

# Final Wrap-Up

With 2,301 bills introduced in total (795 Senate Bills; 1,506 House Bills), 266 were passed into law.

## Budget Bill (SB 125)

As called for in the State Constitution, the Legislature must adopt a balanced state Budget each year to ensure financial stability for West Virginia. This year, the House and Senate accomplished this objective and collectively approved a \$10 billion Budget Bill, which includes \$3.6 billion in General Revenue appropriations.

Some highlights of the Budget include:

The Legislature accomplished a continued reduction in the unfunded liabilities in the Teachers' Retirement System (TRS). Last year, the Legislature appropriated an additional \$317 million into the state's retirement systems. This year, approximately \$384 million was earmarked, through supplemental and Budget Bill appropriations, over and above what the state was required to pay this year. This makes TRS 30 percent funded - up 10 percent from just a few years ago.

The Legislature also allocated \$60 million more to Medicaid than last year and, from Lottery revenues, funded various initiatives for seniors, including \$550,000 for Alzheimer's respite care and \$2 million for senior services above what was allocated last year. This should translate into more funds for the 55 senior centers across the state. In addition, two line items were combined to give the Bureau of Senior Services greater flexibility in deciding the best use for certain funds.

Also, through General Revenue, nearly \$360,000 was included for the expansion of the Children's Health Insurance Agency (CHIP) and \$2.8 million was earmarked to offset premium increases in the Public Employees Insurance Agency (PEIA) for state employees.

Among the educational needs addressed, the Legislature appropriated \$200,000 for a pilot project in certain counties for the Partnership for 21st Century Skills, which seeks to identify the skills students need to succeed in the future; \$2.4 million for the school nurse funding legislation; necessary funding for counselors, audiologists and speech language pathologists; funding for the base budgets of higher education institutions; \$25 million for the Higher Education Grant Program; and, \$40 million for the PROMISE Scholarship Program.



In the area of economic development, the Legislature provided \$50,000 for Main Street West Virginia, which is the program that focuses on revitalizing downtown districts and neighborhoods, while preserving history and community; \$50,000 for the I-79 Development Council, which works to promote economic growth along the I-79 High-Tech Corridor; and, additional funding for local economic development assistance.

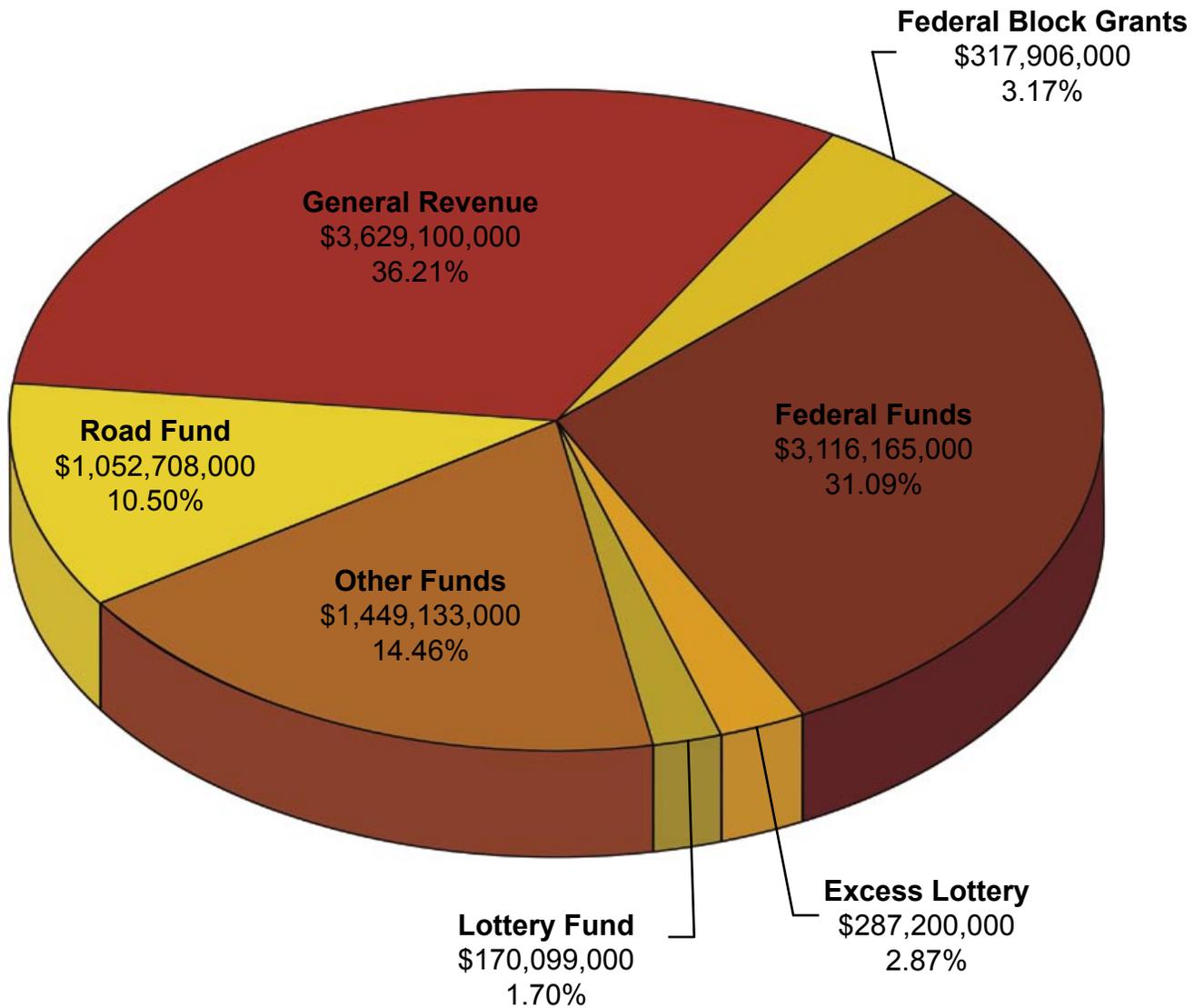
The Budget also reflects certain pay raises, including those that were secured for state troopers; money necessary for the implementation of the legislation passed for improved mine safety and rescue efforts; and, funds set aside for projects in legislative home districts. Since the use of the Budget Digest was eliminated, the manner in which these funds are to be allocated is yet to be decided.

*(For more details, please view the bill on the Legislature's Web site at: [www.legis.state.wv.us](http://www.legis.state.wv.us))*

### Know your bill number?

If you know the bill number, but not the subject heading of the legislation you are seeking, please refer to the index of bills on page 35.

# Total Budget - FY 2007



**Budget Total - All Sections**  
**\$10,022,311,000**

### Bills by Subject

#### Actions & Suits

#### **House Bill 4120 (Water & Homeowners Associations)**

requires water utilities to provide privately owned sewer utilities or sewer utilities owned and operated by a Homeowner's Association to terminate water service for the nonpayment of a delinquent sewer bill. The measure does not require water and sewer utilities to have written contracts in order to terminate the service unless the utility service chooses to do so. However, if an agreement is written, the provisions in the bill require the parties to submit the contract to the Public Service Commission (PSC) for review and approval. In addition, the water and sewer utilities will be required to follow the pertinent rules and orders of the PSC when terminating service, regardless of whether a written contract is used or not.

**House Bill 4611 (civil liability)** provides immunity from civil liability for death or injury to any person or damage to any property caused by a member of a qualified mine rescue team. In addition, this legislation authorizes certain emergency programs to be established by the Division of Homeland Security and Emergency Management, rather than specifically limiting the programs to the Office of Emergency Services.

#### Alcohol

**House Bill 4368 (Alcohol Beverage Control)** clarifies that the Commissioner of the Alcohol Beverage Control Administration is to promulgate rules that impose appropriate sanctions for violations of rules promulgated by those licensed to sell or serve wine. The bill allows the Commissioner to impose penalties on licensees, if under an investigation by the Alcohol Beverage Control Administration the licensee is found to be in violation of orders or rules.

The law also allows the Commissioner to consider and impose the alternative sanctions of a period of probation and/or monetary fines, in addition to or in lieu of the current statutory sanctions of license suspension or revocation.

#### Appropriations

**House Bill 4015 (Rainy Day)** increases the funding of the Revenue Shortfall Reserve (Rainy Day) Fund, which was established by the Legislature in 1994 for the state to rely upon

during natural or financial disasters. Prior to this legislation, 50 percent of any revenue surpluses that accumulate at the end of a fiscal year were placed in the Rainy Day Fund until the amount in the Fund equaled or exceeded 5 percent of the total General Revenue Budget. This measure increases that cap to 10 percent.

**House Bill 4075 (regional jails)** pertains to money dedicated to the Regional Jail Partial Reimbursement Fund. Under this legislation, of each fee for service received in criminal cases against someone convicted in a circuit court, circuit clerks are to pay \$30 into the Fund.

#### Banks & Banking

**Senate Bill 242 (class of stock)** allows states banks to issue more than one class of stock. The new provisions hold that banking institutions have the authority to issue shares of one or more classes of stock. Moreover, each share will be the same as any other share of stock within each class of stock.

**Senate Bill 243 (bank stock)** allows state banks to own shares of their own stock. A banking institution can purchase its equity securities for up to 10 percent of the bank's net worth. The bank would have to do so in a 12-month period, or it can restructure its ownership interests for a legitimate corporate purpose without the prior approval of the Commissioner of Banking as long as the bank remains under federal regulatory guidelines before and after the purchase or restructuring. The bank would be required to apply for approval to purchase the equity securities on a form prescribed by the Commissioner. Also, the Commissioner will have the authority to approve or deny the application after considering whether the proposed purchase would constitute an unsafe or unsound practice.

**Senate Bill 244 (state-chartered banks)** relates to state-chartered banks' investment limitations. Unless waived in writing by the Commissioner, a state-chartered bank may not invest or otherwise expend more of its capital and surplus calculated at the end of the previous calendar year on permitted activities on an aggregate basis, together with any of its approved financially related products and services than would be allowed for a national bank providing the same services.

**Senate Bill 269 (investments)** provides state banks with parity to national banks as it relates to permissible investments. Current law limits a bank's investments to 15 percent of its unimpaired capital and unimpaired surplus. This bill



# Final Wrap-Up

removes the 15 percent limit and includes language-permitting investments equal to those permitted for national banks or any federally-insured depository institution. Current law has a list of exceptions to those limitations (permissible investments). The bill removes those exceptions.

**Senate Bill 271 (bank records)** changes the time period that state banks must retain records from six years to five years.

**House Bill 4063 (use of term banker)** allows the term “banker” to be used in the name of a non-bank company, if it is the legal name of a real estate franchisor and it is used in the tradename of a real estate brokerage firm that is a current or future franchisee of a real estate franchise system and the term “banker” stems from the use of a family surname.

**House Bill 4792 (purchasing services)** authorizes a bank or trust company to purchase services or products, which may include insurance or securities underwritten or distributed by the bank, trust company or an affiliate; and, through or from those entities or a syndicate or selling group that includes them. The measure requires a bank or trust company to disclose at least annually any purchase that was made by the bank or trust company during that reporting period. In addition, the new section created by the bill applies to the purchase of securities made at the time of the initial offering of them or any time after.

## Budget Digest

**House Bill 4019 (end to Budget Digest)** repeals the use of the Budget Digest, a document lawmakers have traditionally used to allocate state money in their districts. The Digest doesn’t have the weight of law because a House-Senate committee, and not the full Legislature, approves it months after the Budget Bill is passed. But agencies typically have honored its recommendations. Lawmakers used this document for nearly 40 years to designate funds for certain projects in their local towns and cities. Some of the projects that received funds from the digest included fairs, festivals, senior centers and schools.

## Boards & Commissions

**Senate Bill 166 (Parole Board)** reorganizes and restructures the West Virginia Parole Board. This measure increases the membership of the board from five members to nine members and provides for the gubernatorial appointment

of the chairperson. The bill also authorizes the Board to make determinations regarding parole and parole revocation through panels and authorizes the Board to conduct parole interviews and hold other hearings.

**Senate Bill 709 (service on planning commissions)** allows a businessperson who regularly conducts business in front of the planning commission to be appointed to a municipal, county, multi-county, regional or joint planning commission. Since the Legislature finds there are individuals willing to serve on planning commissions who may also own interests in businesses that regularly conduct business with planning commission staff, the Legislature also finds that these people may have experience and expertise that would be valuable assets to a planning commission. However, the person must recuse him or herself when there is a conflict.

## Bonds

**House Bill 2118 (bail bonds)** provides that when a bail bondsman has a surety bond forfeited because a defendant has failed to appear in court, the bondsman is to be reimbursed that amount if he or she returns the defendant to the court’s custody within two years.

## Child Welfare

**Senate Bill 517 (multi-disciplinary teams)** allows the Division of Juvenile Services to establish and implement a multi-disciplinary team treatment planning process for some of the juveniles placed in its custody. Some entities convening multi-disciplinary teams may obtain a court order to require attendance. The bill also allows a court to decide not to hold a multi-disciplinary team meeting when circumstances so require.

The Director of the Division of Juvenile Services is to convene and direct a multi-disciplinary treatment team for the juvenile that is to include the juvenile, if appropriate; the juvenile’s probation officer; the juvenile’s social worker, if any; the juvenile’s custodial parent or parents; the juvenile’s guardian; attorneys representing the juvenile or the parents; the guardian ad litem, if any; the prosecuting attorney; and, an appropriate school official or representative. The team may also include, when appropriate, a court-appointed special advocate and any other person who may assist in providing recommendations for the particular needs of the juvenile and the family.



The team will have the authority to obtain an order from the court for meetings of the multi-disciplinary team and compel, if necessary, the attendance of the juvenile at the meetings. The team also will report to the court its opinion on the course of action to be taken for the juvenile.

The bill allows for objections to the use of the multi-disciplinary team to be filed within 45 days of the team being formed. A hearing concerning the objections would be scheduled in a Circuit Court.

**House Bill 4694 (child abuse)** relates to the abuse and neglect of children. The bill amends the provisions of the West Virginia Code related to child abuse and neglect to provide for specific consideration and allow for appropriate findings and determinations when the surrounding circumstances indicate that one of the parents is a battered parent.

**House Bill 4790 (child welfare placements)** modifies the duties of the Secretary of the Department of Health and Human Resources (DHHR) relative to child welfare placement requirements and the associated responsibilities.

In addition, it modifies requirements related to childcare placement in certain homes or comparable facilities while also updating statutory language to comply with current standards. It also retains language allowing for the voluntary registration of informal family childcare homes and relative family childcare homes.

The bill repeals the law concerning the establishment of pilot day care programs.

The DHHR Secretary is to submit by January 1st of each year a report to the Governor, and upon request to members of the Legislature, concerning the regulation of child care agencies, homes or other arenas in which children are placed. The report shall include, but not be limited to, data on the number of children and staff at each facility (except family day child care, informal family child care homes and relative family child care); applications received; types of licenses; certifications, approvals and registrations granted, denied, made provisional or revoked; and, any injunctions obtained or facility closures ordered.

**House Bill 4854 (court appointed licensed psychologist advisor)** allows a psychiatrist, licensed psychologist or licensed clinical social worker to serve as a court appointed licensed psychologist advisor, to provide an expert opinion on the evaluation of children and take the testimony of child witness through use of live two-way closed-circuit television.

The adopted bill removes the restriction that only a doctoral-level psychologist may serve as a court appointed licensed psychologist advisor to provide such an expert opinion.

The doctoral level restriction for professional psychological services does not restrain judges from selecting other qualified licensed psychologists to provide assistance to the court.

Under this change in law, judges have the option of choosing a licensed psychologist with at least five years clinical experience, when a doctoral-level psychologist or a licensed social worker with 5 years of experience is not available.

## Claims

**Senate Bill 516 (state agencies)** finds and declares certain claims against the state. This legislation directs the payment of obligations of state agencies for claims against the state, which the Court of Claims has determined the state “should in good equity and good conscience discharge and pay.”

**Senate Bill 693 (review of claims)** removes certain procedures for review of claims by the Court of Claims to (1) make advisory determinations on the question of the legal or equitable status, or both, of a claim against the state or a state agency; (2) hear claims arising under an appropriation made by the Legislature during the fiscal year to which the appropriation applies; and, (3) hear claims when the Legislature has made special appropriations specifically authorizing such claim.

**House Bill 4494 (claimants who provide service to the state)** provides payment to certain claimants who provided commodities and/or services to the state, but who were not paid because the agency involved overspent its budget. Includes \$11,250 from General Revenue to pay bills owed by the Department of Health and Human Services to four funeral homes for indigent burials. It also includes just less than \$1.2 million from General Revenue to pay bills owed by the Division of Corrections to 10 hospitals and medical providers for medical services rendered to inmates.

## Code Repealed

**Senate Bill 497** repeals the section of code requiring non-residents to post security for court costs.

### Communications

**Senate Bill 781 (placement of wireless communication towers)** adds a new section to the Code authorizing the Secretary of Administration to enter into long-term lease agreements for placement of wireless communication towers on public lands as long as the agreement period is less than 30 years.

This measure also gives the power and authority to the Secretary of Administration to promulgate rules and regulations deemed necessary to carry out the above provisions.

Revenues from leases initiated prior to the enactment of this change in law or subsequently renewed will continue to be treated as they were prior to these changes.

Any long-term lease agreement entered into a contract in line with these changes are to contain provisions allowing for the nonexclusive use of the public lands and allowance for use of the same public space for additional towers by competing persons or corporations.

The Administration Secretary is further allowed to enter into long-term lease agreements for additional wireless communication towers by other persons or corporations upon the same public lands in which there already exists a lease and tower.

Long-term lease agreements are to be recorded in the office of the county clerk of the county where the lease agreement is located on public land.

### Contracts

**Senate Bill 556 (state parks)** addresses contracts for state parks. Under current law, legislative approval is required prior to the initiation of a contract with a state park facility. This bill removes this requirement and provides that the Legislature is to be notified through a letter to the Senate President and Speaker of the House. This measure also requires that public hearings be held before certain facilities are placed under contract. The areas identified in this legislation include state park lodges, cabins, campgrounds, gift shops and golf facilities.

### Corporation & Business Entities

**House Bill 4296 (employer immunity)** sets forth the presumption that employers who disclose job-related information

about a former or current employee to a prospective employer are acting in good faith and, therefore, immune from liability. Under these provisions, the information communicated must be placed in writing and provided to the employee. This assumption can be refuted when there is clear evidence that the information disclosed was knowingly false; disclosed with reckless disregard for the truth; deliberately misleading; passed on with malicious purpose toward the employee; or, communicated in violation of a non-disclosure agreement or relevant law.

**House Bill 4458 (Secretary of State)** permits the Secretary of State to sell bulk data in electronic format from the Uniform Commercial Code and Corporation Data Bases.

**House Bill 4498 (licensed money service)** increases the filing and renewal fees for registering as a licensed money service business in West Virginia. The initial license application fee is increased to \$1,000 (up from \$500), plus \$20 (up from \$10) per location; the renewal fee remains \$250, plus \$20 (up from \$10) for each location; and, the maximum fees are now \$10,000 (up from \$2,500) for any application.

### Corrections

**Senate Bill 484 (bond requirement)** Under current law, counties and municipalities, separately or in combination, may establish and operate community corrections programs to be used as an alternative sentencing option for offenders sentenced within their jurisdiction.

This measure further allows counties and municipalities to use a community corrections programs prior to sentencing as part of the bond requirement in Circuit or Magistrate Court if the Chief Judge certifies the community corrections facility is available for use in connection with the imposition of pretrial bond conditions. This bill allows for the use of these programs as a method of pretrial supervision.

**House Bill 4018 (Crime, Delinquency & Corrections)** requires the subcommittee of the Governor's Committee on Crime, Delinquency and Correction to meet quarterly as opposed to meeting at the call of the presiding officers or majority of the members. The bill also raises the monthly fee collected from individuals on probation from \$30 to \$35 in addition to other fees, costs and fines. It also increases costs taxed against a convicted defendant from \$3 to \$10. The fees collected are placed in the West Virginia Community Corrections Fund.

### Counties

**Senate Bill 114 (mandatory fees)** allows counties, with the approval of the city council in a given municipality, to adopt and apply a mandatory fee of up to \$5 on those convicted of felonies, misdemeanors or municipal ordinances to fund teen courts. Moreover, any mandatory fee established by a county commission or city council will be paid for by the defendant if he/she is found guilty of a felony or a misdemeanor committed in that county.

**Senate Bill 245 (Consolidated Local Government Act)** enables counties and cities to combine some of their governmental services through consolidation. The provisions officially establish the Consolidated Local Government Act, allowing counties and cities to merge, provided that voters approve the proposal in a local referendum.

Following voter acceptance, cities are able to join through a municipal consolidation; counties are sanctioned to merge in a county consolidation; and, a county may join with its principal city to form a metro government, allowing for an expanded resource base for the central city.

Once 25 percent of the qualified voters in the affected areas sign a petition or the governing bodies adopt a resolution, the consolidation process would be initiated. After a petition or resolution is authenticated, the county commission is to form a charter review committee to study the feasibility of consolidation. This will include, among other factors, a review of the areas included in the merger and the financial impact it would have. Additionally, the charter review committee is to hold public hearings prior to approving a consolidation charter.

Upon approval of a charter, the governing bodies of the affected local governments are to hold elections during the next primary or general election. This would require 55 percent of the votes cast in each area affected by the consolidation. If the proposal is defeated in an election, then the charter review committee is authorized to reconvene for up to one year to adopt a subsequent proposal, which would go through the same process.

**Senate Bill 673 (Local Powers Act)** pertains to the Local Powers Act. This legislation grants county commissions the power to impose, administer, collect and enforce payment of voter-approved service fees to finance special infrastructure projects within their counties. In addition, this measure gives county commissions the authority to issue revenue bonds to fund such projects and empowers them to issue refunding bonds and take other necessary actions to complete necessary projects. These projects can include improvements

to facilities owned, supported or established by a county commission. These could include wastewater treatment and disposal facilities, sanitary sewers, flood control facilities and public road systems.

**Senate Bill 728 (background checks)** requires all applicants to the position of director or supervisor of emergency dispatch facilities to be subject to a character and criminal background check. The State Police will complete the background check. Conviction of a felony will preclude an individual from being hired. And, any current employee who fails to pass the check, too, will be removed.

The bill also provides that 5 percent of the Wireless Enhanced 911 fee is to be deposited into a special fund established by Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrades of the WV Interoperable Radio Project.

**House Bill 2136 (disclaimers)** requires county clerks to post a disclaimer regarding restrictions and covenants in deeds. As written in the legislation, this disclaimer is to include information stating that except in a certain portion of the West Virginia Code pertaining to the West Virginia Fair Housing Act, restrictive covenants based on race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin are invalid and unenforceable.

**House Bill 4048 (eminent domain)** places restrictions on the situations in which eminent domain can be used. The new state law lets cities with urban renewal authorities declare sections "blighted," but they can no longer sweep up all the property there via eminent domain. Instead, cities must prove each individual structure is blighted. The legislation preserves all eminent domain powers but makes certain entire neighborhoods cannot be swooped up as blighted. The person who is keeping up his property in an otherwise ruined neighborhood should receive fair value for his or her property.

The bill was introduced to protect the rights of property owners in West Virginia, in response to the U.S. Supreme Court case *Kelo v. New London*, which ruled in June of 2005 that a government could seize private property, for the use of private development, if it determined that it would benefit local economic development.

**House Bill 4431 (charges for electronic documents)** allows county clerks to set reasonable fees for electronic or other medium versions of documents recorded in the office of the clerk of a county commission. A clerk who has the technology available will determine a reasonable fee, to receive or transmit electronic documents. However, this

fee is not to exceed the costs for filling or associated with document search and duplication of paper documents.

### Courts

**Senate Bill 11 (judges and expeditious filling of vacancies)** adds another judge to the 23rd Judicial Circuit, which is comprised of Berkeley, Jefferson and Morgan Counties. This bill will increase the number to five.

The measure also sets provisions that allow for filling judicial vacancies expeditiously. Findings of the Legislature note that when judicial offices created under the Constitution and laws of the state are vacant for extended periods of time, the proper functioning of the judicial branch of the government is impeded. The Legislature further found that when a vacancy in a judicial office is to be filled by appointment, it is in the public interest that any questions regarding the qualifications or eligibility of the person nominated or appointed to fill the vacancy be determined expeditiously.

When the Governor appoints a person to fill a judicial vacancy in the offices of the Supreme Court of Appeals, circuit court, magistrate court or family court, no suit or action challenging the qualifications or eligibility of the person will be recognized in any court of this state unless it is brought within 20 days after the appointment by the Governor.

The bill further sets a 20-day deadline for filing a legal challenge of a Governor's judicial appointment. Such lawsuits must be given "priority over all other actions on the docket," according to the measure.

**Senate Bill 51 (name changes)** relates to name changes for certain people. The bill allows persons, who were born in, married in and previously were residents in the county at least 15 years, to file a petition for a name change.

**Senate Bill 480 (court costs)** increases the amount of time to pay the costs of criminal proceedings. In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there are fines, forfeitures, and penalties in addition to other costs allowed by law. The time line for a defendant, who is confined in a jail or prison and not participating in a work release program, to begin paying these costs has been doubled from 90 days to 180 days.

**Senate Bill 481 (protective orders)** states that any protective order issued by a court of West Virginia, which is served in compliance with the provisions of the West Virginia Rules

of Civil Procedure and is served outside the boundaries of this state, carries the same force and effect as if it had been personally served within this state's boundaries.

**Senate Bill 483 (guardianship confidentiality)** requires the same confidentiality in circuit courts regarding guardianship of a minor as currently is done in family court proceedings. Those who are a party to the proceeding, counsel of record for the proceeding or presiding over it are the only individuals who may view records relating to guardianship, unless otherwise required by a court order.

**Senate Bill 551 (commitment of addicted persons)** relates to the involuntary commitment process for addicted persons. The bill limits the state's authority to involuntarily institutionalize persons who are addicted to drugs or alcohol to instances where the addicted person is likely to cause serious harm to himself or herself or others as a result of the addiction, if he or she is allowed to remain at liberty. The effect of the amendments makes the addiction standard equivalent to the mental illness standard before a person may be institutionalized involuntarily.

**Senate Bill 566 (Forensic Medical Examination Fund)** relates to the clarification of permissible expenditures from the Forensic Medical Examination Fund. The bill continues the Fund and clarifies that the West Virginia Prosecuting Attorneys Institute may expend money from this Fund to pay for the training of nurses to examine sexual assault victims.

**Senate Bill 576 (interest in judgments)** changes the calculation of prejudgment and post-judgment interest.

**Senate Bill 636 (administrative costs)** relates to the Court Security Fund's administrative costs. This bill authorizes payment to Military Affairs and Public Safety of a fee of 3 percent, not to exceed \$30,000, for administering the Court Security Fund. The funds involved are all federal. Archaic language is also removed.

**House Bill 2016 (magistrate court deputy clerks)** increases the maximum number of magistrate court deputy clerks that may be appointed from 62 to 72. Current law allows the Supreme Court of Appeals, whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge, to provide for the appointment of magistrate court deputy clerks.

**House Bill 2146 (magistrate salary)** requires a magistrate who is serving temporarily in another county to receive a salary based on the salary schedule of the county of assignment if it is higher.

**House Bill 2329 (restitution)** authorizes courts to order defendants to contribute to local victims' crime assistance programs or juvenile mediation programs through work or financial means, in addition to or instead of, paying restitution. Programs must be approved by the presiding circuit judge and must be a nonprofit organization certified as a corporation in this state, governed by a board of directors.

**House Bill 3201 (family court salaries)** increases the salary of the secretary-clerk of the family court judge from \$25,322 to \$27,036. The measure also will require the administrative director of the Supreme Court of Appeals to determine the annual salary of the secretary-clerk and the family case coordinator of the family court judge. Beginning July 1, 2006 the secretary-clerk's salary will not be allowed to exceed \$35,000 and the family case coordinator's salary will not be allowed to exceed \$46,000, which is a \$10,000 increase from what was previously allowed in this Code section for the family case coordinator.

**House Bill 4047 (prosecuting attorney)** allows a prosecuting attorney for a Class VI county, which subsequently becomes a Class V county, to remain part-time, provided that the part-time attorney would be compensated at the Class VI county level until it is determined by the prosecuting attorney and commissioner that a full-time attorney is needed.

**House Bill 4472 (grandparent visitation)** permits a family court to receive a motion or petition for grandparents seeking visitation rights for a child residing in West Virginia. Previously, only a circuit court could receive such motions and petitions.

### Crimes

**Senate Bill 13 (cross reporting of abuse)** states that a humane officer who is investigating animal cruelty and has a reasonable suspicion that a minor, incapacitated or elderly person is the victim of abuse, neglect or has a suspicion of domestic violence, should report the suspicion. When dealing with issues of suspected child abuse and/or neglect, the humane officer can report to the local child protective services agency of the Department of Health and Human Resources. Moreover, in situations involving suspected abuse or neglect of an incapacitated or elderly person, the officer can report to the local adult protective services agency. In the event of suspected domestic violence, the officer can report to the State Police. Furthermore, the provisions in this bill add that when a law-enforcement officer who is responding to an alleged incident of domestic violence has reasonable suspicion that an animal is a victim of cruel or inhumane treatment, then

the officer is required to report the suspicion to the county humane officer within 24 hours of the response to the alleged incident of domestic violence.

**Senate Bill 473 (reckless driving)** addresses criminal offenses for reckless driving that causes serious bodily injury.

Reckless driving in West Virginia is defined as driving with willful or wanton disregard for the safety of persons or property. The law will make an individual convicted of reckless driving guilty of a misdemeanor. The first conviction will result in a sentence of jail confinement from 5 to 90 days or fined from \$25 to \$500. Upon a second conviction, an individual will be either be sentenced to jail for 10 days to six months or fined from \$50 to \$1,000.

The more serious penalty results when a person who is convicted of reckless driving has caused another person to suffer serious bodily injury. "Serious bodily injury" means bodily injury that creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ. The convicted individual, regardless of previous convictions, will be confined in jail between 10 days and six months or fined between \$50 and \$1,000.

The seriousness of reckless driving can be found in national statistics, including facts provided by the National Center for Statistics and Analysis (NCSA). According to the NCSA's "Traffic Safety Facts – 2004 Data," 30 percent of all fatal crashes were related to speeding, and thus resulted in 13,192 deaths. In addition, speeding-related accidents cost the United States \$40.4 billion each year.

**Senate Bill 791 (oversight of sale of certain drugs)** clarifies offenses and penalties relating to the sale of controlled substances in pharmacies such as ephedrine, pseudoephedrine or phenylpropranolamine, which are Schedule V controlled substances. Changes in law clarify that information required to be reported by pharmacists and pharmacy technicians to the Board of Pharmacy of the sale, retail, transfer or distribution of ephedrine, pseudoephedrine or phenylpropranolamine, are to be reported by paper log maintained by the pharmacy until December 31, 2006. Beginning January 1, 2007, the reporting of this information shall be by electronic transmission to the Board of Pharmacy.

**House Bill 3213 (assault and battery)** makes more stringent assault and battery charges and penalties for attacks against any driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance. The bill is similar to the current provisions of State Code, which created separate offenses for assaults against



# Final Wrap-Up

law-enforcement personnel with somewhat higher penalties than assault offenses generally.

*Malicious assault* - Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill any person in charge of any vehicle or boat used as a public conveyance will be charged with a felony and will be facing 3 to 15 years in a correctional facility

*Unlawful assault* - Any person who unlawfully, but not maliciously, shoots, stabs, cuts or wounds or by any means causes any driver, will be charged with a felony and can face from two to five years in a correctional facility.

*Battery* - Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a driver, intentionally causes physical harm to a driver, will be charged with a misdemeanor and, upon conviction, can be confined in the county or regional jail for a month to a year, fined \$500, or both.

If any person commits a second offense, he or she is guilty of a felony and can be confined in a correctional facility for a year to three years, or fined \$1,000 or both fined and confined.

Any person who commits a third violation is guilty of a felony and can be jailed for two to five years or fined \$2,000 or both fined and confined.

*Assault* - Any person who unlawfully attempts to commit a violent injury to a driver or unlawfully commits an act which places a driver in reasonable apprehension of immediately receiving a violent injury, and the person committing the assault knows the victim is a driver of a public conveyance, will be charged with a misdemeanor and will face jail time for 24 hours to six months and fined \$200, or both fined and confined.

**House Bill 4036 (murder for solicitation)** provides criminal penalties for soliciting a person to commit murder. The bill states that any person who solicits another to commit a felony crime of violence against a person would be guilty of a felony and upon conviction face a sentence between 3 and 15 years if the felony crime solicited is punishable by life imprisonment. If the offense that was solicited does not carry with it a life in prison sentence, the solicitor could face one to three years in prison and/or a \$5,000 fine.

**House Bill 4313 (domestic violence)** updates the petitions of appeal for domestic violence protective orders. A person, who believes they will be adversely affected by a final protective order, or the denial or dismissal of a petition for a

protective order, can file a petition for appeal with the circuit court within 10 days. The order will remain in effect unless stayed by order of the family court or upon motion, or by the circuit court upon motion.

**House Bill 4355 (juvenile detention)** provides for the temporary detention of juveniles when a petition for an emergency protective order is filed by or on behalf of the juvenile's parent, guardian or custodian or other person with whom the juvenile resides.

**House Bill 4386 (criminal information)** ratifies the National Crime Prevention and Privacy Compact established by Congress in 1998. The compact allows criminal information to be shared among states for noncriminal purposes, such as background checks for certain employment. The measure allows the Superintendent of the West Virginia State Police to oversee the implementation and operation of the compact for the state, including creating rules, regulations and procedures related to the compact.

The bill does not, however, affect the State Police criminal section related to making criminal history records public within West Virginia. The purpose of this bill is to join 21 other states in ratifying the National Crime Prevention and Privacy Compact to streamline the transfer of criminal history records for noncriminal purposes between states that ratify the compact.

**House Bill 4588 (concealing a dead body)** provides that any person who knowingly and willfully conceals, attempts to conceal or otherwise aids and abets any person in concealing a deceased human body when death has occurred as a result of criminal activity is guilty of a felony. Upon conviction, the perpetrators will be confined in a correctional facility for one year to five years and fined from \$1,000 to \$5,000.

**House Bill 4683 (juvenile trial)** makes a juvenile's right to a jury trial comparable to an adult's right to a jury trial. It provides that when a juvenile is accused of acts of juvenile delinquency that constitute a crime punishable by jail time when committed by an adult, he or she has the right to request a trial before a 12-person jury. This legislation also eliminates the right to demand a jury trial for status offenses allegedly committed by a juvenile or when a court has ruled pre-trial that incarceration is not a possibility.

## Disabilities

**House Bill 4491 (Disability Week)** designates the third week of October as Disability History Week for the state of West Virginia. This measure assists in increasing awareness and

understanding of the history and contributions of people with disabilities in the state, nation and world.

**House Bill 4510 (cessation of register of deaf)** removes the requirement that the West Virginia Commission for the Deaf and Hard of Hearing maintain a register of persons who are deaf or hard of hearing and also removes the requirement that the Commission conduct and maintain a census of both populations in West Virginia.

### Education (Higher)

**Senate Bill 58 (annual experience salary increment)** relates to expanding eligibility for certain incremental salary increases to certain higher education employees. The purpose of this bill is to extend eligibility for the annual experience increment to higher education faculty. Faculty members are the only state employees who are not eligible for the salary supplement. The bill provides that faculty members receive one full year of service credit for each nine or more months of contracted employment during a calendar year.

**Senate Bill 587 (state employee increment pay)** extends eligibility for the annual experience increment to higher education faculty. The bill also provides that faculty receive one full year of service credit for each nine or more months of contracted employment during the fiscal year.

**Senate Bill 792 (Fairmont State University)** merges Fairmont State Community and Technical College with Fairmont State University. The bill was passed with an amendment that makes Fairmont State Community and Technical College a division of Fairmont State University. This allows the college to function as it has up to this point, but it provides for a more streamlined administrative process for the students. Effective July 1, 2006, the institution will be named the Pierpont Community and Technical College, designated so after West Virginia's first governor, Francis H. Pierpont from Marion County. The new relationship between the schools will be evaluated to determine if the community and technical college meets or exceeds the benchmarks and criteria contained in its approved compact. The evaluation will be done by the Higher Education Policy Commission and the Council for Community and Technical College Education.

**House Bill 4007 (appraisal standards)** updates the appraisal standards employed by the Public Land Corporation by replacing a reference to a 1972 federal government publication with the current "Uniform Appraisal Standards for Federal Land Acquisitions."

**House Bill 4049 (Promise Scholarship)** will increase funding for the Promise Scholarship to more than \$40 million a year for the next four years. The Promise Scholarship is a merit-based scholarship program that currently covers 9,830 students attending state colleges. The first receivers of the Promise Scholarship will be graduating this year and the bill added provisions requiring the board to track the recipients after graduation to find out how many are actually staying in state to work or pursue further education. The funding will be increased to \$40 million for the 2006-07 school year and increase 2 percent annually to about \$42.5 million by 2010 if the standards to qualify and maintain the scholarships remain the same. The Scholarship is funded through state limited video lottery profits. This bill also increases funding for need-based tuition grants from \$21 million to \$25 million a year by 2010.

**House Bill 4240 (name change)** changes the name of the Community and Technical College of Shepherd to Blue Ridge Community and Technical College; makes findings; clarifies legislative intent related to certain institutional boards of governors; permits institutions under a single governing board to be recognized as a single organization within West Virginia's financial systems; clarifies certain operations of certain community and technical colleges; and, changes the name of the Community and Technical College of Shepherd to the Blue Ridge Community and Technical College.

As of July 1, 2006, the Community and Technical College of Shepherd is now the Blue Ridge Community and Technical College. The bill also calls for legislative findings regarding the history of recent reform changes in the governing of higher education institutions. It clarifies legislative intent regarding the shared administrative operations of community and technical colleges. It permits higher education institutions under a single governing board to be recognized as a single organization within West Virginia's financial systems, as long as the community technical college (CTC) information can be readily separated.

It also requires that governing boards of sponsoring institutions operate a single student financial aid office unless a different arrangement can be shown clearly to be more efficient and effective; and, use a single set of technology solutions to minimize administrative complexity unless a different arrangement can be shown clearly to be more efficient and effective. And, the law requires the Commission and Council staff to prepare reports consistent with the general provisions of this section and to segregate CTC data so that the Legislature and the governing boards can evaluate implementation of CTC statutory provisions.

**House Bill 4626 (student teaching)** The primary purpose of the bill is to allow, beginning Fall 2006-07, an institution



of higher education to provide an alternate student teaching experience in a nonpublic school setting if the institution is approved for teacher education by the State Board and the institution had entered into the agreement for that academic term prior to the effective date of this section. However, to do so, the higher education institution must have a State Board approved educator preparation program. With this alternate program, the student teacher is required to complete at least one-half of the clinical experience in a public school or the educator preparation program must include a requirement that student teacher in a nonpublic school must complete at least 200 hours of field-based training in a public school. Furthermore, the student teacher in a nonpublic school setting will be required to take a course, which is a component of the institution's State Board approved educator preparation program. This program provides prospective teachers with information that is equivalent to the teaching experience in West Virginia's public schools. This course will include State Board policies and provisions as well as federally mandated curriculum.

**House Bill 4651 (Poison Center)** continues the West Virginia Poison Control Center within West Virginia University, Charleston Division. The Center is required to be certified by the American Association of Poison Centers and is required to employ a director that is a board certified toxicologist.

**House Bill 4690 (West Virginia Tech/Shepherd Community)** will make the West Virginia University Institute of Technology (WVUIT) more commonly known as West Virginia Tech, a division of West Virginia University (WVU) by July 1, 2007. The Montgomery campus will now be an affiliate of WVU similar to the regional campuses in Parkersburg and Keyser. The full integration of the school into WVU will include consolidating administrative and academic units, assigning direction and support of the units to WVU and will further establish a collaborative engineering program between the Montgomery campus of WVU and the Dow Research Park in South Charleston.

The bill renames the Board of Advisors of WVUIT, the Board of Visitors; provides that the chair of the Board of Visitors serves as a voting member of the WVU Board of Governors; creates a WV Consortium for Undergraduate Research and Engineering (WV-CURE); directs WV-CURE to develop Collaborative Engineering Strategic Plan; and, moves the Workforce Initiative Program from the supervision of the Development Office to the WV Council for Community and Technical Education.

The engineering school will remain in Montgomery and will allow junior and senior level students at both WVU-Morgantown and WVU-Tech to participate in a collaborative

engineering program at the planned Dow Technology Park. This expansion will include classes, research, and internship opportunities.

The move allows WVU administrators to include Montgomery campus projects when issuing capital improvement bonds. Tech officials have identified pressing needs for at least \$14 million of improvement projects on the Montgomery campus, including a new residence hall. Tech also will be able to use more services that are currently offered by WVU. For example, it can utilize the many recruiters WVU has to sell the schools to prospective students across the country. Currently, Tech has only three recruiters. In addition, the measure renames Shepherd Community and Technical College as Blue Ridge Virginia Council for Community and Technical College Education, among other provisions.

**Education (Public)**

**Senate Bill 53 (School Nurse Ratio)** provides for a distribution to counties of appropriations that may be made to support the school health service needs that exceed a certain established capacity; to the extent funds are available, gives counties funding for nurse positions sufficient to meet a ratio of one school nurse for every 1,500 students in grades PreK-12, less existing nurses employed during the 2005-06 school year; and eliminates the authority of the Commissioner of the Bureau for Public Health to promulgate a rule to implement certain training and create certain standards and gives that authority to the State Board of Education.

**Senate Bill 127 (RESAs)** provides that the State Superintendent of Schools is to conduct a comprehensive study of the programs, governance and administration of Regional Education Service Agencies (RESAs). This is to ensure efficiency and accountability in various areas, including finances and service delivery, and to determine any areas of needed improvement. The findings and recommendations of this review are to be presented to the Legislative Oversight Commission on Education Accountability by December 1, 2006. The measure further provides that the foundation allowance for RESAs will not exceed \$4.2 million. There are eight RESAs across West Virginia, working to provide improved educational opportunities for students in each of these districts.

**Senate Bill 631 (student absenteeism)** clarifies certain provisions. Existing law requires that if a student is absent for five consecutive days or has 10 total un-excused absences during a school year, then the attendance director is required to notify the student's parent or guardian or



custodian in writing. The notification tells the responsible guardian that the child attend school within 10 days of receiving the notice for a conference with the principal or other school representative.

If the legal guardian does not comply, then the attendance director has the authority to file a complaint to a magistrate court against the guardian. The change brought about with the passage of SB 631 clarifies that more than one parent, guardian or custodian may be charged in a truancy complaint; and, further makes clear that failure to effect service within 10 days does not require re-issuance of a complaint.

**Senate Bill 783 (professional teaching standards)** defines completion of the National Board for Professional Teaching Standards certification as the completion of 10 scorable entries as verified by the National Board for Professional Teaching Standards.

**Senate Bill 785 (physical education)** calls for the State Board to promulgate a rule for collecting and reporting body mass index (BMI) data on a scientifically drawn sample of students. It changes the specific grade level requirements for physical education class to more general programmatic references. Too, student confidentiality must be protected, according to the bill.

It also allows schools that would “have to significantly alter academic offerings to meet the physical education requirements” to develop alternate programs to meet the requirements established in the statute. Similar existing provisions in the statute allow such modifications based on insufficient physical education teachers or required physical setting.

Once the data has been collected, it will then be reported to the Department of Education, the Governor, the State Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and Human Resources Accountability.

**House Bill 4406 (growth and development plan)** changes evaluation provisions. Under current law, according to the bill’s abstract, professional personnel with less than five years of experience are to be evaluated on a regular basis to ensure sufficient data for reliable conclusions and findings on their performance.

Professional personnel with five or more years of experience, who have not received an unsatisfactory rating, are to be evaluated only once every three years unless the principal determines a particular employee needs to be evaluated more frequently. This applies to all professional personnel including teachers, principals, administrators and others.

The bill provides that for classroom teachers with five or more years of experience, who have not received an unsatisfactory rating, an evaluation or professional growth and development plan would be required only when the principal determines it is necessary for a particular classroom teacher. As in current law, a classroom teacher may also exercise the option of being evaluated at more frequent intervals.

**House Bill 4625 (authority of principals)** extends the authority of teachers and other school personnel over students and discipline to include principals who are defined as being the principal, assistant principal, vice principal or the administrative head or professional personnel designee of the principal or the administrative head of the school.

### Elections

**Senate Bill 632 (electioneering communications)** tightens some portions of regulation of electioneering communications. According to the abstract, the substantive amendments to the statute clarify definitions, expressly provide that the provisions of the bill do not apply to candidates for federal offices, and clarify that the enactment of the electioneering communications bill has no effect on existing law relating to corporate contributions. Also, changes in the law do not prohibit a corporation from directly communicating with its stockholders and executive or administrative personnel and their families on any subject provided the communication is not by newspapers of general circulation, radio, television or billboard advertising likely to reach the general public.

**Senate Bill 788 (election law)** relates to requirements for elections. The measure will require county clerks to attend training conducted by the Secretary of State every two years to review the election official training and receive updates on election law matters.

In addition, the bill will establish a misdemeanor offense for a person who has agreed to mail or deliver an individual’s voter registration, but interferes with the voter’s application by either destroying it or failing to mail or deliver it. If convicted, the offending person will be fined \$1,000 and/or confined in jail for no more than one year.

The same misdemeanor offense and sentence will be used for an individual who tries to solicit more than one registration from the same person or who intentionally falsifies a registration application. The measure also establishes amendments that will conform voting registration sign-ups relative to personal identification. To assist with the Help America Vote



## Final Wrap-Up

Act, identification is verified through a driver's license. If the prospective voter does not have a license, then the last four digits of their social security number are required.

The bill also increases from 10 to 200 the number of registration forms an entity or organization may request. The entity or organization must provide contact information to the Secretary of State. Any person who agrees to deliver a signed voter registration application, but intentionally destroys or fails to provide the application in a timely manner is guilty of a misdemeanor. The misdemeanor is punishable by a fine of no more than \$1,000, confinement in a jail for not more than one year, or both. A person who intentionally solicits multiple registrations from one person or intentionally falsifies a registration application is guilty of a misdemeanor, punishable by a fine of up to \$1,000, confinement in a jail for up to a year, or both.

The measure also clarifies the use of excess campaign contribution funds and the processing of absentee ballots

According to the bill, paper absentee ballots are to be counted on Election Day at the central counting office and opened in the presence of the county clerk and other witnesses. Those votes will be recorded on a direct recording voting terminal after being read aloud. Teams of two representatives from opposite political parties must verify the ballots.

This bill clarifies that excess campaign contributions may be used by the candidate in the following situations: 1) usual and customary expenses incurred with the office holder duties; 2) unlimited contributions to either charities or the same candidates subsequent campaigns; 3) to a national committee in accordance with federal requirements; 4) to a state party executive committee not to exceed \$15,000 in any calendar year; and, 5) to any local committee or other candidate for public office in accordance with existing limitations on contributions.

The bill provides the Secretary of State's office with the authority to promulgate emergency rules related to excess funds.

**House Bill 4481 (ballot-scanning devices - election night)** relates to the limited use of precinct ballot-scanning devices for a count of votes following the close of the polls on election night. A device may be used, provided that the county has at least one device in each precinct; no print-out or tabulation of results is done at the precinct; the "tabulation memory device" may be removed from the device only after the polls close and the votes may only be counted at the central counting center on election night; and, all voters at the precinct are required to use the device as a condition of completing their vote.

**House Bill 4489 (ballot-scanning devices - testing)** relates to the testing of electronic voting machines used for early voting in order to allow their use on election day. Under this legislation, devices used during the early voting period may be used on election day if they are retested in accordance with this bill's provisions, which include public notice, paper trail requirements and other provisions.

**House Bill 4721 (ballot boxes)** authorizes the clerk of the county commission to appoint two special messengers of different registered party affiliations to deliver a ballot box or container to the central counting center.

### Ethics

**House Bill 2328 (Ethics Commission)** provides reliance that a written opinion of the West Virginia Ethics Commission would give precedential value to its written advisory opinions and an absolute defense to certain criminal actions. This measure allows for a governing body or member to have an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on a written opinion of the Ethics Commission Committee, as long as underlying facts surrounding the action were the same or substantially the same as those being addressed by the written opinion.

### Fire Fighting & Prevention

**Senate Bill 511 (Crime Victim Compensation Act)** amends portions of the Crime Victims Compensation Act by increasing the cap on allowable expenses for cleanup of property damaged by a methamphetamine lab from \$1,000 to \$5,000. The bill also places new administrative obligations and restrictions on health care providers that file an assignment of benefits with the West Virginia Court of Claims.

**House Bill 4445 (Division of Forestry)** permits the Director of the Division of Forestry, instead of the Director of the Department of Natural Resources, to recover costs incurred in fighting fires. Currently, the Division of Forestry is performing this collection and this legislation codifies this practice.

### Fuel

**House Bill 4622 (performance bonds)** reduces certain oil and gas well and methane gas well performance bonds from



\$10,000 to \$5,000. The bill also increases permit application fees from \$250 to \$650.

## Funds

**Senate Bill 554 (Forensic Fund)** provides for the expenditure of moneys from the Forensic Medical Examination Fund for the purpose of training nurses to examine sexual assault victims. This training was funded through a federal grant that has been exhausted and cannot be renewed.

## Government Agencies

**Senate Bill 489 (State Treasurer)** authorizes the State Treasurer, upon written request from a political subdivision, to provide services of the office to a political subdivision and charge for those services.

**Senate Bill 591 (Tax Division)** authorizes the Tax Division to collect the cost of federal refund offset fees from the tax debtor. This bill provides that the amount of the offset fee imposed by the Internal Revenue Service should be added to the taxes, interest and penalties owed by the taxpayer to the state.

**Senate Bill 773 (Health Care Authority)** clarifies and amends the certificate of need review process for health care facilities in the state in order to ensure adequate consideration and use of modified standards adopted by the West Virginia Health Care Authority. To accomplish this, the legislation establishes various benchmarks for the Health Care Authority when making changes to certificate of need standards.

**Senate Bill 774 (DEP)** allow the Secretary of the Department of Environmental Protection to organize and designate internal organizational names for the offices, sections or divisions of the DEP so long as the duties and responsibilities prescribed by statute are fulfilled. It also creates a definition of chief as the person named by the Secretary.

**House Bill 4008 (housing authorities)** authorizes city and county housing authorities to merge to form a regional housing authority. Each housing authority must hold a public hearing and adopt a joint resolution to merge. A consolidated regional housing authority established through merger acquires and succeeds to all rights, obligations, duties, and privileges of the underlying housing authorities.

**House Bill 4601 (Public Utilities Division)** increases the amount transferred to the Special Operating Fund in the

State Treasury for the Auditor's Public Utilities Division and dedicates the increased amount to pay for public utility litigation expenses.

**House Bill 4632 (homeland security)** relates to employing homeland security and emergency service personnel. The bill prohibits convicted felons from being employed and requires a background check of each person appointed to serve as a homeland security or emergency service personnel. It also requires each person to take an oath that they are not a convicted felon.

## Hazardous Materials

**House Bill 4321 (lead abatement)** changes the definitions and modifications of exemptions from notification as it relates to lead abatement. This bill makes the requirements for lead abatement in single family dwellings also apply to a dwelling where a child has been documented to have an elevated blood lead level. These changes make state law consistent with federal law.

## Health Care

**Senate Bill 112 (The Alzheimer's Special Care Standards Act)** calls for the establishment of an Alzheimer's Disease Registry within West Virginia University (WVU) to act as a central information database for policy and planning relative to Alzheimer's Disease. The governing board of WVU is to propose rules to establish the Registry and determine who should collect and evaluate data regarding the prevalence of the debilitating disease, as well as related disorders in West Virginia. The information contained in the registry will be confidential and all persons to whom the data is released shall assure patient confidentiality. No publication of information, bio-technical research or medical data may be made that identifies the patient by name.

The various contacts providing information will supply a report of each case to the Registry. These sources will include hospitals, physicians, clinics and other similar entities that diagnose or treat Alzheimer's Disease. All provided information will remain confidential and will only be used for the purposes set forth in this legislation.

**Senate Bill 170 (West Virginia Health Information Network)** establishes the WV Health Information Network. It establishes a board of directors, terms of office of the Board and its powers and duties.



The Network is under the oversight of the Health Care Authority, which will provide needed staff support. Its primary purpose is to promote the design, implementation, operation and maintenance of a network to facilitate public and private use of health care information in the state.

**Senate Bill 223 (Insurance Commission examinations)** increases the amount of time health care companies have to respond or object to the results of a financial or procedural conduct examination, conducted by the Insurance Commissioner. The amount of allowed response time for objections to the findings by the entities has increased from 10 to 30 days. The bill changes the requirement for audits of Hospital (Medical, Dental & Health) Service Corporations from at least every three years to at least every five years. Required examinations of health care corporations have been rescheduled to occur at least once every five years instead of annually, while the organization's response time has been extended from 10 to 30 days. And, Prepaid Limited Health Service Organizations are to be examined by the Insurance Commissioner every five years as opposed to three.

**Senate Bill 619 (Physicians Mutual)** removes a restriction limiting service on the board of directors relating to the governance and organization of the West Virginia Physicians' Mutual Insurance Company. The provision that stated no director could serve more than two consecutive terms has been removed.

**Senate Bill 772 (subrogation)** creates a right of subrogation, which is the assumption by a third party of another's collection rights, for the Department of Health and Human Resources (DHHR) on behalf of the James "Tiger" Morton Catastrophic Illness Commission. This legislation grants the DHHR the right to recover full reimbursement from any award, settlement or judgment for medical assistance paid by the Commission. This applies to amounts sufficient to reimburse the DHHR for the full amount paid on behalf of the recipient, but these amounts are not to exceed the amount of the medical expenses.

**House Bill 2548 (The Diabetes Care Plan Act)** calls for the State Board of Education, working with the Bureau for Public Health and the Department of Health and Human Resources (DHHR), to adopt guidelines for the development and implementation of individual diabetes care plans on or before January 1, 2007. The guidelines are to align with the American Diabetes Association's recommendations for the management of children with diabetes in a school or day care setting.

The bill calls for school nurses to develop and monitor individual diabetes care plans for students diagnosed with diabetes. The involvement of the parent or guardian, the

student's doctor, the student's classroom teacher, and the student is advised.

While a policy for nurses to prepare plans for students who have chronic illnesses is in place, policies may not be followed in some areas of the state. The bill, too, was designed to ensure children themselves are educated on how to care for their conditions.

**House Bill 4021 (comprehensive health)** authorizes the Health Care Authority and State Insurance Commission to establish a pilot project (Preventive Care Clinic-based Plan) that provides basic health care services for a monthly fee through a handful of clinics and physician offices; and, incorporates the Individual Limited Health Benefits Plan, which would allow insurance companies to offer simple insurance plans that focus on preventive coverage.

Already, the Preventive Care Clinic-based Plan has been under the review of the Health Care Authority and within the Insurance Commission to prepare for the first part of the comprehensive health care bill that includes a pilot project that will set up sites at clinics and physicians' offices throughout the state. The program is designed to attract people who do not have insurance, to give those people an option for getting care that they need earlier. It is limited to primary care services available at the provider's site for a low monthly fee. Up to eight providers can participate, and may have up to three sites each. The program will allow subscribers access to primary care services such as checkups, sick visits, x-rays and lab tests at the participating clinic or doctors' office. While this is not insurance and does not cover specialists or hospital costs, this program will provide basic preventive care at a very low price.

According to the Health Care Authority Chairman, the program will more than likely be established within six to nine months after the final criteria for provider application is determined and processed. The Health Care Authority will review applications received from providers who offer the care to uninsured patients.

An estimated 300,000 West Virginians, or nearly 17 percent of the state's population, lack health insurance. Only eight states have a higher percentage of their adults age 19 to 64 without coverage, according to the Henry J. Kaiser Family Foundation. As such, the affordable health care insurance portion of the measure would allow insurance companies to offer simple insurance plans that focus on preventive coverage. The Individual Limited Health Benefits Plan provides for affordable insurance plans for individuals who want, and can afford, more in-depth coverage than the Preventive Care Plan. Commercial insurance carriers will soon start offering



this portable insurance to West Virginia families starting at a low cost of \$99 per month. This allowance also will be worked on by the Health Care Authority and the Insurance Commission.

In other areas of the bill are plans to increase eligibility for the state's Children's Health Insurance Program (CHIP) for children from families with incomes of up to 300 percent of the poverty level as opposed to the existing 200 percent (from \$40,000 to \$60,000 for a family of four). This would leave just under 3 percent of West Virginia's children without health insurance.

*(The following has been provided by Pam Gunter of CHIP.)*

"While the CHIP Expansion will be a major step in covering children who remain uninsured, it likely will not cover all remaining uninsured children in West Virginia. Some remaining uninsured children still qualify for Medicaid, some may be in transition to employer based health insurance coverage and there will be families who are resistant to being on government programs. There will also be families who will not want to participate in premium participation due to budget priorities for their household.

For example:

- A family with a high mortgage payment may choose not to participate.
- A family with a child about to enter college has to prioritize disposable income for tuition over premiums for younger children in the family.
- Families who have a child with a chronic disease, such as Asthma or who value preventive care would tend to make it an economic priority.

Steps that need to be taken in order to set up the CHIP expansion program:

1. CHIP must amend its state plan with approval from the federal level of the Centers of Medicaid and Medicare Services (CMS). The approval process is likely to take up to 90 days. This approval allows the program to receive federal matching funds of about 4:1.
2. The CHIP Board of Directors will oversee and review the design of the expansion program and a State Plan Amendment will be drafted.
3. Planning and implementation of the administrative changes for the expansion could take up to 6 months. Expect the roll out of the expansion program to be January 1, 2007.

The CHIP Board of Directors will review and approve the premium structure during the design phase of the expansion program. The premium could be set up as a monthly or quarterly payment process."

House Bill 4021 also created a Commission on Health Care Reform to oversee future changes in the health care system designed to allow for health care coverage for everyone by the year 2010. This health care panel of experts is charged with finding ways to provide full health coverage to the state's estimated 245,000 uninsured residents. The panel will be overseen by two existing state agencies, the Health Care Authority and the Insurance Commission, which have been assigned the duty of assembling study committees and reporting yearly on cost-neutral strategies to provide greater access and increased benefits.

**House Bill 4108 (osteopathic physicians)** amends current State Code to allow osteopathic physicians to supervise up to three physician assistants in a non-hospital setting, instead of the current limitation of two. This modification makes the provisions of the Code relating to the supervision of physician assistants by osteopathic physicians more consistent with the supervision of physician assistants by medical doctors.

**House Bill 4379 (testing coverage)** adds human papillomavirus (HPV) testing to the list of cancer screening and diagnostic procedures that cannot be excluded from reimbursement or indemnification under an accident or insurance policy, contract or other health care plan when the procedures are deemed medically appropriate in the opinion of a woman's physician. It also eliminates the specified testing intervals for mammograms and pap smears, and instead incorporates the applicable guidelines from either the United State Preventive Services Task Force or The American College of Obstetrics and Gynecology. This is to determine when mammograms, pap smears and HPV testing is medically appropriate for cancer screening and diagnostic procedures.

**House Bill 4470 (Medicare)** relates to certain definitions and policies concerning Medicaid. According to the abstract, the measure deletes obsolete language and updates the exclusions to the definition of a Medicare Supplement Policy. The list of exclusions now includes Medicare Advantage Plans under Medicare Part C, outpatient prescription drug plans under Medicare Part D, or any health care prepayment plan pursuant to an agreement under a section of the Social Security Act. Policies or contracts of employers or labor organizations remain as a listed exclusion.

**House Bill 4488 (Behavioral Health Commission)** creates a commission to complete a comprehensive study of the state's



# Final Wrap-Up

behavioral health system. The commission will be named the Comprehensive Behavioral Health Commission.

This article is enacted to provide a framework within which the departments and divisions of state government, working collaboratively with the applicable individuals and organizations in the private sector that provide or are in need of behavioral health services, can study the current system of behavioral health services offered within West Virginia, the financing of those services, and proposed changes to both.

It is the purpose of the Legislature to encourage the long-term, well-planned development of a comprehensive and cost-effective system of care.

Specifically, the study is to include the prevention, treatment, education, related services and appropriate workforce development for behavioral health, including substance abuse and domestic violence.

The Commission will be required to submit a preliminary report of its progress in its study to the Governor and the Legislature by January 1, 2007. A final report must be submitted to the same entities by January 1, 2008. The Department of Health and Human Resources (DHHR) will submit a report regarding implementation of the recommendations of the Commission to the Governor and the Legislature by July 1, 2008. The DHHR will report to the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

**House Bill 4565 (Vital Statistics)** establishes a section of vital statistics in the Bureau for Public Health. The bill further authorizes the appointment of a State Registrar and allows the Department of Health and Human Resources to propose legislative rules. The provisions for birth registration have been updated and provisions pertaining to situations when a birth occurs other than in a hospital have been clarified. For the purposes of registration, the woman who gives birth to the child is presumed to be the mother in the absence of a court order. When the woman who gives birth is married but her husband is not the father, paternity may be established by a three-way paternity affidavit or genetic testing. Birth records will become public after 100 years, and death and marriage records after 50 years.

**House Bill 4685 (Arthritis)** establishes the Arthritis Prevention and Treatment Education Program. The bill requires the Bureau for Public Health to establish strategies to promote and maintain a program in order to raise public awareness, educate consumers and educate and train health professionals, teachers and human service providers. The measure also establishes the Interagency Council on Arthritis, with the Director

of Public Health as the Chair of the Council. The Council will have representatives from appropriate state departments and agencies including, but not limited to, the entities with responsibility for aging, health care reform implementation, education and public welfare.

## Holidays

**Senate Bill 603 (Lincoln)** renames the day after Thanksgiving Day as Lincoln's Day.

## Insurance

**Senate Bill 438 (title insurance)** regulates title insurance rates. The bill adds language that provides that title insurance companies shall file separate rate schedules for commercial and non-commercial risks. It also provides that the Insurance Commissioner must promulgate rules regarding the requirements that are to give due consideration to the nature of commercial transactions and the need for greater protections for consumers in non-commercial transactions.

**Senate Bill 454 (attorney in fact)** will remove the Commissioner of Insurance as the attorney in fact for health maintenance organizations for service involving process purposes. An attorney in fact is a person who holds power of attorney, and therefore is legally designated to transact business and execute documents on behalf of another person.

**Senate Bill 463 (issuance of licenses)** modifies the qualifications for the issuance of licenses to practice medicine and surgery in West Virginia. The bill simply adds language pertaining to the Board of Medicine's requirement for medical students enrolled in a dual MD-PhD program to pass a national standard examination for up to 10 consecutive years to also apply to medical students participating in an accredited fellowship training program.

**Senate Bill 467 (group life insurance)** amends group life insurance requirements. This bill amends the section relating to Employee Groups in the Group Life Insurance article. Language is stricken that requires a certain percentage of employees be covered (75 if part of the premium is paid by the employees and 100 percent if the premium is paid by the employer). Language also is stricken that prohibits the issue of policies if the premium is paid totally by the employees, unless the policy value is \$1,000 or less. The new language permits policies with premiums paid by the employer, the employee or both. If only the employer pays the premium, then all employ-

ees must be covered except those providing a written rejection. The insurer is permitted to exclude or limit the coverage on a person whose evidence of insurability is not satisfactory. The policies must cover two employees, instead of 10.

**Senate Bill 468 (group accident and sickness policies)** adopts the National Association of Insurance Commissioner's model language for Group Accident and Sickness Policies. The adopted changes within the State Code relate only to the first classification, which are policies issued to an employer. According to the abstract of the bill, group policies may now be issued to an employer insuring only two employees ( the former requirement was 10 ) and removes the participation requirements for policies paid solely by the employee or jointly by the employer and employee. These requirements were 70 percent of all employees or 75 percent of all employees of a class of employees. If solely the employer pays the premiums, then the group must be all employees or all of any class of employees.

**Senate Bill 630 (cancellation of policies)** provides an insurer with the right to cancel or not renew a combination automobile and homeowners policy of insurance.

**Senate Bill 635 (school flood insurance)** requires that each county board is to maintain flood insurance on each insurable building that it owns. The building, in order to be insured, must be within an identified special flood hazard area on a flood hazard boundary map or a flood insurance rate map. Also, buildings that are on a 100-year floodplain and have replacement values that are greater than \$300,000 must be insured. If the building has been damaged in a previous flood and flood insurance is required by the Federal Emergency Management Agency, then the school board is required to maintain flood insurance.

**Senate Bill 644 (insurance - motor vehicles)** repeals obsolete sections of State Code that permitted the deposit of cash or securities in lieu of traditional motor vehicle insurance coverage. The random sampling process for verification of the required liability insurance coverage is eliminated through this measure and the Insurance Commissioner is authorized to select any certificate of insurance, owner's statement of insurance, vehicle registration or any other form for verification of insurance coverage.

**Senate Bill 754 (farmers' mutual)** relates to farmers' mutual fire insurance companies and clarifies that certain requirements for the filing of fire and marine policies apply to farm mutual insurance companies. The types of coverage farm mutuals may offer is clarified to include: property loss or damage; crop loss or damage; domestic farm animal loss or damage; loss or damage by burglary, theft, larceny, robbery,

etc.; loss or damage to personal effects; and, loss or damage to glass. The bill also adds a requirement that a farm mutual is to have a majority of its book of business in under-served areas of the insurance market. The percentage can be determined by gross premiums or policy count.

**Senate Bill 755 (casualty insurance)** provides that a physician's mutual insurance company can issue casualty or liability insurance. However, the company has the right to decline or refuse to renew any contracts of insurance transferred to the company from the Board of Risk and Insurance Management whenever the terms expire.

This legislation allows a company to establish, for an individual physician within a classification, variations in coverage based on underwriting criteria established by the company. The underwriting criteria can take into account factors considered by other medical malpractice insurance companies. These new criteria include disciplinary action taken against the physician by the Board of Medicine or Board of Osteopathy and felonies or other criminal offenses committed by the physician.

**House Bill 4383 (pilot program continued)** continues the pilot program offered by the United States Department of Health and Human Services that encourages innovative integrated health care delivery systems to serve uninsured and underinsured persons with greater efficiency and improved quality of care and to further maximize reimbursements to health care providers that provide these services. The program will be continued indefinitely as determined by the Insurance Commissioner.

**House Bill 4513 (Workers' Compensation Fund)** transfers authority to the Insurance Commissioner regarding employers in default to the old Workers' Compensation Fund.

Upon termination of the Workers' Compensation Commission, all of the powers and authority previously conferred upon the Commission relating to employers in default to the Workers' Compensation Fund have been transferred to the Insurance Commissioner. One of these authorities is the collection of amounts owed by employers and another allows for the acceptance of bonds permitting from defaulting employers. Also, a circuit court will issue an injunction prohibiting the employer from operating the employer's business should the Insurance Commissioner prove that the employer is in default to the old fund, has liability to the uninsured fund, is in policy default or has otherwise failed to maintain mandatory workers' compensation coverage.

And, the Commissioner has the authority to waive penalty and interest accrued on moneys due the old fund. The en-



actment of the provisions will be applied retrospectively to January 1, 2006 and may not be construed to require the Commissioner to adjust or otherwise modify any agreements reached with regard to the payment of penalty or interest since that date.

**House Bill 4847 (limited health plans)** relates to group limited health benefits insurance plans. The bill permits the Insurance Commissioner to approve group health insurance plans that provide limited benefits to employees who are part-time, seasonal or temporary employees who are ineligible for coverage under any of the employer’s group health benefit plans or are employed by an employer that does not offer a group benefit plan to any of its employees. The bill provides that premium rates be reasonable in relation to the benefits available and authorizes the Insurance Commissioner to promulgate emergency rules prescribing ratemaking requirements.

## Investments

**House Bill 4595 (certified treasury manager)** allows the Board of Treasury Investments to retain one employee with a chartered financial analyst designation or a certified treasury manager instead of requiring the Board to have an employee with these qualifications. The board may, instead of shall, retain one employee with a chartered financial analyst designation or an employee who is a certified treasury manager. The measure also adds certificates of deposit as an investment for the board and participants.

**House Bill 4679 (charitable gift annuities)** exempts charitable gift annuities and transfers of cash or property by donors to charitable organizations in return for annuities from regulation by the Insurance Commission. The measure accomplishes this by clarifying that the issuance of such annuities does not constitute engaging in the business of insurance in West Virginia.

In addition, the legislation provides that to qualify for this exemption, a charity must meet the definition of a “qualified charitable gift annuity” under the Internal Revenue Code; have existed for three or more years; and have \$300,000 in unrestricted assets. Charities meeting these requirements are required to notify the Insurance Commission when issuing annuities and inform the donor that it is not subject to these regulations.

If you know the bill number, but not the subject heading of the legislation you are seeking, please refer to the index of bills on pg. 35.

## Labor

**House Bill 4023 (minimum wage)** pertains to the minimum wage, which was passed in 1938 as part of the Federal Fair Labor Standards Act. The policies established by then President Franklin Roosevelt created an hourly wage floor beneath which employers cannot legally pay their workers.

Members of the Legislature passed a symbolic measure during its 2006 Session which in essence called for Congress to raise the minimum wage. The federal rate of \$5.15 an hour was last increased in 1997.

The West Virginia legislation calls for an increase of the current \$5.15 an hour to \$5.85 in 2006, \$6.50 in 2007 and \$7.25 in 2008.

Currently, this state measure affects a minuscule number of workers in West Virginia who are not engaged in any form of interstate commerce.

**House Bill 4454 (withheld wages)** amends current provisions pertaining to wages withheld from an employee. This measure provides that if an employer fails to pay wages due to an employee in a timely manner after termination, suspension, lay off or resignation, then he or she is required to provide - in addition to the unpaid wages - liquidated damages equal to three times the amount of the unpaid wages. Previous law stated that the liquidated damages were to equal one day of the employee’s wages for each day that payment was delayed for up to 30 days.

## Law Enforcement

**Senate Bill 18 (tuition waivers)** adds children and spouses of parole and probation officers killed in the line of duty to the individuals eligible for tuition waivers for state institutions of higher education for undergraduate courses. Children and spouses of correctional officers at state penal institutions, conservation officers or registered firefighters, including volunteer firefighters, who are killed in the line of duty while employed by the state or any political subdivision are the current individuals eligible for tuition waivers.

**Senate Bill 479 (death benefits)** expands the funeral expense payment benefit to include all probation officers killed in the line of duty.

### Liens

**House Bill 4698 (subcontractor's liens)** extends a subcontractor's time to file a notice of a lien from 75 days to 100 days after completion of a subcontract. In 2002, the Legislature changed the time for filing notice of a mechanic's lien to 100 days and inadvertently did not change this section.

### Local Bills

**Senate Bill 505 (Fairmont)** will extend the time for the Fairmont City Council to meet as a levying body to put forth an election to the voters of the city for a municipal excess levy until May 19, 2006.

**House Bill 4112 (Mineral County)** extends the time for Mineral County to hold an excess levy until the third Tuesday in May 2006.

**House Bill 4484 (Marion County)** extends the time for Marion County to hold an excess levy for vital public services until the first Thursday in June 2006.

**House Bill 4569 (Harrison County)** extends the time for Harrison County to meet as a levying body until the first Thursday in June 2006.

**House Bill 4751 (Grant County)** extends the time for the Board of Education of Grant County to meet as a levying body. The bill allows the Board to meet between March 7-28 and the third Tuesday in April until the third Tuesday in May, 2006 for the purpose of presenting to the voters an election for an additional excess levy to provide funding for the operation, maintenance and repair of schools and to pay school personnel.

### Military Affairs

**House Bill 4486 (National Guard)** provides that pay and allowances for officers and enlisted personnel of the National Guard for drill, encampment or other duty for training prescribed by the federal government shall be such as are provided by the laws of the United States.

Officers and enlisted personnel of the National Guard in active service of the state will receive the same pay and allowances, in accordance with their rank and service, as prescribed for the Armed Forces of the United States. However, no member of the National Guard shall receive base pay of less than \$100 per day while he or she is in active service of the state.

With their consent, members of the National Guard may perform any duties in line with competent orders without pay and allowances, provided that necessary expenses may be furnished the guardsman at the discretion of the Adjutant General.

### Mine Safety / Mines & Minerals

**Senate Bill 247 (mine safety)** mandates immediate and crucial upgrades in West Virginia's rescue technology and provides for better communication among local and state officials and mine operators when an accident occurs. This measure swiftly passed both bodies following the terrible tragedies in West Virginia mines in January.

The bill seeks to provide additional safety and rescue provisions to enable expeditious response and prolong survivability within a mine after an accident occurs. The bill touches upon three major concepts: additional oxygen supplies; upgrades in specific technologies; and, greater streamlining of response efforts within local and state entities.

The bill requires oxygen apparatuses to be strategically placed throughout underground mines to provide extended caches of breathable air for those trapped by a mining accident. These breathing devices could provide valuable time for miners who find themselves barricaded underground. In addition, battery powered strobe lights and lifeline cords could be connected to these caches for visibility and access.

The use of wireless technology is a major component of the new safety regulations, including the required use of wireless emergency communication devices and wireless tracking systems. With communication a key aspect in rescue efforts, utilizing wireless devices that will keep those miners who are underground in contact with those on the surface will be crucial to their recovery.

Along those lines, the use of wireless tracking systems to provide real-time monitoring of the actual location of each miner underground may enable rescue teams to have the ability to know where to start searching and possibly reach those trapped in a more expeditious manner. This tracking information, however, could not be used against a miner in non-emergency situations.



To avoid further delay in the response and recovery when a disaster hits, the bill requires the mine operator or foreman in charge of the mine to notify local authorities or contact the newly-created statewide Mine and Industrial Accident Emergency Operations Center within 15 minutes of realizing an accident has occurred.

This Center, which is to be maintained by the Division of Homeland Security and Emergency Management, will become the official and primary state government communications hub for dealing with mine and industrial accidents. The Division also will be required to establish a 24-hour statewide telephone hotline to increase communication in disaster response.

**Senate Bill 461 (water replacement)** amends water replacement requirements relating to mining operations. Under provisions of current law, mine operators are to provide a water supply for a landowner whose underground supply was damaged during the course of an operation. This legislation provides that in addition to providing emergency and temporary supplies within certain time frames, a mine operator is to begin activities or plans to establish a permanent water supply within 30 days.

The total time for providing a permanent water supply is not to exceed two years; however, if it is demonstrated that two years is not enough time, then the time frame may be extended on a case-by-case basis. As stated in current law, the mine operator is responsible for paying all reasonable costs for securing a water supply. In addition, this legislation provides that a mine operator is prohibited from discontinuing the required water service, unless the appropriate authorization is received.

**Senate Bill 539 (director qualifications)** will remove the qualification of five years of underground coal mining experience for applicants applying for the position of the Director of the Office of Miners' Health, Safety and Training, making this requirement optional if the applicant had completed five years of education and training in underground coal mining safety.

**House Bill 4596 (qualifications for director)** revises the qualifications for the Director of the Office of Miners' Health, Safety and Training.

The Director of the Office of Miners' Health, Safety and Training is required to have at least five years education or training in underground mining safety and three years experience in underground mining as well as meet previous requirements. Special reference shall be given to his or her administrative experience and ability.

According to the bill, the director of this office may not have any financial interest, majority ownership or control in any mine in West Virginia or any other state.

If the director's position becomes vacant, then the Governor may fill the position by appointing an acting director to exercise the powers of the office. The acting director must be a citizen of West Virginia and meet the same requirements as his or her predecessor. The interim service appointment cannot last for more than one year. After one year, a permanent director must be appointed.

**Motor Vehicles**

**Senate Bill 183 (special license plates)** makes Armed Forces Air Medal recipients; Lions International members; West Virginia Bar Association members; former Boy Scouts and Eagle Scouts; and retired or former Justices of the Supreme Court of Appeals of West Virginia eligible for special vehicle license plates in West Virginia. The newly authorized licenses also includes a "Donate Life" plate promoting organ donation and a "Share the Road" plate boosting peaceful coexistence between drivers and cyclists.

Also, the bill authorized a new state scenic license plate based on the design of the New River Gorge with the Almost Heaven motto in place.

With these new additions, the total number of specialty plates now available to West Virginia drivers equals 102. These specialty plates are available through the Division of Motor Vehicles and have accompanying special fees.

**Senate Bill 219 (car accidents & handheld cell phones)** prohibits minors who have earned a learner's permit from talking on cell phones while they are operating vehicles unless they are using the handheld mobile device for the purpose of dialing 911. However, a minor driver cannot be pulled over, solely, for communicating on his or her cell phone while driving. The driver must be pulled over by a police officer for another violation, making the use of a handheld mobile device while driving a secondary offense.

The Division of Motor Vehicles has the authority to revoke a license from a minor driver, without a preliminary hearing, if the driver holds a level one instruction permit or a level two intermediate driver's license and has been cited for driving while using a wireless communication device. Despite the potential revocation, a driver has the ability to have his or her driver's license reinstated.



This bill, though, does not completely eliminate cell phone communications within a vehicle for minors. In fact, drivers under the age of 18 will be able to drive while talking on a “hands free” mobile device.

**Senate Bill 492 (motor carrier insurance)** provides that indemnity provisions (assurances against loss) or agreements in relation to motor carrier transportation contracts, which are purportedly to protect one party against claims based on the other party’s negligence or intentional acts or omissions, are void and unenforceable and against public policy.

The bill’s prohibition relates to the transportation of property by a motor carrier, and includes activities related to acts on the property by the motor carrier for the purpose of loading, unloading or transporting property for compensation or hire, and other incidental activities related to the transportation services, including storage.

**Senate Bill 509 (dealer agreement)** adds that an automobile manufacturer or distributor cannot cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless he/she can demonstrate that the termination is necessary because of a breach of a reasonable term of the agreement by a dealer. The dealer is required to weigh this against his/her personal interests and those of the public. New provisions add that if a contract is terminated, cancelled or not renewed, because the manufacturer is discontinuing the sale of a product line, then the manufacturer will be required to pay or provide the motor vehicle dealer with compensation that is consistent with the length of time the dealer carried the line and the investment and timing.

**Senate Bill 605 (electronic verification of personal property tax)** allows the Department of Motor Vehicles to accept a receipt showing proof of payment of current year personal property taxes (or, as permitted by current law, proof of payment of the prior year’s taxes) as a prerequisite to registration or renewal of a motor vehicle or motorboat registration. It also allows for those payments to be verified by electronic means in lieu of physically providing those receipts.

The bill also eliminates the requirement that an applicant choosing to renew for two years present the previous two years of tax receipts.

**House Bill 4004 (traffic photo monitoring)** prohibits the use of traffic law photo-monitoring devices in West Virginia. The bill will however, allow for photographs of non-traffic violations, including littering. In addition, the bill does not prohibit the use of microwave devices, otherwise known as radar devices, in Class I, II, III and IV cities.

**House Bill 4119 (All Terrain Vehicle Responsibility Act)** establishes the All Terrain Vehicle (ATV) Responsibility Act and applies to authorized outfitters or licensees licensed by the Hatfield-McCoy Regional Recreation Authority.

Under this legislation, every authorized ATV or motorcycle outfitter or licensee is required to:

- Mark for identification purposes all equipment and vehicles used in the business;
- Maintain all equipment and vehicles used in the business as intended and recommended by the manufacturer;
- Provide facilities, equipment and services, conforming to safety and other requirements established by the Hatfield-McCoy Regional Recreation Authority;
- Provide facilities, equipment and services as advertised or as agreed to by the authorized outfitter or licensee and the participant;
- Provide protective helmets which are size appropriate and which meet the current performance specifications established by the American National Standards Institute
- Provide all-terrain vehicles or motorcycles that are age and size appropriate as recommended by the manufacturer;
- Make reasonable and prudent efforts to ensure that participants have received the safety training required for the use of the Hatfield- McCoy Regional Recreation Area;
- Make certain that every guide offered to participants by the authorized outfitter or licensee has a current standard first aid training certificate and CPR certificate issued by the American Red Cross or its equivalent and ATV safety training through the ATV Safety Institute;
- Make certain that employees carry first aid kits when acting as guides.
- Make known to any participant any dangerous condition as to trail lands, facilities or equipment to be traversed or used which is known by the outfitter or licensee.

These authorized outfitters or licensees may not rent or lease an ATV or motorcycle to a person under the age of 18 or allow any owner-operated ATV or motorcycle on any guided tour when operated by any person under the age of 18 without first obtaining a written statement signed by the minor’s parent or guardian. The release must assure that the machine follows the criteria for safety, and is age appropriate. The minor must understand the rules governing the use of the vehicle within



## Final Wrap-Up

the Hatfield-McCoy Recreation Area. Too, any minor under the age of 16 will remain under the supervision of and the sight of the parent or guardian at all times.

Duties of participants also are outlined in the new law, which requires them to follow the rules of the Hatfield-McCoy Recreation Area.

Operators or licensees expressly assume the risk of, and legal responsibility for, any injury, loss or damage to a person or property which results from participation in operating an ATV or motorcycle owned by the outfitter or licensee, and caused by variations in terrain, surface or subsurface conditions. These include: rocks, trees or other forms of forest growth or debris; collisions with signs, markers, or any other objects or fixtures used in trail management, maintenance, construction or development; and, collisions with electrical transmission poles, towers, lines, guy wires, etc.

Riders have to obey all rules or instructions announced by the outfitter or licensee and wear all safety equipment provided by the outfitter or licensee, or which might otherwise be required by law.

In addition, a provision in this bill requires outfitters to be insured.

**House Bill 4307 (antique cars)** extends the weekend driving privileges of antique motor vehicles and motorcycles. Originally, West Virginia law only permitted the use of these vehicles for recreational driving on Saturdays and Sundays. This bill changes the time frame so that the use of these vehicles may begin on Fridays at 4:00 p.m., through Sundays.

**House Bill 4490 (motor vehicles)** relates generally to the regulation of selling new or used vehicles. The bill also provides for the comprehensive regulation and licensing of salespersons and finance and insurance representatives.

### Natural Resources

**Senate Bill 439 (excavating)** strengthens the one-call system requirements for persons excavating or performing demolition work in the vicinity of pipelines by increasing the number of emergency response agencies to be notified in the event of resulting damage; and to strengthen penalties for violations of these duties.

**Senate Bill 496 (moving game out of state)** allows any person to transport legally obtained game out of the state.

Current law limits the amount of game a person can transport out of the state to game legally killed in two days. This bill removes that limit and will allow for all legally possessed game to be transported across state lines.

**Senate Bill 521 (white-tail deer)** requires state park revenues earned through the operation of the park to be invested by the Treasurer and used for maintenance, operation and improvement of the park or for the retirement of park development revenue bonds.

The measure increases the amount of money required to be deposited within 24 hours from \$250 to \$500. A provision in the measure exempts state parks from the requirement that all payments must be deposited in a bank within 24 hours for amounts less than \$500 provided that the parks make at least one deposit no less than \$500 once a week.

In addition, the provisions also will allow the Natural Resources Commission (NRC) to promulgate rules in relation to permitting and regulating the hunting of white-tailed deer in state parks. The director of the NRC will decide when it is appropriate to allow hunting of white-tailed deer to protect the ecological integrity of the area.

**Senate Bill 778 (Conservation Districts)** relates to the State Conservation Committee and conservation districts. The bill repeals antiquated code sections that authorized the districts to adopt land use regulations.

**House Bill 3119 (loss of habitat)** prevents the Division of Natural Resources from reducing the amount of acreage available for hunting and shooting opportunities so there is not a net loss of habitat acreage. The bill allows the Division of Natural Resources to close some lands opened for recreational hunting only if lands of the equal size are opened. The DNR is required to provide an annual report to the Governor and the Legislature on these lands and designations.

**House Bill 4116 (timber selling)** increases the amount of timber that can be sold on state Wildlife Management Areas, without sealed bids, from \$500 to \$5,000. The Director of the Division of Natural Resources must obtain the written permission of the Governor to sell the timber when its appraised value is more than \$5,000. The changes are made to appropriately reflect changes in today's timber market.

**House Bill 4272 (Hunting)** clarifies the language regarding requirements for a Class BG (Big Game) stamp. Language referring to Class Q permits and licensees is removed.



**House Bill 4295 (bird dog)** establishes a bird dog training permit, which requires a \$10 fee. Under this new law, bird dog training is to take place on private land owned by a person who purchased a permit or received written permission from another landowner for the training. The birds permitted to be used for such training are quail, which must be purchased from a licensed commercial game farm, and pigeons, which can either be purchased from a game farm or legally trapped in the state. Permittees are prohibited from holding more than 30 birds and are required to house and care for the birds in accordance with all applicable rules.

**House Bill 4437 (red warning lights)** authorizes the use of red flashing warning lights for the West Virginia Department of Agriculture on emergency response vehicles designated by the Commissioner of the agency.

**House Bill 4444 (Ginseng)** permits and grants university researchers performing research to plant ginseng seed and to dig, collect or gather ginseng on state public lands. Additionally, the bill provides exceptions to the permit requirements for growing and digging ginseng. The bill also establishes an annual expiration date for ginseng dealer permits.

**House Bill 4453 (litter enforcement)** provides for the statewide authority of conservation officers to enforce litter-control laws and initiate complaints for violations relating to wildlife, forests and natural resources. This legislation authorizes conservation officers to serve and execute arrest and search warrants and provides that when a conservation officer has reason to believe that a state law has been violated, he/ she is authorized to initiate a criminal complaint before a magistrate or court.

**House Bill 4456 (beaver trapping)** allows for a more efficient and effective means of trapping beaver for either recreational purposes or nuisance wildlife control. The measure removes all limitations previously codified on the destruction of beaver habitat and the locations of trap lines, as well as removes all requirements upon persons who kill a beaver when it is done unintentionally.

**House Bill 4487 (hunting with help)** allows an individual who is at least 16 years old to assist a Class Q permit holder while hunting. The person helping will not be allowed to hunt with a firearm, bow or crossbow while assisting a Class Q permit holder. A Class Q permit is a special hunting permit that allows an individual to hunt all legal game during the designated hunting seasons from a motor vehicle. The bill requires that only the permit holder and the person assisting be the only two occupants of the vehicle. This measure changes previous law, which noted a Class Q permit holder would have been the sole occupant in the vehicle.

**House Bill 4550** relates to designation of streams as waters of special concern and clarifies the current law requiring legislative approval of final designation of streams of special concern. Any classification of a water as a Tier 2.5 water (water of special concern) does not become effective until that determination is approved by the Legislature through the rulemaking process.

## Professions & Occupations

**House Bill 4279 (massage therapists)** strengthens the licensing laws for massage therapist. Also, it grandfathers existing licenses but require that persons with existing licenses be subject to the same renewal provisions as newly issued licenses under the provisions of this code. It also provides that a lapsed license would, at the discretion of the Massage Therapy Licensure Board, be subject to the licensing requirements of the Massage Therapy Licensure Board. The bill also eliminates archaic language with regard to a National Certification Exam.

Additional provisions in the bill provide for denial of a license for any reason that the Board feels would justify denial. It also allows the imposition of disciplinary sanctions upon a licensee in addition to current law that provides for revocation, suspension or annulment. Additional reasons for disciplinary action would be practicing outside the scope of the license, engaging in acts of sexual abuse, misconduct or exploitation and obtaining fees by fraud or deceit.

**House Bill 4606 (Real Estate Licensing Act)** removes the written verification requirement of complaints against licensees under the Real Estate Licensing Act.

## Public Employees

**Senate Bill 538 (deferred compensation plan)** transfers responsibility for the State Employee Deferred Compensation Plan to the State Treasurer beginning July 1, 2006. All records regarding money, contracts, property and other matters involving deferred compensation plans will be transferred by that date.

The Treasurer is given the authority to invest compensation held pursuant to the State Deferred Compensation Plan in investment products, including fixed or variable rate annuities, life insurance contracts, savings accounts, CDs, money market accounts, bonds or mutual funds.



## Final Wrap-Up

The West Virginia Deferred Compensation Trust Fund is created within the accounts held by the Treasurer to hold deferred amounts and investment income. The Deferred Compensation Administrative Account also is created in the accounts of the State Treasurer to implement, operate and maintain the trust and plan. The moneys in the account come from fees charged on employees and expenditures from the fund are authorized from collections.

The bill gives the state, including all state boards, commissions, agencies, and counties, municipalities or political subdivisions, authority to operate the Trust Fund containing the funds deferred, including entering into contracts; executing and delivering instruments; engaging consultants, auditors, counsel, managers, advisors, trustees or any other contractors or professionals; and, charging and collecting administrative fees. It allows a public employee to attend meetings called by a public employer to explain a deferred compensation plan during regular working hours.

The bill also authorizes county commissions or governing boards of other local public employers that do not have deferred compensation plans to request the Treasurer to authorize its employees participate in the State Plan and authorizes local public employees (county, municipal or other local political subdivision) to participate in the State Plan.

The bill exempts from the Freedom of Information Act any information maintained pursuant to the article that would tend to disclose the identity of the participating employee.

The bill exempts from execution, garnishment, attachment, sale to satisfy a judgment or order, bankruptcy or other process of law, any benefit created pursuant to this article. It also makes any such benefit unassignable.

### Public Service Commission

**Senate Bill 419 (sewer service)** provides that an innovative, alternative sewer service method provided by a public utility is subject to the jurisdiction of the Public Service Commission. The measure incorporates provisions that modify the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by the Infrastructure and Jobs Development Council.

**Senate Bill 680 (motor carriers)** grants the Public Service Commission (PSC) authority and responsibility under the Single State Registration System and the Unified Carrier

Registration System with regard to motor carriers operating in interstate commerce. The purpose of this bill is to address the transition from the current single state registration system for motor carriers operating in interstate commerce to the new federal system established by the Unified Carrier Registration Act of 2005.

### Real Property

**Senate Bill 47 (factory built homes)** provides that if the Housing & Urban Development's (HUD's) standards for a factory-built home are met, then the home is acceptable for use in this state if it adheres to the State Building Code.

The law is modified to replace a "certificate" from the state director of HUD, with "appropriate building code compliance documentation" to create a prima facie case that acceptable products or materials were used to build the home. A prima-facie case is a lawsuit that alleges facts adequate to prove the underlying conduct supporting the cause of action and thereby prevails.

The measure also eliminates the requirement that the building contractor furnish a certificate from the HUD Director when presented to the local building inspectors.

And, new section provides that county or municipal governing bodies must uniformly apply any design standards, associated review and permitting procedures for factory-built and other single-family constructed homes. In other words, local governments can set standards for all homes - such as base size, roof pitch or brick fronts and chimneys - but must apply standards uniformly to all homes. This prohibits discrimination against factory-built housing solely because it is factory built.

**Senate Bill 722 (technical errors in a foreclosure sale)** allows a one-year statute of limitations for a grantor to bring an action that will set aside a foreclosure sale by a trustee because of technical errors in the sale, if the grantor has received proper notice of the sale.

**House Bill 2947 (delinquent property taxes)** requires payments made to a Sheriff's Department for delinquent property taxes be in the form of a cashier's check, money order or cash, if the payment is made within 14 days of the property's sale.

**House Bill 4037 (Property Classifications)** provides corrections to the definition of real property. The previous definitions of real property taxed at a class III commercial



tax rate any additional property people owned even if it was just a cabin or vacation home. This measure passed by the Legislature changes this to allow people who own second homes to be taxed at class II, the same as an individual's primary home, as long as the second home is not used for commercial purposes. The measure is retroactive to July 1, 2005. Class III tax rates are approximately two times the rate of Class II taxes. House Bill 4037 clarifies the definitions of real property in order to ensure proper taxation.

## Retirement

**Senate Bill 173 (Retirement - Public Employees)** allows members and former members of the Public Employees Retirement System (PERS) with 10 or more years of credited service, and who are entitled to a deferred annuity, to elect how his/her pre-retirement death annuity will be paid. The bill also provides that temporary employees of the Legislature's Joint Committee on Government and Finance who perform services required by the Legislature for its regular sessions prior to and during the regular sessions are entitled to the same benefits as employees of the House of Delegates or the Senate.

**Senate Bill 174 (State Police Death, Disability and Retirement Fund)** requires that each recipient of disability benefits file an annual certified statement of earnings. The law also requires the Consolidated Public Retirement Board to examine earnings information made available from the State Tax Commissioner. It allows the board to terminate any present benefit approved as a result of false statement or record made in support of benefits. Also, it prohibits any member who withdraws contributions from receiving prior service credit upon re-enlistment unless he/she redeposits a certain amount of money.

**Senate Bill 598 (accumulated contributions by teachers)** relates to the State Teachers Retirement System by deleting provisions which allowed for the distribution, without a contributor's consent, of accumulated contributions to the State Teachers Retirement System to a contributor with fewer than five years of service, who quits service or ceases to be a member; and correcting code references.

The measure provides that temporarily employed persons under the Comprehensive Employment and Training Act (CETA) may purchase up to five years service credit for time previously worked. It also provides that teachers in fully accredited, private Catholic schools may purchase service credit for time worked during certain years.

**House Bill 2638 (city police & firemen)** relates to restrictions on investments by municipal policemen and firemen's pension and relief funds by increasing the amount that may be invested in equities. The amount, which now may be invested in equities by municipal policemen and firemen's pension and relief funds, has been increased from 50 percent to 60 percent.

**House Bill 4032 (Consolidated Public Retirement Board)** authorizes the Consolidated Public Retirement Board to recover contributions not timely paid to a retirement system plus an amount not greater than the interest or other earnings lost as a result of the late payment, or a reasonable minimum fee, whichever is greater, as established by legislative rule

**House Bill 4654 (post-employment health care benefits for retirees)** establishes the West Virginia Retiree Health Benefit Trust Fund, which will provide post-employment health care benefits for retirees. The measure also establishes that the 80/20 split between employer and employee for the scheduled increase in health care costs for employees may be partially offset by a legislative appropriation.

**House Bill 4846 (provides retiree bonuses)** provides that more than 26,000 retired state employees and teachers will get a 3 percent increase in their pensions, starting July 1, 2006.

Retirees 70 or older who have been retired for at least five years will qualify for the increase - more than half of the 46,000 retirees in the state Teachers Retirement System and the Public Employees Retirement System. The increase is expected to cost \$38 million, according to actuarial projections.

Although the increase is for the lives of the eligible pensioners' benefits, it is legally referred to as a one-time supplement, since only those who are eligible for the increase on July 1 will receive it. Under the law, a five-year retiree who turns 70 on July 2 will not qualify for the increase.

## Roads & Highways

**Senate Bill 759 (design-build)** allows the Division of Highways to implement a program for highway and bridge construction by using the design-build process. The bill establishes a pilot program that would allow the Division of Highways to undertake no more than three projects over a period of 18 months that combine the design and construction elements of a highway or bridge into a single contract. The Commissioner of Highways must establish written policies and procedures before issuing invitations for bids. Requirements are set forth for the invitations for bids and for

acceptance of the bids. The Commissioner is required to report to the Legislature on or before December 1, 2008.

### Rulemaking & Review

**Senate Bill 299** will allow various executive or administrative agencies to promulgate legislative rules. Some of the agencies included in this measure are: the Commissioner of Agriculture; the State Auditor; the Board of Dental Examiners; and, the Board of Optometry.

**Senate Bill 350** authorizes the Department of Health and Human Resources to promulgate legislative rules.

**Senate Bill 353** allows the Department of Transportation to promulgate rules for the Division of Highways pertaining to illuminated advertisements on roadways and obtaining crossing permits.

**Senate Bill 357** authorizes the Department of Revenue to promulgate legislative rules. The proposed rule amends the existing rule governing Medicare supplemental insurance to comply with federal standards set forth in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). Conforming to the federal legislation requires removal of prescription drug benefits from standard Medigap plans H, I, J, and J high deductible and pre-standardized Medigap policies with drug coverage and add the new "Part D" prescription drug coverage. The Insurance Commissioner is required to adopt these amendments in order to maintain certification of its regulatory programs, and the amendments are based on the NAIC model rule on the subject.

**Senate Bill 396** authorizes the Division of Rehabilitation Services to promulgate legislative rules as they relate to the Ron Yost Personal Assistance Services Board.

**Senate Bill 767 (Bureau of Employment Programs)** authorizes Commissioner of the Bureau of Employment Programs to propose legislative rules that will authorize state agencies to revoke the business license of an employing unit in default on unemployment compensation payments.

**House Bill 4031** allows the Director of the Purchasing Division of the Department of Administration to propose rules for legislative approval to authorize a spending unit to purchase various commodities and prescribe all manners for which they are to be used or distributed

**House Bill 4135** authorizes the Department of Environmental Protection to promulgate legislative rules.

**House Bill 4192** authorizes the State Fire Commission to promulgate legislative rules relating to the State Fire Code. The proposed rule adopts the 2000 addition of the National Fire Codes and National Fire Codes Supplements

**House Bill 4210** authorizes the Department of Commerce to promulgate legislative rules. The proposed rule amends the existing rule governing cultivating, harvesting or dealing in ginseng roots for export to conform to the requirements of House Bill 2663 passed in 2005. The proposed rule sets out the duties of collectors, dealers and growers and establishes fees of \$10 annually for a ginseng grower's permit, \$10 annually for a ginseng dealer's permit, and \$20 annually for a late renewal fee for either growers or dealers. There is also a \$.50 per pound of dry root fee for certification of ginseng root.

**House Bill 4603 (Higher Education)** authorizes rules for the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education regarding authorization of degree granting institutions.

**House Bill 4661 (dialysis technicians)** continues the Emergency Rule promulgated by the Board of Registered Professional Nurses providing certification requirements for dialysis technicians. This bill extends the rule until July 1, 2007.

### Safety

**House Bill 4479 (Manufactured Housing Construction and Safety Standards Act)** amends the current provisions of Code as it relates to the assurance requirements of those licensed under the Manufactured Housing Construction and Safety Standards Act.

This bill authorizes the current practice established in state rule of satisfying the assurance requirements with an annual fee program and separates those funds from license fees collected by the Manufactured Housing Construction and Safety Standards Board by creating a new fund for the license fees.

All license fees collected will be deposited in a special account in the State Treasury to be known as the "State Manufactured Housing Administration Fund." Also, the board has the ability to assess an annual fee on licensees. This annual fee is set in amounts that are prescribed by legislative rules.

**House Bill 4842 (competitive skiing)** tightens the Skiing Responsibility Act by requiring competitors' to practice per-



sonal safety guidelines and requiring ski area operators to be responsible for conducting a reasonable visual inspection of the ski slopes and trails or freestyle terrain used in the competition. There is no liability attached to a ski area operator for injury or death to any competitor caused by course, venue, or area conditions that a visual inspection should have revealed or by collisions with other competitors.

The competitor assumes the risk of all ski slopes and trails or freestyle terrain conditions including, weather and snow conditions; obstacles, course or feature location, construction or layout, freestyle terrain configuration and conditions; and other courses, layouts, or configurations of the area to be used. If a slope has been deemed closed, the new provisions in this legislation requires that persons do not ski on that slope.

Also, another aspect of ski safety requires skiers of all skiing devices to be sober on any ski slope. Skiers are responsible for maintaining control of speed and course at all times. However, the primary duty to avoid collision with any person or objects below the skier rests on the shoulders of the skier.

Other changes update definitions in the West Virginia Skiing Responsibility Act to reflect the addition of snowboarding and tubing as skiing. Snowbikes also are entered into law to reflect definitions of skiing.

## Salaries

**Senate Bill 503 (State Police)** provides a pay raise for State Police. The bill would provide base pay salary increases for uniformed members of the State Police over 3 years, increases their experience increment pay, and permits the superintendent of the State Police to appoint two additional supervisors, from the executive protection unit, to hold the temporary rank of first lieutenant and serve at the will and pleasure of the superintendent. The additional supervisors must have served at least two years in the executive protection unit prior to being appointed.

**Senate Bill 558 (appointed state officers)** provides salary adjustments for certain appointive state officers, including various appointed secretaries, commissioners and directors of state departments.

**House Bill 2235 (Magistrate Court Clerks)** increases the salary for magistrate court clerks, deputy clerks and magistrate assistants by \$10,000 by July 1, 2007 and codifies the annual salary rather than the monthly salary. The bill

also provides that these employees will continue to receive general state employee pay raises.

**House Bill 4100 (county officials)** provides salary increases for elected county officials, including county commissioners, sheriffs, county clerks, assessors and prosecuting attorneys, if they choose to accept the raises. This legislation includes findings that state additional duties have been imposed on county officials that justify the increased compensation.

**House Bill 4312 (Bureau of Child Support)** increases the minimum salaries for Bureau of Child Support Enforcement attorneys from \$35,000.00 a year to \$45,000.00 a year.

## Secretary of State

**House Bill 4774 (Rules)** allows the Secretary of State's Office to amend its rules to allow for the sale of the code of State Rules by electronic media format.

**Senate Bill 462 (interstate compacts)** pertains to filing interstate compacts with the Secretary of State's Office. A commission, agency or person administering a compact between or among states or the federal government is to file certain information with the Secretary of State within 90 days of the compact's initiation. This required information includes a copy of the compact with a letter of authentication, a listing of the parties involved in the compact and any citations from Congress consenting to the compact. Within a reasonable time frame, the Secretary of State also is to receive information on the status of each compact and any modifications to the compact.

## Seniors

**Senate Bill 609 (senior citizens' tax credit)** requires eligible low-income senior citizens who wish to claim for the refundable tax credit for certain amounts of their real property taxes to file their claim for refund within three years after the due date for the personal income tax return upon which the credit is first available.

## State Police

**House Bill 4030 (voluntary benefit plan)** limits the administration of a voluntary contribution fund or similar benefit plan by members and employees of the West Virginia State Police.

This legislation authorizes the use of staff time, postage, copying, and incidental resources in the administration of a voluntary contribution fund to be used for small contributions to a beneficiary upon the death of a member or employee.

Furthermore, House Bill 4030 establishes guidelines that must be followed, including one that states that membership in the fund must be completely voluntary – making the use of coercion to participate grounds for dismissal from employment. The fund is maintained in a bank account and not to be deposited in the State Treasury.

### Sunset Legislation

**Senate Bill 211** continues the Board of Professional Surveyors.

**Senate Bill 212** continues the Board of Dental Examiners.

**Senate Bill 213** continues the Consolidated Public Retirement Board.

**Senate Bill 214** continues the Real Estate Commission.

**Senate Bill 215** continues the Board of Examiners in Counseling.

**Senate Bill 216** continues the Women's Commission through July 1, 2008. The Women's Commission is funded through the West Virginia Department of Health and Human Resources.

**Senate Bill 217** continues the Board of Osteopathy.

**Senate Bill 218** continues the Capitol Building Commission.

**Senate Bill 270** continues the Board of Banking and Financial Institutions. The bill also will make it so after July 1, 2006, when a vacancy occurs among the executive officers of state banking institutions the Banking Commissioner will list all state banking institutions according to each bank's asset size and then divide the list into three groups so that there is an equal number of banking institutions in each group. The vacancy will then be filled from the appropriate group to ensure that each group has a representative on the board.

**Senate Bill 364** removes the sunset provisions from the West Virginia Jobs Act. The provisions in this bill require that the Division of Labor compile required information and submit it annually to the Joint Committee on Government and Finance by October 15 2006.

**House Bill 4069** continues the Rural Health Advisory Panel until July 1, 2009.

**House Bill 4239** continues the Division of Unemployment Compensation.

**House Bill 4276** continues the West Virginia Board of Landscape Architects until July 1, 2009. This bill also updates the regulations and definitions for the entire practice of Landscape Architecture. More specifically, the bill adds a lay member to the Board; authorizes fees to be set by legislative rules; changes licensing procedures to include 10 years of experience under direct supervision, currently it is six years; authorizes biennial licenses; and, requires firms to acquire certificates of authorization.

**House Bill 4310** continues the Board of Risk and Insurance Management.

**House Bill 4311** continues the Department of Environmental Protection.

**House Bill 4349** continues the Division of Motor Vehicles.

**House Bill 4350** continues the Family Protection Services Board.

**House Bill 4391** continues the State Rail Authority.

**House Bill 4392** continues the WV Conservation Agency.

**House Bill 4849** relates to the West Virginia Sunset Law.

**House Bill 4850** expedites the sunrise application process by allowing sunrise applications to be processed twice a year, rather than once a year. To facilitate the process, when an application is received between December 1 and June 1, the Performance Evaluation and Research Division (PERD), which reviews the applications, is to submit its legislative report by the end of that year. When an application is received between June 1 and December 1, PERD is to present its report by June 30 of the following year.

### Supplemental Appropriations

**Senate Bill 793** makes a supplementary appropriation from State Fund, General Revenue, to various accounts.

**Senate Bill 794** expires unappropriated funds in the State Fund General Revenue in the amount of \$46.6 million, of which \$16.6 million is an unappropriated surplus balance and \$30 million is for TRAFFIC.

**Senate Bill 795** makes a supplementary appropriation of public moneys from the Treasury out of the State Fund and General Revenue to the Department of Military Affairs and Public Safety's Office of Emergency Services.

**House Bill 4855** makes a supplementary appropriation to the Department of Education and the Arts, Department of Environmental Protection and the Department of Health and Human Resources, among others.

**House Bill 4856** provides a supplementary appropriation from the balance money remaining unappropriated for the fiscal year to the Department of Commerce for the Miners' Health, Safety and Training Fund.

**House Bill 4857** provides supplementary appropriations of federal funds out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2006. These supplementals address, as well as other agencies, the Department of Administration - the Children's Health Insurance Agency; the Department of Commerce - the Division of Natural Resources; and, the Department of Environmental Protection - the Division of Environmental Protection.

**House Bill 4858** makes a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys that have not been appropriated to the Secretary of State's State Election Fund.

### Taxation

**Senate Bill 362 (retirement disability tax information)** requires the Tax Commissioner to disclose certain tax information to the Consolidated Public Retirement Board to help the board administer retirement plans' disability retirement benefits.

Social security account numbers, address and marital status, amounts, nature and source of income and the number of dependents reported on any return filed by any individual receiving a disability annuity are among the types of information allowed to be revealed to the board to assist the Consolidated Public Retirement Board. However, the information can only be used to aid the Board in its efforts to ascertain whether individuals receiving disability retirement benefits under any of the retirement systems that it administers continue to be eligible to receive their disability retirement benefits.

In addition, the Consolidated Public Retirement Board and its employee are required to maintain confidentiality of the

information received, except that the information may be disclosed during an administrative process, hearing or appeal, or other actions relating to eligibility in receiving disability retirement benefits.

**Senate Bill 370 (tax exemption)** will add equipment, machinery, implements, vehicles, supplies, crops and livestock used to engage in commercial farming to property that is exempt from taxation in relation to farming equipment and livestock.

**Senate Bill 371 (timber)** reduces the rate of tax paid on privilege of timber produced to 1.22 percent of the gross value after December 31, 2006.

**Senate Bill 529 (federal adjusted gross income)** updates the meaning of federal adjusted gross income and other terms applied to West Virginia Personal Income Tax Act. The provisions in this bill also specify the effective dates. The bill goes further to state that all amendments made to U.S. laws after December 31, 2006 and before January 1, 2006, will affect the determination of imposed taxes to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective. However, no amendment to the laws of the United States made on or after the January 1, 2006 will be given any merit. The changes from 2006 are retroactive as allowed under federal income tax law.

**Senate Bill 530 (definitions)** updates the meaning of Federal Taxable Income and certain other terms used in West Virginia Corporation Net Income Tax Act.

**Senate Bill 581 (motor fuel excise tax)** amends the definition of "person" as it relates to the motor fuel excise tax. According to the amendment, a person now includes responsible individuals. Making responsible officers liable makes this tax consistent with other taxes.

**Senate Bill 582 (electronic filing)** requires certain tax preparers that have prepared more than 100 personal income tax returns for any taxable year to file the returns electronically.

**Senate Bill 626 (personal tax withheld)** requires employers to submit a copy of an employee's withholding statement with an annual reconciliation of income tax withheld. The bill also requires an employer with 250 or more employees to submit withholding statements electronically.

**Senate Bill 627 (tax lien facsimiles)** allows facsimile signatures on tax liens while eliminating the requirement for notarization of notices of tax liens and releases of tax liens



when facsimile signatures are used. According to the new provisions, the facsimile signature will have the same legal effect as a manual signature.

**Senate Bill 692 (Streamlined Sales and Use Tax Agreement)** conforms Consumer’s Sales and Service Tax law to requirements of Streamlined Sales and Use Tax Agreement. The bill conforms state law to recent changes made in the national “Streamlined Sales and Use Tax Agreement” by the implementing states. Some of the conforming matters addressed in this bill are: filing deadlines for remissions of taxes and returns; revisions of definitions of certain exemptions, extending amnesty provisions for sellers; extending applicability of certain sourcing rules by which the jurisdiction of the applicable tax is determined; expanding ability of states to provide certain exemptions to the tax; expanding the means by which a state may provide a system for assigning taxability jurisdictions; and, clarifying that the providers of systems to automatically calculate tax and sellers are not liable where taxes are not collected because of errors in the state’s certification of the accuracy of the automated tax collection system.

**Senate Bill 786 (state income tax exclusion)** provides up to a \$30,000 tax exclusion for severance wages from gross income for state income tax if an individual was permanently and involuntarily terminated through no fault of the individual.

**House Bill 3295 (delinquent taxes)** increases certain fees charged to collect delinquent taxes. To cover the costs of preparing, publishing and posting the delinquent lists, a charge of \$20 as opposed to \$10 will be added to the taxes and interest already due on each listed item.

For the second delinquent list for real estate to be posted, a charge of \$25 will be added to the charges to cover the cost of preparing and publishing. To cover costs of mailing notices to landowners, a charge of \$10, from \$5, per addressee will be added to the charges already due. For the publication of the list of all sales and certifications is an increase from \$7.50 to \$15.00.

**House Bill 4580 (Special District Excise Tax Administration Fund)** creates the Special District Excise Tax Administration Fund within the State Treasury. The legislation authorizes the Tax Commissioner to deposit and expend these funds for designated purposes.

**House Bill 4598 (combined oil and gas returns)** eliminates the requirement for combined oil and gas returns for purposes of property taxes.

This measure also defines the information that may be released to the Department of Environmental Protection, Office of Oil and Gas, and the West Virginia Geological and Economic Survey to include: the name, address and phone number of the producer; the name and address of the owner of a working interest in the well for which the return is filed; the county and district within the county where the oil or gas well is located and taxed; the American Petroleum Institute number assigned to each well for which the return is filed; the total barrels produced in the reporting period for each oil well; and, the total MCF, or thousand cubic feet of natural gas, produced in the reporting period for each gas well.

The measure also authorizes the Tax Commissioner to release information to the Department of Environmental Protection that is currently provided on the combined report.

**House Bill 4630** amends the State Code relating to the procedure and administration of the limitations on assessment of taxes. Under this bill, if a taxpayer fails to disclose a listed transaction on the taxpayer’s state or federal income tax return, an assessment will be made at any time under six years after the due date of the return for the same taxable year or after such return was filed. If an amended return was filed the assessment will be no later than three years. Penalties for promoting abuse tax shelters will be imposed equal to 50 percent of the gross income derived from activities by the person. A penalty of \$1,000, or 100 percent of the gross income when the activity is subject to penalty, will be assessed for those making a false or fraudulent statement.

**Technology**

**Senate Bill 653 (Chief Technology Officer)** expands the duties of the state’s Chief Technology Officer (CTO) to include, among other charges, developing a four-year strategic information technology and technical infrastructure policy and development plan; developing standards for the security of the state’s information and technology systems and performing security audits to ensure such safety; creating an approval process concerning all major information technology projects proposed by state agencies that cost more than \$100,000 or require more than 300 man hours to complete; and, establishing a Project Management Office within the Office of Technology to assist the CTO and other state agencies.

In addition, this measure establishes the West Virginia Technology Infrastructure Fund to be used for cost-saving initiatives for the state’s technological infrastructure.

### Transportation

**Senate Bill 557 (toll rates)** requires the West Virginia Parkways, Economic Development and Tourism Authority receive approval to sell bonds for road building or maintenance projects. Also in the bill is a provision to roll back the tolls raised by the Authority to those charged prior to January 1, 2006. It also repeals a 2004 law that mandates that the authority fund a new interchange and access road at Shady Spring, which is East of Beckley.

### Uniform Commercial Code

**Senate Bill 742** updates the definitions in Article 1 of the Uniform Commercial Code (UCC) to comply with the changes made to other articles in the UCC. Article 1 of the Uniform Commercial Code provides definitions and provisions that are generally applicable throughout the UCC unless an article has another specific provision on the same subject matter. The revisions to Article 1 generally reflect amendments to other articles of the UCC and changing business practices.

### Utilities

**Senate Bill 578 (Troubled Utilities)** increases the power of the Public Service Commission with respect to the takeover or transfer of troubled utilities. This bill authorizes the revocation of certificates of public convenience and necessity for the effective abandonment or inability or unwillingness of gas and electric utilities to adequately serve its customers.

**House Bill 4536 (telephone service contracts)** provides standards for landline telephone service contracts that require telephone companies to issue new contracts to business customers when the initial term of the contract expires or allow the current contract to renew on a month-to-month basis.

The legislation also provides that contracts that have been renewed automatically are limited to liquidated damages not to exceed an amount equal to one month's service fee. This fee is computed by averaging the service charges invoiced to the terminating customer during the preceding four months.

Also, if service agreements already active are already automatically renewed, then the telephone public utility may not impose a termination fee that is greater than the charges for two months'

service, which fee is computed with averaging the service charges of the customer for the preceding four months.

The provisions in this legislation do not apply to service agreements between one telephone public utility and another telephone public utility. And, this newly enacted law is not to be construed as preventing a telephone public utility and its business customers from entering into customer service agreements, governing, among other matters, any termination fee that may be imposed on the customer for terminating the service agreement during its initial term.

### Veterans

**Senate Bill 32 (tuition waivers)** expands the number of children eligible for tuition waivers and allocations to children whose guardians served in the United States Armed Forces upon the call of the President during armed combat and who were killed in action or have died as a result of sustained military injuries.

To be eligible for the benefits, the West Virginia enlistee's child has to be legitimized by law prior to the demise of the veteran, at least 16-years-old but not older than 25 years; enrolled in an education or training institution; and, declared the child of a West Virginian. As of Jan. 1, 2007, all benefits listed below are directed solely for the purpose of post-secondary education. Eligibility and amounts of allotments are determined by the state Division of Veterans' Affairs.

No tuition fees will be charged to eligible young adults attending any state education or training institution and allocations from \$1,000 to \$2,000 may be provided in any one year for expenditures provided by the Division of Veterans' Affairs for graduation fees, board, room rent, books, supplies and other necessary living expenses. Should the student leave post-secondary education programs, the allotments will cease.

However, if a person eligible for a tuition waiver attends a private education or training institution or an out-of-state education or training institution where tuition waivers are not applicable, that child is still eligible but for no more than \$2,000 per year in education benefits.

**House Bill 4283 (bidding contracts)** provides a preference to West Virginia veterans in the awarding of state contracts in the competitive bidding process. The bill provides that the state is to give the resident vendor who is a veteran of the armed forces, including the reserves and National Guard, a preference in awarding contracts provided the bid does not exceed by 3.5 percent the lowest qualified bid from a non-

resident vendor and the veteran vendor has made a written claim for preference at the time the bid is submitted.

## Veto Messages (8)

<b>Senate Bill 107</b>	<b>House Bill 4172</b>
<b>Senate Bill 490</b>	<b>House Bill 4256</b>
<b>Senate Bill 760</b>	<b>House Bill 4353</b>
<b>Senate Bill 787</b>	<b>House Bill 4728</b>

## Waste Management

**Senate Bill 443 (hazardous waste management fee)** continues the hazardous waste management fee, which is collected annually by the state for certification of facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, until 2011. The revenues collected from the annual certification fee are deposited in the State Treasury to the credit of the Hazardous Waste Management Fee Fund.

## Workers Compensation

**Senate Bill 790 (Workers Compensation Board of Review)** provides that in cases involving Worker's Compensation claims, the aggrieved party has 30 days after the complaint is made to file a written notice of appeal with the Workers Compensation Board of Review, with a copy sent to the office of judges as opposed to notifying the office of judges first. The Board must notify the other parties immediately upon the filing of a notice of appeal. After receiving a copy of the notice of appeal, the Office of Judges will make a transcript of the proceedings available and certify and transmit it to the Board. After a review of the case, the Board shall issue a written decision and mail a copy to the parties involved. Overall, the purpose of this bill is to require appeals of workers compensation administration law decisions to be filed with the Workers Compensation Board of Review.

### Bill Status

For bill history information and full bill text of all Legislation from the 2006 Regular Session, please go to the West Virginia Legislature's Web site: <http://www.legis.state.wv.us> and select the "Bill Status" link.

**April 9 - 11**  
**May 21 - 23**  
**June 11-13**  
**July 23-25**

**2006 - 2007**  
**Interim Committee**  
**Meeting Dates**

**August 6 - 8** (Chief Logan State Park)  
**September 11 - 13**  
**October 15 - 17**  
**November 13 - 15**  
**December 10 - 12**  
**January 7 - 9, 2007**

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

## The West Virginia Legislature's Reference & Information Center

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## Index of Completed Legislation

<b>SB 11</b> , pg. 8	<b>SB 467</b> , pg. 18	<b>SB 692</b> , pg. 32	<b>HB 4049</b> , pg. 11	<b>HB 4489</b> , pg. 14
<b>SB 13</b> , pg. 9	<b>SB 468</b> , pg. 19	<b>SB 693</b> , pg. 5	<b>HB 4063</b> , pg. 4	<b>HB 4490</b> , pg. 24
<b>SB 18</b> , pg. 20	<b>SB 473</b> , pg. 9	<b>SB 709</b> , pg. 4	<b>HB 4069</b> , pg. 30	<b>HB 4491</b> , pg. 10
<b>SB 32</b> , pg. 33	<b>SB 479</b> , pg. 21	<b>SB 722</b> , pg. 26	<b>HB 4075</b> , pg. 3	<b>HB 4494</b> , pg. 5
<b>SB 47</b> , pg. 26	<b>SB 480</b> , pg. 8	<b>SB 728</b> , pg. 7	<b>HB 4100</b> , pg. 29	<b>HB 4498</b> , pg. 6
<b>SB 51</b> , pg. 8	<b>SB 481</b> , pg. 8	<b>SB 742</b> , pg. 33	<b>HB 4108</b> , pg. 17	<b>HB 4510</b> , pg. 11
<b>SB 53</b> , pg. 12	<b>SB 483</b> , pg. 8	<b>SB 754</b> , pg. 19	<b>HB 4112</b> , pg. 21	<b>HB 4513</b> , pg. 19
<b>SB 107</b> , pg. 34	<b>SB 484</b> , pg. 6	<b>SB 755</b> , pg. 19	<b>HB 4116</b> , pg. 24	<b>HB 4536</b> , pg. 33
<b>SB 112</b> , pg. 15	<b>SB 489</b> , pg. 15	<b>SB 759</b> , pg. 27	<b>HB 4119</b> , pg. 23	<b>HB 4550</b> , pg. 25
<b>SB 114</b> , pg. 7	<b>SB 490</b> , pg. 34	<b>SB 760</b> , pg. 34	<b>HB 4120</b> , pg. 3	<b>HB 4565</b> , pg. 18
<b>SB 125</b> , pg. 1	<b>SB 492</b> , pg. 23	<b>SB 767</b> , pg. 28	<b>HB 4135</b> , pg. 28	<b>HB 4569</b> , pg. 21
<b>SB 127</b> , pg. 12	<b>SB 496</b> , pg. 24	<b>SB 772</b> , pg. 16	<b>HB 4172</b> , pg. 34	<b>HB 4580</b> , pg. 32
<b>SB 166</b> , pg. 4	<b>SB 497</b> , pg. 5	<b>SB 773</b> , pg. 15	<b>HB 4192</b> , pg. 28	<b>HB 4588</b> , pg. 10
<b>SB 170</b> , pg. 15	<b>SB 503</b> , pg. 29	<b>SB 774</b> , pg. 15	<b>HB 4210</b> , pg. 28	<b>HB 4595</b> , pg. 20
<b>SB 173</b> , pg. 27	<b>SB 505</b> , pg. 21	<b>SB 778</b> , pg. 24	<b>HB 4239</b> , pg. 30	<b>HB 4596</b> , pg. 22
<b>SB 174</b> , pg. 27	<b>SB 509</b> , pg. 23	<b>SB 781</b> , pg. 6	<b>HB 4240</b> , pg. 11	<b>HB 4598</b> , pg. 32
<b>SB 183</b> , pg. 22	<b>SB 511</b> , pg. 14	<b>SB 783</b> , pg. 13	<b>HB 4256</b> , pg. 34	<b>HB 4601</b> , pg. 15
<b>SB 211</b> , pg. 30	<b>SB 516</b> , pg. 5	<b>SB 785</b> , pg. 13	<b>HB 4272</b> , pg. 24	<b>HB 4603</b> , pg. 28
<b>SB 212</b> , pg. 30	<b>SB 517</b> , pg. 4	<b>SB 786</b> , pg. 32	<b>HB 4276</b> , pg. 30	<b>HB 4606</b> , pg. 25
<b>SB 213</b> , pg. 30	<b>SB 521</b> , pg. 24	<b>SB 787</b> , pg. 34	<b>HB 4279</b> , pg. 25	<b>HB 4611</b> , pg. 3
<b>SB 214</b> , pg. 30	<b>SB 529</b> , pg. 31	<b>SB 788</b> , pg. 13	<b>HB 4283</b> , pg. 33	<b>HB 4622</b> , pg. 14
<b>SB 215</b> , pg. 30	<b>SB 530</b> , pg. 31	<b>SB 790</b> , pg. 34	<b>HB 4295</b> , pg. 25	<b>HB 4625</b> , pg. 13
<b>SB 216</b> , pg. 30	<b>SB 538</b> , pg. 25	<b>SB 791</b> , pg. 9	<b>HB 4296</b> , pg. 6	<b>HB 4626</b> , pg. 11
<b>SB 217</b> , pg. 30	<b>SB 539</b> , pg. 22	<b>SB 792</b> , pg. 11	<b>HB 4307</b> , pg. 24	<b>HB 4630</b> , pg. 32
<b>SB 218</b> , pg. 30	<b>SB 551</b> , pg. 8	<b>SB 793</b> , pg. 30	<b>HB 4310</b> , pg. 30	<b>HB 4632</b> , pg. 15
<b>SB 219</b> , pg. 22	<b>SB 554</b> , pg. 15	<b>SB 794</b> , pg. 30	<b>HB 4311</b> , pg. 30	<b>HB 4651</b> , pg. 12
<b>SB 223</b> , pg. 16	<b>SB 556</b> , pg. 6	<b>SB 795</b> , pg. 31	<b>HB 4312</b> , pg. 29	<b>HB 4654</b> , pg. 27
<b>SB 242</b> , pg. 3	<b>SB 557</b> , pg. 33	<b>HB 2016</b> , pg. 8	<b>HB 4313</b> , pg. 10	<b>HB 4661</b> , pg. 28
<b>SB 243</b> , pg. 3	<b>SB 558</b> , pg. 29	<b>HB 2118</b> , pg. 4	<b>HB 4321</b> , pg. 15	<b>HB 4679</b> , pg. 20
<b>SB 244</b> , pg. 3	<b>SB 566</b> , pg. 8	<b>HB 2136</b> , pg. 7	<b>HB 4349</b> , pg. 30	<b>HB 4683</b> , pg. 10
<b>SB 245</b> , pg. 7	<b>SB 576</b> , pg. 8	<b>HB 2146</b> , pg. 8	<b>HB 4350</b> , pg. 30	<b>HB 4685</b> , pg. 18
<b>SB 247</b> , pg. 21	<b>SB 578</b> , pg. 33	<b>HB 2235</b> , pg. 29	<b>HB 4353</b> , pg. 34	<b>HB 4690</b> , pg. 12
<b>SB 269</b> , pg. 3	<b>SB 581</b> , pg. 31	<b>HB 2328</b> , pg. 14	<b>HB 4355</b> , pg. 10	<b>HB 4694</b> , pg. 5
<b>SB 270</b> , pg. 30	<b>SB 582</b> , pg. 31	<b>HB 2329</b> , pg. 9	<b>HB 4368</b> , pg. 3	<b>HB 4698</b> , pg. 21
<b>SB 271</b> , pg. 4	<b>SB 587</b> , pg. 11	<b>HB 2548</b> , pg. 16	<b>HB 4379</b> , pg. 17	<b>HB 4721</b> , pg. 14
<b>SB 299</b> , pg. 28	<b>SB 591</b> , pg. 15	<b>HB 2638</b> , pg. 27	<b>HB 4383</b> , pg. 19	<b>HB 4728</b> , pg. 34
<b>SB 350</b> , pg. 28	<b>SB 598</b> , pg. 27	<b>HB 2947</b> , pg. 26	<b>HB 4386</b> , pg. 10	<b>HB 4751</b> , pg. 21
<b>SB 353</b> , pg. 28	<b>SB 603</b> , pg. 18	<b>HB 3119</b> , pg. 24	<b>HB 4391</b> , pg. 30	<b>HB 4774</b> , pg. 29
<b>SB 357</b> , pg. 28	<b>SB 605</b> , pg. 23	<b>HB 3201</b> , pg. 9	<b>HB 4392</b> , pg. 30	<b>HB 4790</b> , pg. 5
<b>SB 362</b> , pg. 31	<b>SB 609</b> , pg. 29	<b>HB 3213</b> , pg. 9	<b>HB 4406</b> , pg. 13	<b>HB 4792</b> , pg. 4
<b>SB 364</b> , pg. 30	<b>SB 619</b> , pg. 16	<b>HB 3295</b> , pg. 32	<b>HB 4431</b> , pg. 7	<b>HB 4842</b> , pg. 28
<b>SB 370</b> , pg. 31	<b>SB 626</b> , pg. 31	<b>HB 4004</b> , pg. 23	<b>HB 4437</b> , pg. 25	<b>HB 4846</b> , pg. 27
<b>SB 371</b> , pg. 31	<b>SB 627</b> , pg. 31	<b>HB 4007</b> , pg. 11	<b>HB 4444</b> , pg. 25	<b>HB 4847</b> , pg. 20
<b>SB 396</b> , pg. 28	<b>SB 630</b> , pg. 19	<b>HB 4008</b> , pg. 15	<b>HB 4445</b> , pg. 14	<b>HB 4849</b> , pg. 30
<b>SB 419</b> , pg. 26	<b>SB 631</b> , pg. 12	<b>HB 4015</b> , pg. 3	<b>HB 4453</b> , pg. 25	<b>HB 4850</b> , pg. 30
<b>SB 438</b> , pg. 18	<b>SB 632</b> , pg. 32	<b>HB 4018</b> , pg. 6	<b>HB 4454</b> , pg. 20	<b>HB 4854</b> , pg. 5
<b>SB 439</b> , pg. 24	<b>SB 635</b> , pg. 19	<b>HB 4019</b> , pg. 4	<b>HB 4456</b> , pg. 25	<b>HB 4855</b> , pg. 31
<b>SB 443</b> , pg. 34	<b>SB 636</b> , pg. 8	<b>HB 4021</b> , pg. 16	<b>HB 4458</b> , pg. 6	<b>HB 4856</b> , pg. 31
<b>SB 454</b> , pg. 18	<b>SB 644</b> , pg. 19	<b>HB 4023</b> , pg. 20	<b>HB 4470</b> , pg. 17	<b>HB 4857</b> , pg. 31
<b>SB 461</b> , pg. 22	<b>SB 653</b> , pg. 32	<b>HB 4030</b> , pg. 29	<b>HB 4472</b> , pg. 9	<b>HB 4858</b> , pg. 31
<b>SB 462</b> , pg. 29	<b>SB 673</b> , pg. 7	<b>HB 4031</b> , pg. 28	<b>HB 4479</b> , pg. 28	
<b>SB 463</b> , pg. 18	<b>SB 680</b> , pg. 26	<b>HB 4032</b> , pg. 27	<b>HB 4481</b> , pg. 14	
		<b>HB 4036</b> , pg. 10	<b>HB 4484</b> , pg. 21	
		<b>HB 4037</b> , pg. 26	<b>HB 4486</b> , pg. 21	
		<b>HB 4047</b> , pg. 9	<b>HB 4487</b> , pg. 25	
		<b>HB 4048</b> , pg. 7	<b>HB 4488</b> , pg. 17	