemental Appropriation of Federal Funds to Department of Health and Human Resources, Division of Health, Maternal and Child Health

**SB 662** - Expiration of Funds to unappropriated balance in the general revenue from the Division of Banking, Assessment and Examination Fund

teacher was absent from work. The injury must have occurred between Jan. 1, 1988, and Dec. 31, 1998. The bill also provides that a teacher who purchases the service time gets a one-year increment credit for each year purchased.

**Senate Bill 206** clarifies that aides may supervise students undergoing in-school suspensions; eliminates the home school requirement that the instructor have four more years of formal education than the child being instructed; and, modifies assessment requirements for home schooled children.

**House Bill 2961** - limits the idling of school bus engines for more than five minutes except for certain reasons and requires the State Board to write a policy governing the idling of school buses.

## Education-Colleges and Universities

**Senate Bill 646** authorizes the establishment of centers for economic development and

technology advancement to be formed in connection with doctoral institutions in the state to provide maximum flexibility and to encourage and facilitate private sector participation in and support of research. The bill provides that the majority of members on a center governing body must be private sector business and industry representatives. The bill also includes changes to the state grant program by allowing proprietary schools the ability to participate in the grant program.

**House Bill 2224** reorganizes institutions of higher education in West Virginia. The bill requires that Potomac State College become a fully-integrated division of West Virginia University by July 1, 2005. This merger would make the Potomac State College President a WVU provost. The bill also changes Potomac State College's curriculum focus to agriculture, forestry instruction, professional programs and basic liberal arts instruction. Potomac State College will also negotiate contracts through Eastern West Virginia Community and Technical College to provide work force

development training, literacy education and technical education programs.

Glenville State College remains a four year institution, but without a Community and Technical College. Fairmont State College retains its Community and Technical College with its expanded responsibility district until the Community and Technical College becomes independently accredited.

New River Community and Technical College is a newly-named Community and Technical College comprised of components of Bluefield State College, the Center for Higher Education and Work Force Development at Beckley. The bill also headquarters the New River Community and Technical College in Beckley with administrative links to Bluefield State College. By Dec. 31, 2004, if New River Community and Technical College is not independently accredited, the Policy Commission can designate it as an independent community and technical college or merge it with another institution. The Bluefield State College President will appoint a provost to head New



From the West Gallery in the House Chamber, constituents can closely follow the progress of the Legislature

*photo: Max Hunt*

River Community and Technical College.

In regard to tuition and fees at state colleges and universities, the bill limits undergraduate resident tuition and fee increases to 9.5 percent in any fiscal year. Community and Technical Colleges will be limited to tuition and fee increases of 4.75 percent. The Policy Commission is required to approve any tuition increases before they take effect.

The bill protects students enrolled in a merging institution from loss of financial aid and changes in programs. The bill also directs governing boards to provide salary increases of up to 10 percent for faculty who are promoted in rank and allows faculty eligible for sick leave to draw from catastrophic leave banks.

The bill requires all institutions generally to reduce the number of low-enrollment introductory classes by 2004 and maximize the use of their own natural resources.

## Education – Retirement

**House Bill 3109** allows teachers and school administrators serving as West Virginia Legislators to count periods served in the Legislature toward the Teachers Defined Contribution Retirement System. Employers are required to pay benefits into the System for teachers who serve during legislative periods.

## Elections

**House Bill 3093** requires county commissions to follow geographic physical features identified by the United States Census Bureau when determining precinct boundaries. These geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks and mountain ridge lines. The county commissions are required to submit these changes to the West Virginia Office of Legislative Services by June 30, 2007, and every 10 years thereafter.

**Senate Bill 648** clarifies ambiguities and inconsistencies in current law, including changes requested by the circuit and county clerks, and makes changes required by the Help America Vote Act of 2002. This bill requires written notice to registered voters if a voting precinct is changed and also clarifies how members of the state executive committees are elected as well as providing for additional members. This bill also specifies the information to be on the general information cards and provides instruction on casting a

provisional ballot.

The bill increases the time for early in-person voting to 20 days before an election including the two Saturdays prior to an election; however, the half day voting on the Monday before an election has been discontinued. The County Clerk in each county must notify everyone who voted on Monday during the previous general election that Monday voting is no longer available. Due to the increased time for in-person voting the publication dates for sample ballots was changed to require publication not more than 26 days nor less than 20 before the election. In addition, the deadline for filing as a write-in candidate was moved back to the 21st day before the election.

## Environmental Protection

**Senate Bill 649** allows the Commissioner of Highways to pledge all or any money in the A. J. Manchin Fund to payment of debt service on bonds issued by the Water Development Authority to finance infrastructure projects relating to waste tire processing facilities. The facility must have a minimum capital cost of \$3 million and be determined to be environmentally sound. The bill also authorizes the Water Development Authority to issue infrastructure revenue bonds payable from the A. J. Manchin Fund.

**House Bill 2528** establishes the West Virginia Flood Prevention Task Force. The ten-member Task Force will make recommendations to the West Virginia Office of Emergency Services in relation to federal, state and local appropriations for flooding. Also, the Task Force will review the progress of

flood mapping, examine and improve flood prevention measures, and request federal funding assistance when necessary.

**House Bill 2669** sunsets the annual certification payment for facilities that manage hazardous waste, to occur based on the fiscal year for the next three years and terminates the Hazardous Waste Management Annual Certification Fee and the Hazardous Waste Management Fee Fund on June 30, 2006. If any fines are collected, the net proceeds of the fines, penalties and forfeitures shall be considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this action. All permit application fees collected under this article shall be paid into the State Treasury into a special fund designated "The Hazardous Waste Management Fund."

**Senate Bill 649** authorizes the Highways Commissioner to pledge moneys from the A.J. Manchin Fund to finance projects implemented by bonds from the Water Development Authority which finance infrastructure projects of waste tire processing facilities in West Virginia. The facility must be environmentally sound, significantly further efforts to properly dispose of waste tires and have a capital cost no less than \$3 million.

## Ethics

**House Bill 3051** makes certain public officials report any gifts over \$50 on their financial disclosure statements. Previously, public officials would only have to report a gift of \$100 or more. When claiming the gift, the

### Rulemaking Review:

**HB 2592** - Authorizing the Department of Administration to promulgate legislative rules

**HB 2599** - Authorizing the Department of Education and the Arts to promulgate legislative rules

**HB 2603** - Authorizing the Department of Environmental Protection to promulgate legislative rules

**HB 2615** - Authorizing the Department of Military Affairs and Public Safety to promulgate legislative rules

**HB 2625** - Authorizing the Department of Health and Human Resources to promulgate legislative rules

**HB 2648** - Authorizing the Department of Transportation to promulgate legislative rules

**HB 3011** - Relating to the authority of the State Fire Commission to promulgate legislative and emergency rules

**SB 287** - Authorizing various agencies within the Department of Tax and Revenue to promulgate legislative rules

**SB 316** - Authorizing various agencies within the Bureau of Commerce to promulgate legislative rules

**SB 329** - Authorizing miscellaneous agencies and boards to promulgate legislative rules

official must also report the giver's name, address, and other similar information used to identify the person who gives the gift.

## Fire Fighting and Prevention

**House Bill 2878** permits municipalities with a Firefighter's Civil Service System that provide Advanced Life Support Ambulance Service to train, examine and hire firefighter paramedics. In order to qualify, however, the ambulance service must be licensed by the state health department. Applicants for the firefighter paramedics position must be certified paramedics and successfully pass the firefighter paramedic examination.

**Senate Bill 505** allows municipal fire chiefs to retain their rank in certain cases. This bill permits an appointed fire chief of a fire department who is removed from the position, except for good cause, to keep the status attained during his or her fire chief term.

**House Bill 2714** provides that a person who donates fire control or rescue equipment to

a volunteer fire department is not subject to civil liability for any personal injury, property damages or death resulting from a defect in the equipment. This liability limit only applies if the individual does not act with deliberate malice, recklessness or negligence when donating the equipment.

**House Bill 3037** mandates that an apprentice fireman be terminated from employment following three unsuccessful attempts at passing an apprentice examination. The provisions of this measure applies to apprentice firemen hired after the last day of March 2003.

**House Bill 2359** allows all of the fees collected for required inspections done by the Office of the State Fire Marshal and for license fees for electricians and electrical inspectors to be kept in a special revenue account, instead of having 10 percent of the fees transferred to the General Revenue Fund. It also requires that the premium tax on insurance companies which provide fire insurance be deposited in

that account.

## Freedom of Information

**House Bill 2700** adds Peer Review Committees established by Health Maintenance Organizations to the definition of "review organization." Current law protects records and proceedings of medical peer review organizations, and this bill would give Peer Review Committees the same statutory privileges.

**House Bill 3009** exempts certain records from the Freedom of Information Act for reasons of national security. The list of exempt records includes information prepared to prevent or respond to terrorist attacks, law enforcement and emergency response deployment plans, terrorist intelligence documents shared by federal and international law-enforcement officials, disaster recovery plans, architectural layouts of facilities containing recovery plan programming and codes for facility security



Due to the many important issues facing lawmakers, the Senate chamber housed much debate and deliberation during the 2003 session.

photo: Martin Valent

systems.

## Fuel

**House Bill 2891** removes the requirement that the Tax Commissioner annually report the quantity of gasoline and special fuel tax collected in each county.

## Funds

**Senate Bill 655** creates a Special Revenue Fund in the State Treasury entitled the "Public Utilities Tax Loss Restoration Fund." The Auditor is to pay into the fund, up to one percent of gross receipts deposited in the Public Utilities Operating Fund and up to one percent of gross receipts deposited in the Operating Fund of the Interstate Commerce Division. The proceeds of the new fund are to be distributed quarterly on a proportional basis to counties, districts and municipalities that have lost assessed value from the prior year's assessment. The distribution is based on the county, district or municipality's percentage loss compared to the total loss of all counties, districts and municipalities that have lost assessed value from the prior year's assessment.

## Governmental Agencies

**Senate Bill 636** exempts commodities and services offered by nonprofit workshops for the disabled from competitive bidding requirements. In the past, nonprofit workshops for the disabled were exempted from the competitive bidding process when selling commodities or printing to the State. However, the Department of Administration currently allows workshops to avoid competitive bidding for services other than printing, such as janitorial services, food services, etc. This bill changes the word "printing" to "service" to authorize continuation of the existing practice.

**House Bill 2077** removes the requirement that the Joint Committee on Government and Finance be given reports on the Colin Anderson closure and relocation of the patients. The Colin Anderson Center, a state mental health hospital and facility, was closed Dec. 31, 1996, and its patients were either transferred or de-institutionalized. Current law directs the Secretary of the Department of Health and Human Resources to submit monthly reports to the Legislature's Joint Committee

on Government and Finance pertaining to the placement and monitoring of all residents transferred from the Colin Anderson Center.

**House Bill 2733** increases from \$75,000 to \$150,000, the amount of special revenue collections that may be carried over from one fiscal year to the next for expenditure by the State Tax Division's Criminal Investigations Division and Special Audits Division.

**Senate Bill 383** allows the Alcohol Beverage Control Commissioner (ABCA), with approval of the Governor and Board of Public Works, to sell a warehouse and purchase a replacement. The legislation authorizes the sale of the ABCA warehouse in Nitro, WV, and its surrounding real estate for a fair and marketable price. It also authorizes the purchase of real estate for a replacement warehouse that meets the size and standards determined by the ABCA Commissioner.

**Senate Bill 437** requires the Joint Committee on Government and Finance to review certain acquisitions, construction and long-term agreements for state office space and/or property exceeding \$1 million. The bill also provides that any property acquired for the state's benefit will be considered a public improvement and insured against hazards and other liabilities. The bill adds that any private entity involved in such an arrangement is exempt to any personal liability relating to the use, control or possession of the property.

## Health

**Senate Bill 652** re-names the Marion Health Care Hospital (formerly known as the Fairmont Emergency Hospital) the "John Manchin, Sr. Health Care Center."

**House Bill 3016** allows the Department of Health and Human Resources to retain Adult Protective Service Records for 30 years instead of two years. After the 30 year period, the records will be destroyed.

**Senate Bill 608** allows the continuance of the summary certificate of need reviews for proposed behavioral health services. The bill states this continuance is necessary to maintain federal approval of the Medicaid Mentally Retarded, Developmentally Disabled Waiver Program.

**Senate Bill 336** requires the Secretary of the Department of Health and Human Resources

and the Insurance Commissioner to propose legislative rules. These rules will govern the development of uniform application forms for credentialing, re-credentialing or updating information of health care practitioners required to use the forms.

**Senate Bill 405** repeals the provisions for the Residential Board and Care Homes and changes the naming of "personal care homes" to "assisted living residences." The bill also extends the duration of the Care Home Advisory Board for an additional six months. The bill also removes the requirement that a backup power generator be provided for services requiring auxiliary electrical power.

## Health Insurance

**House Bill 2675** mandates insurance coverage of certain clinical trials for ordinary costs of covered services. The bill covers payment of patient care costs in clinical trials under hospital service corporations, dental service corporations, medical service corporations and health service corporations, as well as the Public Employees Insurance Agency (PEIA), Children's Health Insurance Program (CHIP), Medicare and accident and sickness insurance. The bill also requires reimbursement for treatment by an out-of-network or non-contracting provider.

**Senate Bill 56** prohibits certain insurers (insurance companies, hospital service corporations, medical and dental service corporations, HMOs, and health care centers) from requiring persons under an insurance contract to use a mail order pharmacy. An insurer issuing group accident and sickness policies in this state may not require any person covered under a contract which provides coverage for prescription drugs to obtain the prescription from a mail-order pharmacy in order to obtain benefits for the drugs. The bill would prohibit insurers from imposing an extra fee or a penalty upon the insured for using another pharmacy.

## Insurance

**Senate Bill 338** creates a Medicaid Buy-In Program for those individuals with a disability who want to continue to work. To be eligible for the program, a person must have a disability, be a West Virginia resident between the ages of 16 and 65, and have a job in a competitive environment. The participant's

income also cannot exceed 250 percent of the federal poverty level, exceed the resource limits for the Federal Supplemental Security Income Program, or, using the Social Security Income Program methodology, have income that does not exceed the federal benefit rate plus the general income exclusion. Limitation only applies to individuals who are unable to maintain employment for involuntary reasons.

**House Bill 2702** eliminates the provision requiring risk retention groups registered with the state to pay examination assessment fees. This examination assessment fee is not a tax; it is a preempted fee.

**Senate Bill 534** creates the Third-Party Administrator Act, which applies to administrators who underwrite, collect premiums or settle claims on West Virginia residents in connection with life, annuity or accident and sickness coverage. No administrator may act without a written agreement between himself or herself and the insurer. All agreements are to be kept as part of the official record and will contain the administrator's duties. Both the insurer and the administrator can terminate the written agreement for cause.

The bill mandates that the Insurance Commissioner is responsible for licensing all third-party administrators. Administrators will keep records and make them readily available for the Commissioner, who will keep any findings confidential except when requested by the National Association of Insurance Commissioners. However, if the insurer and administrator cancel their agreement, then records may be transferred to the new administrator.

The insurer must determine benefits, premium rates, underwriting criteria and claims

payment criteria. The insurer must competently administer its programs and must conduct a semiannual review of administrator operations if benefits for more than 100 certificate holders are awarded. The administrator cannot enter into agreements where compensation is based upon "savings" made by the administrator in the adjustment, settlement or payment of claims

The insured must be notified of the insurer-administrator relationship and informed about all charges and collections. Administrators must file an annual report with the Commissioner. The report must include an audited financial statement performed by an independent certified public accountant.

Administrators' certificates of authority may be denied, suspended or revoked if the company is in unsound financial condition, practicing methods that are hazardous to insured persons or the public, or neglects to pay judgments rendered against it.

**Senate Bill 485** allows the Insurance Commissioner to enter into settlement agreements and/or to compromise civil actions arising out of the Insurance Commissioner's taxing authority. The bill creates a new section within the Insurance Tax Procedure Act which generally provides for closing agreements, finality of closing agreements, authorized compromises, and records of agreements, as well as records of the compromises.

**Senate Bill 400** requires the Insurance Commissioner to keep certain documents from the National Association of Insurance Commissioners (NAIC) and certain other state insurance departments confidential. The Commissioner also may share information, even if it is confidential, with the NAIC and the Board of Governors of the Federal Reserve

System, if it should become necessary. This brings state code into line with the Federal Gramm-Leach-Bliley Act.

**House Bill 2764** further outlines the authority of the Insurance Commissioner regarding subpoenas. The subpoenas may require testimony under oath, answers to written inquiries, and the production of documents. The bill also states that answers to inquiries and documents produced in response to a subpoena are exempt from disclosure under the Freedom of Information Act.

**Senate Bill 358** allows a domestic insurer, if approved by the Insurance Commissioner, to transfer its offices to another state. The insurer would become a foreign insurer upon the transfer, if qualified. The Commissioner may not allow the transfer if it is determined not to be in the best interest of the policy holders of the state. The transferring insurer also would be responsible for filing new policy forms, notifying the Commissioner of the details of the transfer and filing any resulting amendments to corporate documents.

**Senate Bill 357** lowers the interest rate for individual deferred annuities. The law sets the rate at 3 percent, and this bill changes the minimum rate to 1.5 percent for two years. The previous rate made it difficult for insurers to sell annuities and offer some services. This legislation provides temporary relief while the National Association of Insurance Workers establishes a permanent solution. The bill will affect annuity contracts issued between July 1, 2003, and July 1, 2005.

**House Bill 2003** allows groups of two or more political subdivisions to establish their own insurance pool to cover the potential liability costs in cases of injury, death or personal loss for employees due to neglect. The Insurance Commissioner will propose legislative rules for establishing such political subdivision self-insurance programs.

**House Bill 2715** modernizes the regulation of excess/surplus line insurance sales or the sale of insurance by carriers unlicensed in this state in order to fill a particularized need by adopting the National Association of Insurance Commissioners' Model Act: "The Non-surplus line insurance is to be placed with reputable and financially sound non-admitted insurers, establish a system of regulation which will permit orderly access to surplus lines insurance in this state and encourage admitted insurers to

## Expiring Funds:

**HB 3204** - Expiring funds from the Insurance Commissioner - Insurance Commission Fund

**HB 3205** - Expiring funds from the Public Service Commission

**HB 3211** - Expiring funds to the unappropriated surplus balance in the state fund - general revenue

**HB 3212** - Expiring funds to the Department of Military Affairs and Public Safety - West Virginia State Police - surplus real property process fund

**HB 3214** - Expiring funds to the Secretary of State - State Election Fund

**HB 3215** - Expiring funds to the unappropriated surplus balance in the state fund, general revenue

**HB 3218** - Expiring funds to the unappropriated surplus balance in the state fund, general revenue

## Establishing Funds:

**HB 3217** - Establishing a fund and making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated

provide new and innovative types of insurance available to consumers. The Act also provides a system through which people may purchase insurance other than surplus lines insurance, protects revenues of this state and provides a system which subjects non-admitted insurance activities in this state to the jurisdiction of the Insurance Commissioner and state and federal courts in suits by or on the state's behalf.

**Senate Bill 488** relates to the contingent liability of members of Farmers' Mutual Fire Insurance companies and limits the amount of risk such companies may undertake. The purpose of this bill is to establish a new minimum surplus for Farmers' Mutual Insurance companies in order to ensure financial solvency.

**House Bill 2556** requires the Insurance Commissioner to issue an annual communication to state and local governmental entities and nonprofit organizations to increase awareness of certain flood insurance issues. The bill ensures state and local governmental entities and nonprofit organizations are aware of the 1988 amendments to the federal Robert T. Stafford Emergency Assistance and Disaster Relief Act. This Act imposes penalties in the form of reductions in Federal Emergency Management Agency (FEMA) Disaster Relief Funds on public entities which fail to purchase adequate flood insurance on all property located in identified flood hazard areas. It also considers the magnitude of risk exposure and potential financial loss that may result from these penalties and makes these entities aware that low-cost, federally subsidized flood insurance may be available through the National Flood Insurance Program (NFIP).

**Senate Bill 486** requires Certified Public Accountants (CPAs) to notify the Insurer's Board and Audit Committee of adverse financial conditions. The bill mandates any CPA to immediately notify the Insurer's Board and Audit Committee when noticing the insurer has materially misstated its financial condition.

**Senate Bill 356** relates to insurance company holding systems and the federal Gramm-Leach-Bliley Act. This bill allows insurance companies to acquire or be acquired by depository institutions and amends the time period within which a public hearing and action may be taken by the Insurance Commissioner once a statement is filed by a person offering to acquire control of an insurance company. Also,

this bill authorizes the Insurance Commissioner to share confidential information gathered with the Board of Governors of the Federal Reserve System or other appropriate federal banking agency.

## Jobs

**Senate Bill 352** reenacts the West Virginia Jobs Act. The bill amends the legislative findings to include construction projects which use public funds indirectly. It also eliminates the requirement that an employee must have resided in the local labor market for at least six months prior to application for employment.

## Law Enforcement

**House Bill 2799** authorizes the re-employment of recently retired troopers by allowing the Superintendent of the State Police to re-employ recently retired members who were honorably retired to fill vacant trooper positions. Any re-employed member serves at the will and pleasure of the superintendent and has no civil service protections. While the re-employed member would not require as much training as a new recruit, any re-employed member is required to complete instruction courses before resuming duties, including firearms training and certification, defensive driving and other listed subject areas.

**House Bill 2847** requires the law-enforcement agency that places a person under arrest to transport them to a regional or county jail. An exemption occurs to this requirement when there is a preexisting agreement between the county and the political body the other law-enforcement agency serves.

## Liability

**Senate Bill 381** adds professional surveyors to the list of professionals who may organize professional limited liability companies. One or more professional surveyors who render the same or compatible services or otherwise practice together in West Virginia may become members of a professional limited liability company. The Licensing Board for Land Surveyors is required to propose legislative rules providing procedures for the formation and approval of professional limited liability companies. Those rules are to permit the formation of professional limited liability companies with members of other professions.

**Senate Bill 412** eliminates a landlord's liability for a tenant's delinquent utility accounts. The bill will remove this liability for water and sewer charges from the Public Service District (PSD) left delinquent by a tenant, unless the landlord has contracted directly with the respective PSD. The bill, in turn, changes the deposit requirements for new tenants. New applicants for water and/or sewer services must place a deposit of \$50, or 2/12 of the average billing amount, whichever is greater. If a deposit is forfeited, the original deposit will be used and another will be required to reestablish service. After 12 months of prompt payment history, the PSD may return the deposit, but upon termination of service by the tenant the deposit must be returned.

## Licensing

**House Bill 2529** revises the law governing persons who are licensed to perform lie detector tests, now known as psychophysiological detection of deception examinations. Current law allows the tests to be administered to employees of law enforcement and pharmacies, and to any employee if there is an ongoing investigation. Any person performing such a test must be licensed by the Division of Labor, whose requirements must be in line with the American Polygraph Association's standards. This bill creates a Class II license, which allows a full-time employee of a law-enforcement agency to give the test to prospective employees of that law-enforcement agency. The Division of Labor will propose rules to establish the education requirements to obtain a Class II license.

## Liens

**Senate Bill 387** sets a 100-day time period for suppliers or mechanics to perfect liens for services or material provided in the construction or renovation of real property. The law previously gave suppliers and mechanics only 75 days to perfect a lien.

## Mental Health

**Senate Bill 204** relates to involuntary commitment generally. This measure allows the determination of probable cause in mental hygiene cases to be determined

by the evaluation and certification by a licensed independent clinical social worker, or by a nurse practitioner with certification in psychiatrics. Previous West Virginia law permitted independent clinical social workers and nurse practitioners with psychiatric certification to determine probable cause in mental hygiene cases but did not allow these professionals to render an opinion regarding their evaluations. This bill will change that discrepancy and permit independent clinical social workers and nurse practitioners with psychiatric certification to render an opinion and allow the courts to determine probable cause based on these opinions. The measure also adds language that allows for the review of the mental hygiene of incarcerated persons who have yet to be convicted.

## Military Affairs

**House Bill 2835** creates a special revenue fund in the State Treasury designated to be a Veterans Facilities Support Fund. The Fund will consist of gifts and donations for the veterans nursing homes and interest and return on investments relating to the Fund, and profits from the sale of veterans benefit lottery tickets. Money in the Fund is to be used for the operational costs of any veterans facility or as otherwise designated by the donor.

**Senate Bill 494** authorizes the Public Service Commission (PSC) to regulate fees and charges between cemeteries and veterans for the setting of U.S. Department of Veterans Affairs' grave markers. The PSC may ensure compliance to its lawful orders by mandamus or injunction or other proper proceedings in circuit court or the Supreme Court. It provides that aggrieved parties may appeal the decision of the PSC to the Supreme Court of Appeals for an appeal procedure.

## Motor Vehicles

**Senate Bill 342** limits the time that driver's licenses may be issued to persons who are not citizens of the United States. Under this legislation, an individual who is legally authorized to be in the United States may be issued a five year license. Upon renewal, another five year license may be authorized.

**Senate Bill 182** relates to child passenger safety seats, booster seats and safety devices. This bill requires that every driver transporting children less than nine years of age in certain motor vehicles must maintain and secure the

child in a child passenger safety seat or booster seat or other safety device meeting federal motor vehicle safety standards.

**House Bill 3104** provides for commercial work orders for vehicle and equipment repair; establishes criteria for commercial vehicle and equipment repair vendors; and requires a cost effectiveness analysis for issuing commercial work orders. The bill allows the Highway Commissioner to issue a work order to commercial vendors when it is determined that repairs made to a vehicle will extend the life of the equipment for a minimum of five years.

**Senate Bill 162** prohibits the release of information regarding any license suspension or revocation related to school truancy for people 18 years of age or older. The Division of Motor Vehicles (DMV) is required to file every license application and maintain suitable indices containing all applications denied and reasons for such denial. The Division also is responsible for all applications granted and the name of every licensee whose license has been suspended or revoked by the Division. The Division also is required to file all abstracts of court records and convictions received by it under the laws of this state.

**House Bill 2511** authorizes the issuance of a special motor vehicle license plates. There is a special application fee of \$10 for each plate and an annual fee of \$15. The exception is an annual fee of \$25 for Democratic State or County Executive Committee members. The DMV must also have 100 applications from the Democratic or Republican State or County Executive Committee members prior to beginning production. This bill also prohibits the Commissioner from beginning the design or production of any license plates regarding private organizations until at least 100 persons complete an application and deposit a check to cover the first year basic registration, one time design and manufacturing costs and first year additional annual fees.

**House Bill 2763** allows auxiliary roof-mounted lighting on vehicles only when it comes as original equipment. These lights must be off and covered while the vehicle is driven on the highway. In regard to spot lamps, any motor vehicle, except a public utility company maintenance vehicle, may be equipped with not more than one spot lamp. Also, motor vehicles may be equipped

with not more than two fog lamps mounted on the front. Similar provisions deal with auxiliary passing lamps, auxiliary driving lamps and roof-mounted off-road light bar lighting devices.

**House Bill 3056** provides for the regulation of intrastate driving hours of for-hire carriers. Under this legislation, these drivers are not permitted to drive for more than 10 consecutive hours without eight consecutive hours off duty; drive after having on-duty time of 15 hours without eight consecutive hours off duty; or drive after being on duty for a total of 70 consecutive hours within eight consecutive days. Additionally, for-hire carrier companies are required to keep time records for six months.

**Senate Bill 52** eliminates certain bonds on out-of-state defendants in automobile accident cases. This measure is a technical clean-up bill from legislation passed during the 2002 Legislative Session.

**Senate Bill 390** removes the requirement that a person's Social Security Number appear on a commercial driver's license (CDL). However, the license will still include the driver's name, eye and hair color, weight, gender, birth date, address, signature and color photo.

**Senate Bill 95** increases the maximum allowable length and width of motor homes, travel trailers, truck campers and combined vehicles. Motor homes can be 45 feet long and nine feet wide, excluding front and rear bumpers. Two-vehicle combinations, one of which is a travel trailer, folding camper trailer or motor home, can be 65 feet long and nine feet wide.

## Municipalities

**House Bill 2972** improves the actuarial stability of municipal police and fire pensions. Beginning on Sept. 1, 2003, any municipality which previously chose alternative funding may revert back to the standard funding method, which is to annually contribute to the fund an adequate amount to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years beginning July 1, 1991.

## Natural Resources

**House Bill 2882** limits requirements for stays for appeals under the Surface Coal Mining and Reclamation Act for unjust hardship.

Under the provisions of the law, an unjust hardship is not grounds for granting a stay or suspension of an order, permit or official action.

**House Bill 2881** modifies an existing law pertaining to the Surface Coal Mining and Reclamation Act. The law dictates that a bond posted under the Act can not be released until the quality of the post-mining discharge is equal to or better than the pre-mining discharge. The modification under this bill allows the state Department of Environmental Protection to authorize exceptions to the mandate.

**House Bill 2818** authorizes county commissions of designated growth counties to establish a program for the transfer of development rights to encourage natural resources preservation, protection of scenic open lands, and facilitate organized county development and growth.

**House Bill 2902** relates to the confidentiality and disclosure of information set forth in the oil and gas combined report form. The bill treats certain information reflected on the combined forms as confidential tax information and prevents its release in the same manner as other protected tax information. Also, the bill recognizes that, historically, some of the information contained on the combined report form has been released to the public and is not entitled to confidential treatment.

**House Bill 2285** requires hunting and fishing licensees to carry identification and other documents, including a valid license or proof of one; all relevant stamps, permits and written consents; a driver's license, passport or picture identification; and a training certificate or other proof of hunter safety education. Additionally, this bill mandates that personal information of a licensee under age 15 may be verified by an accompanying licensed adult and that no individual may transfer a license to another person.

**House Bill 2512** relates to the competitive bidding and notice requirements for the development of natural resources in which the Public Land Corporation (PLC) has interest. The measure establishes public notice, public hearing, review and oversight standards to ensure that the public and state interests are represented when the PLC allows for drilling or development of minerals, which include oil, gas and coal, as well as other natural resources, such as sand and gravel, on public lands. The bill also mandates that the rents, royalties and

other payments from mineral leases be placed into the Special Public Land Corporation Fund in the State Treasury.

**House Bill 2094** regulates the release of fish, water animals and other aquatic organisms into the waters of West Virginia. This measure makes it unlawful to release any fish, water animal or other aquatic organism into the public waters of this state without first obtaining a permit from the Division of Natural Resources. However, the bill allows the release of trout originating in West Virginia or imported as long as the imported trout meet the disease free certification requirements set forth by law. Additionally, bass which meet the disease free certification requirements may also be released without a stocking permit.

**Senate Bill 447** allows the Director of Natural Resources to enter into reciprocal agreements with the state of Ohio in regard to hunting and fishing on tributaries of the Ohio River. The bill states that residents of Ohio who carry valid Ohio hunting or fishing licenses may hunt waterfowl or fish from the West Virginia banks, tributaries and embankments of the Ohio River without obtaining West Virginia licenses to do so, provided that Ohio grants similar privileges to West Virginia

**House Bill 2240** creates the Hunter's Helping the Hungry Program. People who apply for a hunting license, either online or on paper, have the opportunity to donate money to the Hunter's Helping the Hungry Fund. This money will then be distributed, at the discretion of the Director of the Division of Natural Resources, to different groups who are responsible for butchering game. The money will be used to cover the costs of butchering game meat and distributing it to needy residents.

**Senate Bill 634** removes crows (Corvidae) from the category of unprotected birds and puts them in the category of game bird. The Division of Natural Resources may now set bagging limits on how many birds a hunter can take, as well as other similar rules. This bill allows the state to continue to receive \$5.22 million federal funding from the Wildlife Restoration Act. Farmers would still be allowed to destroy crows that cause damage to crops, as the bill applies only to hunting the birds as a sport, and not to protecting farmland.

## Parks

**House Bill 2840** increases the number of members on the Greater Huntington Park Board. Also, the law regulates how many people can serve on the board, how long they can serve and what regions the board members must represent.

## Professions and Occupations

**Senate Bill 611** allows a podiatric medical assistant to be issued a permit by the Board of Radiologic Technologists to take radiographs confined to the foot and ankle. To be eligible for a permit, the podiatric medical assistant must be of good moral character and have completed high school; pass the written exam for certification from the American Society of Podiatric Medical Assistants and maintain active certification through the society; meet all of the requirements of the society including the continuing educational requirements; not have been convicted of a felony within 10 years preceding his or her permit application; and pay to the board an application fee of \$75, which will be refunded if the permit application is denied.

## Public Employees

**House Bill 2975** provides a window for people who were members of Public Employment Retirement System (PERS) and who left state employment withdrawing their PERS money to buy back their time with interest. This bill allows any PERS member to purchase credited service previously forfeited by him or her and the period of time during which a member may purchase the service is March 1, 2003, through Dec. 31, 2004.

## Public Service Commission

**Senate Bill 422** allows the Public Service Commission to authorize a municipality or cooperative to place an interim or emergency rate into effect if the Public Service Commission determines that an interim or emergency rate is necessary for the municipally owned utility or gas, telephone or electric cooperative to avoid financial distress. Under the present provisions of law, municipally operated public utilities and electric, natural gas and telephone cooperatives are exempt from the Public Service Commission's general rate-making procedures and the corresponding suspensions and review periods.

**House Bill 2870** specifies the jurisdiction of the Public Service Commission (PSC) over certain described electric generating facilities. The measure requires persons, corporations and other entities that intend to construct and operate electric generating facilities, or that intend to make or construct material modifications to existing facilities, to obtain a siting certificate from the PSC in lieu of a certificate of public convenience and necessity. The bill also allows the PSC, under specified circumstances, to seek the imposition of civil or criminal penalties

**House Bill 3068** empowers public service districts to enter into agreements for engineering, design or feasibility studies without the prior approval of the Public Service Commission (PSC). The public service districts must file a request for waiver of approval to the PSC in order to enter into these agreements without prior PSC approval.

## Real Property

**Senate Bill 589** permits common interest communities to amend bylaws that affect restrictive covenants where a notice is provided in the deed. Also, all provisions of the declaration and bylaws are severable. In the event of a conflict between the declaration and the bylaws, the declaration prevails excepts when it is inconsistent with a certain chapter within the bill.

**House Bill 3062** authorizes an action for partition of real estate by stockholders for a closely held corporation when there are no more than five stockholders and the only substantial asset of the corporation is real estate. Before instituting a suit for partition, the person entitled to demand it shall notify the proper official who has supervision of the state land, and thereafter they shall proceed as they determine best. In all cases resulting in partitions, the cost of a suit shall come from its proceeds. No state official in charge of state lands may refuse to perform his or her duty in any case where any person is entitled to demand a partition.

## Regulation of Trade

**House Bill 2239** relates to reporting procedures of collections under the WV Business Corporation Act and provides that a foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State if its business is defined as a collection agency.

## Retirement

**Senate Bill 455** authorizes retirement credit for public employment in another state. This credit service will be granted to members of the Retirement System for the time of public employment in the other state, which does not surpass five years. The employee is required to provide documentation verifying this out-of-state employment. If any doubt arises regarding the service period to be credited, the Board of Trustees have the final authority to determine this time period.

## Right-of-Way

**House Bill 2802** provides for a legal description in deeds creating an easement right-of-way. The bill requires the description to be either in metes and bounds or by reference to an attached plat, by specification of the centerline of the easement or right-of-way, by station and offset, or by a plat or drawing which may not require survey. The bill does not apply to a service extension from a main distribution system of a public utility where the service is located entirely on, below, or above the property.

## Roads and Highways

**Senate Bill 404** establishes the Blue and Gray Intermodal Highway Authority which will work to advance the construction of a modern highway. This highway will travel through Jackson, Roane, Calhoun, Gilmer, Braxton and Lewis counties, connecting Interstate 79 and Interstate 77. This Authority will coordinate with counties, municipalities, agencies, corporations and associations to establish the development of this highway.

**Senate Bill 583** creates the Coal Resource Transportation Road System. This bill raises the weight limit on coal trucks to 120,000 pounds on the designated coal transportation roads, located in Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming counties. On all other state highways that are not a part of this road system, the weight limits will be 80,000 pounds. Operators of these trucks will be required to carry a permit, which will require a fee, in order to haul under the new 120,000 pound limit. The funds from this fee will be allocated to a Coal Transportation Road Fund which will function to maintain and repair heavily traveled roads and bridges. In addition,

the Public Safety Commission will create and maintain a toll-free number by which citizens can report poor driving or weight violations. Coal truck operators surpassing the speed limit are subject to triple fines.

## Safety

**House Bill 2110** declares that the lawful design, marketing, manufacturing or sale of firearms or ammunition to the public is not an unreasonably dangerous activity. This bill limits the authority of political subdivisions to bring suit against firearms and ammunition manufacturers, trade association dealers for the marketing, or sale of firearms and ammunition.

**House Bill 3203** relates to amusement ride safety by determining that a "kiddie ride" is intended for children 12 years old and younger, persons 42 inches in height or less or persons who weigh 90 pounds or less. Additionally, no person under the age of 16 may operate a kiddie ride. This bill also outlines the reasons that the owner or operator of an amusement ride may refuse public admission to a ride because of possible endangerment. These reasons include intoxication, refusal to obey rules, unacceptable or unsafe behavior and violation of any age, height or weight restriction.

## State Police

**House Bill 2118** relates to the benefits offered for surviving spouses, children and parents of State Police Officers who die while on duty. The measure increases the benefits offered from the current rate of 70 percent of the salary base or \$6,000 a year to 90 percent or \$10,000 a year, whichever is greater. The entitlement a spouse may receive for each dependent child is raised from \$100 to \$150 per month. If a spouse dies or there is no surviving spouse, the monthly entitlement for each dependent child is raised from 1/4 to 1/3 of the surviving spouse's entitlement.

## Taxation

**Senate Bill 107** establishes a sales tax holiday for the first weekend of August, 2003. School supplies, footwear and clothing will all be exempt from the state sales tax, so long as they are under \$100. This is similar to a holiday that took place last year designed to assist low-income families in buying supplies for

their children's schooling.

**Senate Bill 496** creates the Motor Fuels Excise Tax. The tax is applicable when fuel is imported to or exported from the state. It does not apply to bulk transfers of fuel. The tax is a variable 21.5 cents per gallon of gasoline until August 2007, when the rate becomes a flat 15.5 cent tax per gallon. The law provides for multiple exceptions, including all United States agencies as well as county and municipal governments and agencies. The bill also establishes licensing requirements for gasoline suppliers, importers, distributors, blenders and exporters. The bill provides for civil penalties for violations as well.

**House Bill 2477** permits residents of nursing homes and similar facilities to retain the Homestead Exemption and Class II Property Designation. The property must be used for non commercial purposes, and have been most recently used and occupied by the owner or the owner's spouse as a residence. The owner, as a result of illness, accident or infirmity, must currently be residing with a family member or be a resident in a nursing home, personal care home, rehabilitation center or similar facility. He or she would then remain eligible for the exemptions

**House Bill 2534** eliminates the property value limit on the application of the additional county excise tax imposed if a person transfers the property title to someone else. This is only applicable in those counties that have a Farmland Protection Program. The current maximum value limit is one million dollars. Taxes collected from these areas are used to promote farmland preservation.

**Senate Bill 461** updates the section of the West Virginia Corporation Net Income Tax Act which brings terms in that Act into conformity with federal terms for federal income tax purposes.

**House Bill 3014** authorizes the Tax Commissioner to sign the Streamlined Sales and Use Tax Agreement. The Act is designed to reduce the problems of collecting and remitting sales and use taxes for all vendors and will work on a multi-state customer base. The Agreement was adopted in November 2002, by a group known as the Streamlined Sales Tax Implementing States. The group consists of legislative and executive representatives from 35 states, including West Virginia. This

bill also makes the changes necessary in West Virginia tax laws in order to be in compliance with the Agreement.

The changes include: changing definitions, replacing the method by which sales and use taxes are calculated (they will still remain at 6 percent), changing the date for monthly filings of the tax from the 15th of each month to the 20th, implementing rules regarding taxing jurisdictions, incorporate uniform rules for filing tax returns and adopting taxpayer confidentiality provisions.

**Senate Bill 105** will increase the excise tax imposed on cigarettes by 38 cents to 55 cent per pack; the tax was 17 cents per pack. The bill provides that the revenues received from the tax shall be deposited into the General Revenue Fund. Any packaging of cigarettes of more or less than the 20 per pack standard will still be taxed under this bill. Packages will be taxed in a like ratio of the 55 cents per 20 cigarettes.

**Senate Bill 450** authorizes the Tax Commissioner to acquire and operate an automated tax administration system through a funding mechanism that would pay vendors of the system out of the increase in tax revenues that result from implementation of the system. The bill: 1) Provides for determination by the Tax Commissioner of the amount of the increase in tax revenues that results from implementation of the system; 2) establishes a fund for deposits of that increase in tax revenues, net of any tax revenues dedicated to local or municipal subdivisions; and 3) provides for a disbursement of those deposits per the terms of the system development contract or contracts. After any disbursements made under the contracts, the remainder of the deposited money will be paid into the General Revenue Fund, except for \$750,000, which will be allocated to the Tax Department for maintenance and operation of the system. The Tax Commissioner is required by the bill to make an annual report to the Governor, the Speaker of the House, and the Senate President each year for two years after implementation of the system, describing in detail the costs and benefits of implementing the system. Before the Tax Commissioner enters into any contract permitted by the bill, a copy and explanation of the contract must be provided to the Joint Committee on Government and Finance.

**House Bill 3077** authorizes the Tax Commissioner to agree with the federal

government to "offset" state tax refunds against federal tax liabilities and to offset federal tax refunds against state tax liabilities. In other words, if a citizen has a tax refund coming from the federal government but he or she owes state taxes, then the federal government will reduce the person's federal tax refund by that amount and send the difference to the state... and visa versa.

**House Bill 3027** authorizes the Tax Commissioner to waive tax, interest and penalties imposed on uncompensated members of the governing board or board of directors of charitable organizations and issues tax exemptions under the Internal Revenue Code for derivative tax liabilities of the organization resulting from defaults or delinquencies which could otherwise be attributable to members.

**House Bill 3095** authorizes the Tax Commissioner to share certain taxpayer information with the Treasurer. The Treasurer as Administrator for Unclaimed Property shall treat the information as records of abandoned property and shall use the information to facilitate locating owners of unclaimed tax refunds. The Treasurer may disclose any or all of the information to an owner, his or her personal representative, next of kin, attorney or a person entitled to inherit from the owner. Of the information received by the Treasurer, only the name, city and state of the last known address of the payee to whom the unclaimed or uncashed check was originally issued may be published by the Treasurer, and only for returning, recovering or disposing of unclaimed tax refunds.

**Senate Bill 462** updates the West Virginia Personal Income Tax Act by bringing the terms into conformity with their meanings for federal income tax purposes. The bill provides that for tax year 2002 the meaning of the terms in the West Virginia statutes relating to personal income taxes will have the same meaning as those terms have under federal statutes as amended during 2002.

**Senate Bill 531** provides an exemption for certain lodging franchise assessed fees from the consumer sales and service tax. This bill provides an expansion of the current exemption for casual and occasional sales by volunteer fire departments and volunteer school support groups from six to 18 sales per year. The bill further clarifies that payments received by a vendor of tangible personal property

as an incentive to sell a greater volume of such tangible personal property under a manufacturer, distributor or other third-party marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement are eliminated from the tax.

## **Taxation – Mines and Minerals**

**Senate Bill 443** institutes an annual privilege tax for anyone processing materials from waste coal refuse, gob piles, slurry ponds or pond fines to produce coal. The tax does not apply to electrical power cogeneration plants burning material from their wholly owned refuse or gob pile. The tax collected will be placed into the Waste Coal-Producing Counties Fund and will be used to foster economic and infrastructure development in waste coal-producing counties.

## **Tobacco**

**House Bill 3046** provides that persons selling cigarettes not officially approved by West Virginia are committing an unlawful act and establishes certification procedures for new tobacco manufacturers wanting to sell products in the state for the first time. The bill also establishes penalties including license revocation, civil money penalties and contraband charges for manufacturers who distribute cigarettes without certification to do so. The Tax Division is required to maintain an up-to-date, online list of all certifications incorporated in the requirements established by the bill. The bill also requires manufacturers to maintain cigarette sales invoices and documentation for five years.

**House Bill 2748** prevents mail order or internet sales of tobacco products to persons who are under the age of 18. Anyone who sells tobacco products through non-point of sales transactions must register with the State Tax Department, adopt a policy for verifying age of purchasers, not deliver products except to verified addresses, and clearly mark the packages as tobacco products. The bill contains clarifications of counterfeit cigarettes and has penalties for a violation. The penalties include a \$1,000 civil fine for a first offense and \$5,000 for a second offense if the violation is for less than two cartons. If the violation is for greater than two cartons, the penalty is \$2,000 and \$50,000 for second and subsequent offenses.

**House Bill 3045** implements the Master Tobacco Settlement Agreement. This bill states that if the amount of money a non-participating manufacturer pays into an escrow account based on units sold is greater than the amount paid by participating manufacturers, the excess in escrow is to be released to the non-participating manufacturer when the excess is determined or the escrow is to be released in 25 years.