

Interim Highlights

Education Subcommittee A

Career Tech Prep

The West Virginia Department of Education Assistant State Superintendent for the Division of Technical and Adult Education Services addressed committee members on the value of including family and consumer sciences and technology education courses in the middle school curriculum during November's interim meeting.

Research shows improved academic scores for students involved in career tech education and also gets them more interested in education in general. The Assistant State Superintendent for the Division of Technical and Adult Education Services told the committee that career tech education targets those students who are on their own because they do not score well enough for the PROMISE scholarship and are not low enough either to be taken care of.

One consideration the Division of Technical and Adult Education Services would like to see happen is to start looking at vocational classes being provided at schools instead of going to technical centers. The Assistant Superintendent told the committee that there has always been this stereotype cast with regards to technical centers and it hinders many students from considering taking technical career courses. She also said it was a shame for this to happen because the future of West Virginia is in technology programs.

Another plus to adding vocational classes is that it is easy to phase in to keep kids in school. There is a 98 percent post secondary rate after high school through the implementation of such classes and it also decreases dropout rates. One committee member asked if an Individualized Education Plan (IEP) should be written for every student and the Assistant Superintendent said that there should be because all students need to know what opportunities and experiences are out there.

Another concern from committee members was the fact that the bottom third of college students is going into education. The Assistant Superintendent said that salaries are a factor because they are not as competitive as those in other states.

The Assistant Superintendent told the committee that it is important to promote and focus on reaching middle school students with these programs so they know what is out there and, as they enter into high school, will be more likely to stay in school through vocational programs.

The Legislature passed HCR 128 during this year's regular session, which requested a study of implementing career tech programs into middle schools be considered during interims this year.

Education Subcommittee B

Secondary Schools Concussion Rule

The Legislature passed House Concurrent Resolution 77 this year, which required the study on care and prevention of concussion injuries in sports regulated by secondary schools.

During November's interim meeting, committee members heard from various representatives with the West Virginia Secondary Schools Activities Commission (WVSSAC).

First to address the committee was the Executive Director of the WVSSAC who said that he is confident of the changes that have been implemented with regards to the concussion rule in secondary school sports. He also added

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that concussions have been an issue with all sports not just football.

Two legislative members introduced legislation last year that would change the rules regarding concussions, which the Executive Director said that the WVSSAC worked closely with the members in the writing of the bill. He also added that changes were made at the national SSAC meeting, but more authority would be given to these rules if they came from the Legislature. With the implementation of the new rules, there have been no concerns from coaches, just thanks, the Executive Director said.

Next to address the committee was another representative with the WVSSAC who told the committee that schools in West Virginia are required to teach players to tackle properly and that this year every rule book has a statement that if an official recognizes signs of a concussion, then they are to take the player out of the game until they can be evaluated by a certified physician. They are not to go back in the game until they have been thoroughly checked out. This protocol was adopted in May of this year.

The representative told the committee that the WVSSAC created a poster that includes that signs of a concussion that has been put up throughout schools in the state in order to make more people aware. He also said that there have been more concussion-related problems in high schools than at any other level due to the large number of participants.

All officials at games are now required to take a course on the signs and symptoms of concussions and second impact syndrome. Second Impact Syndrome (SIS) is a condition in which the brain swells rapidly and catastrophically after receiving a second concussion before the brain has had time to fully heal from the first concussion. SIS is also believed to be a contributing factor in Chronic Traumatic Encephalopathy (CTE), which is a progressive degenerative disease of the brain found in athletes (and others) with a history of repetitive brain trauma. CTE is associated with memory loss, confusion, impaired judgment, paranoia,

impulse control problems, aggression, depression, and, eventually, progressive dementia.

WVSSAC also encourages coaches and other personnel to take the course as well. Those interested in taking a course on what you need to know about concussions can take a free course at www.nfhslearn.com. Officials who have gone through the course now wear a patch on their uniform to signify they are looking for signs of concussion from players. The representative told the committee that the officials use the motto, "When in doubt, set them out." In 2008-2009, there were nine football deaths; five of those were from SIS and two were from brain trauma.

When an athlete suffers from a concussion, it is important for them to fully heal which requires the brain to rest. With this in mind, administrators need to work with teachers to make sure of enough healing time for the athlete, the representative said.

WVSSAC has been getting information since October on the how the implementation of the new rule is working and thus far it seems to be working. The WVSSAC has also put in rulebooks, definitions of butt blocking and other illegal helmet contact in order to crack down on concussion injuries. Illegal helmet contact now receives an unsportsmanlike conduct penalty with possible ejection from the game from the offending player.

The clinician for the WVSSAC told the committee that the WVSSAC has been ahead of the NFL and NCAA in adopting rules changes intended to protect student athletes. Any athlete showing signs or symptoms of concussion may not play or return to practice until they are evaluated by a health-care professional, and then completes a six-step progression of tests to determine if they are ready to return. Neurocognitive testing computerized programs are used to determine if an athlete has healed sufficiently.

Last to address the committee was the Assistant Professor of Neurosurgery at WVU who told the committee that multiple concussions for athletes is the fastest-growing area of



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medical knowledge at the moment. What was first seen as a minor setback for an athlete, concussions can have serious implications later in life like CTE. He also said that what helmets thought to withstand forceful blows to the heads are showing to be less affective. Impact testing, which looks at 21 functions of the brain, is being used and is showing that it takes several days to weeks for tests to come back normal. The Assistant Professor also told the committee that impact testing is inexpensive but the problem is you need someone able to administer the test.

Education Subcommittee C

New Teacher Recruitment

Committee members heard from the Superintendent of Kanawha County schools regarding teacher recruitment and the problems West Virginia schools are facing when it comes to bringing new teachers into the state.

The Superintendent told the committee that there were many teacher vacancies for this school year including elementary teachers. The main reason for that is the number of teachers retiring is growing and that leaves a number of vacancies to try and fill with teachers just graduating from college. However, he said that right now Kanawha County, like many other counties in the state, are unable to provide many incentives to prospective teachers that other states can such as competitive salaries and sign-on bonuses.

When asked about the hiring practices for teachers coming from other states, the Superintendent said that, with current certification requirements, it is difficult for out of state teachers to get certified to teach in West Virginia.

Recommendations brought forth by the Superintendent included consideration of sign-on bonuses to new teachers, loan forgiveness opportunities and changing the date that teachers can transfer out of schools. Currently, a teacher can transfer to another school one week before school starts.

Education Accountability, Legis. Oversight Comm. on

Chancellor Reports

Members of the Legislative Oversight Commission on Education Accountability heard reports from both the Community and Technical College System of WV (CTCS WV) and the Higher Education Policy Commission (HEPC).

The first report from the CTCS related to the Annual Report of State Advisory Council of Students. This report focused on five sub-topics and areas where they believe some changes can be implemented and where they would like some legislative input.

The first topic related to general education courses. The speaker mentioned that these courses don't always transfer; students don't always graduate on time and, as often happens, students decide to not continue their education.

Another area, which was addressed, concerned the issue of financial aid. The Advisory Council of Students has been told of FAFSA acceptance problems as well as retention once refunds have been issued. Also, another issue related to financial aid was cost of books. Members were told that book vouchers can help but not all schools do this. Also, professors assigning expensive books they do not plan to utilize efficiently represent a huge cost for students. The speaker stated that books should not be almost as much as tuition saying it's especially hard for a student who is going to a community college for the lower tuition prices due to other obligations. It was suggested that more of these institutions could try renting books as opposed to buying them straight out.

Interim Committee Information
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Online courses were next to be discussed and members were told there is a strong move in this direction, stating it is the “class room of tomorrow”. Some concerns and hurdles remain, however, including a question regarding the assurance of academic integrity.

Finally, the council presented concerns regarding higher education health care. On the matter of insurance, it was related that many schools do not offer insurance and those who do don’t offer effective programs. Also, in regard to clinics, it was reported that many were found to be ineffective and or not convenient. Students are largely unaware of programs offered by those institutions that do offer them so schools must do a better job of promoting these programs where available.

Next for the Commission, members heard a report of the proposed CTCS grant/scholarship program, which is used to assist in attracting students into occupational-technical programs at West Virginia’s public community and technical colleges.

Something the Commission may want to consider is whether or not to Limit the program to those students pursuing any technical program, certain technical programs, or make available to all community and technical college students.

Eligibility requirements would include that applicants must be a West Virginia resident as defined by the institution of attendance, may be an adult student or recent high school graduate, must attend a minimum of six credit hours per semester, must be admitted and attend a public West Virginia community and technical college, as defined in West Virginia Code, a student must be pursuing a certificate or associate degree as defined in WV Code, and they must comply with all State and Federal requirements to receive assistance through Title IV Student Financial Aid Programs.

In order to retain a grant or scholarship a student must have completed a minimum of 12 credit hours from a public West Virginia community and technical college the prior academic year with a cumulative grade point average (GPA) of 2.5 and

continue to meet the enrollment requirements. However, a student will no longer be eligible for an award once an associate degree is earned but a student earning a certificate degree may continue to be eligible if pursuing an associate degree, but may not be awarded a grant for more than 68 credit hours.

Next members heard a presentation from HEPC and a consultant group regarding the South Charleston Tech Park, which was given to HEPC last year. The report presented to the commission stated the site could play a pivotal role in helping companies convert ideas into sellable products and also could be used to recruit emerging-growth companies that specialize in “niche areas” of the chemical, engineering, materials and energy industries.

The consultants report recommended that the state provide hands-on training for technicians, engineers and scientists at the tech park and also suggested that the state establish a “world-class” chemical engineering institute at the tech park. The Kanawha Valley Community and Technical College is moving to the tech park. The state also has started construction on a \$15 million advanced-technology training center on the site.

Finally, HEPC presented some trends to the commission regarding enrollment trends during the recession. The National Association for College Admission Counseling (NACAC) 2009 State of College Admissions survey found that the current recession has had a number of effects on the enrollment pipeline nationwide. First, students were more likely to forego ‘dream’ schools in favor of more affordable options, including reported shifts in preferences from private to public institutions. Second, students applied to more schools and were more likely to submit financial aid applications. Third, institutions admitted a higher proportion of students, but yields were down. And fourth, students were more likely to turn down offers of acceptance, citing insufficient aid to attend.

Equal Pay Commission

Pay Equity Distribution 2011

Last month, a representative from the West Virginia Division of Personnel presented the committee with the proposed distribution for fiscal year 2011.

In coming up with these figures the Division defined female dominated jobs as jobs where 70 percent or more of the employees are women. Male dominated jobs were defined by jobs where 80 percent or more of the employees are men.

The Division used their budget to fill in the gaps where they found that female dominated jobs paid less than male dominated jobs of similar complexity and responsibility.

The figures show an increase ranging from \$25 to \$40 a paycheck or \$480 to \$300 annually based on the gap in pay equity for jobs with similar complexity and responsibility.

Social Service Supervisors will get the maximum increase while Health and Human Resources managers, directors and service aides, along with social service coordinators will get an increase of \$30 per paycheck or \$360 annually. A group that includes tax audit clerks, social worker 3, housekeeper, family support supervisor, economic service worker and food service supervisor will get the low-end increase.

The numbers were formally proposed for expenditure in the November meeting and approved by a unanimous vote of the committee.

Finance Subcommittee A

Juvenile Drug Court

Various representatives with West Virginia's Supreme Court of Appeals Division of Probation Services addressed the

committee on various aspects of the state's Juvenile Drug Court Program.

According to the Juvenile Drug Court's (JDC) program summary, it is a cooperative effort of the juvenile justice, social service, law enforcement and education systems in the state seeking to divert non-violent juvenile offenders exhibiting alcohol or substance abuse behavior from the traditional juvenile court process to an intensive, individualized treatment process that includes parental involvement and cooperation. The goal for this program is to reduce further court involvement for these youth.

The JDC program is structured in four phases with the last phase being graduation. Minimum length of time in the program is six to eight months but varies with each individual case based on each juvenile's needs. Each phase of the program requires drug testing, meeting with probation officer with both the juvenile and parent, regular court appearances, counseling and family education/counseling. Six months of aftercare is also offered to every graduate of the program. At graduation, the juvenile's case is disposed or a non-file petition is destroyed.

The target population for the JDC program is juveniles between the ages of 10-17 adjudicated for non-violent misdemeanor, felony or drug/alcohol-related status offenses with no previous adjudications for a sex offense. Some youth under juvenile jurisdiction for delinquency offense are eligible until the age of 21. Juveniles can be referred to the program by a judicial official, law enforcement, schools, probation officers, a prosecutor, or a parent. Before being admitted to the program, each juvenile must have a clinical determination of substance abuse, addiction or dependence and be appropriate for outpatient treatment services. Candidates are selected based on:

- The alleged offense or the basis of the alleged offense includes alcohol and/or drugs.
- The existence of a substance abuse problem as determined by behavioral health assessment.
- No history of threatened or actual violence.



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There are currently 9 JDCs in West Virginia serving 12 counties that follow one statewide protocol set forth by the WVS-CAO. The first Drug Court was opened in Cabell County in 1999. The other counties with a Juvenile Drug Court are:

- Hancock
- Brooke
- Monongalia
- Randolph
- Wood
- Putnam
- Lincoln
- Boone
- Logan
- Mercer
- Wayne
- Logan

JDC locations are selected through a data driven process and must demonstrate that there is a need for the program in the area as well as cooperation with necessary community agencies and local courts.

For each drug court there is one full-time probation position specifically create and funded by the West Virginia Supreme Court as a JDC Probation Officer. Other staff members include:

- A sitting Circuit, Family Court, or retired Judge to preside over each case,
- A planning and evaluation team consisting of a juvenile prosecutor, public defender/defense attorney, treatment provider representative, law enforcement representative, education representative, DHHR case worker, etc.
- Treatment teams

For FY 2010 there were 72 cases referred to Cabell’s JDC. Of those, 30 were either denied or refused and 42 were accepted; 14 have graduated from the program, 12 were terminated from the program and 16 are still active. Conservative projections for the next year show that 51 juveniles are projected to complete the program from all 9 courts.

Funding for the JDC’s come from a combination of state legislative funds, federal grant funds (federal grant monies only given to establish a drug court), and the WVSCAO general funds. Approximate annual cost to the Court per program is \$89,500.

Benefits of the JDC, thus far, are:

- Reduced court involvement
- Reduced substance use/abuse
- Improved general functioning of program participants
- Participants can become more productive citizens
- Cost savings for the criminal justice system from reduced re-arrests, court hearings, and use of detention centers.
- Cost savings for the State through reduced out of home placements and decreased use of residential treatment centers.

Recommendations by the representatives with the Juvenile Drug Courts were more funding for statewide JDC training and meetings, enhanced 6 months to one year aftercare services, enhanced family treatment component and additional JDC programs.

Finance Subcommittee B

Homestead Exemption Tax Policy

The Director of the State Department of Revenue gave a review of the state’s Homestead Exemption to committee members.

In 1982 voters approved a constitutional amendment giving a \$20,000 break on property taxes for those 65 and older and the permanently disabled.

Assessors tax 60 percent of the market value of each house so the homestead exemption is subtracted from the tax value. For example, if a house were worth \$100,000 the tax value would be \$60,000 but those eligible for the homestead exemption would pay taxes on only \$40,000.



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The amount of relief can vary greatly depending on where you live in West Virginia. Because property values, and property taxes, have increased so much in the Eastern Panhandle the homestead exemption no longer offers the tax relief it once did.

In 2008 the state tax commissioner gave the legislature an annual report listing the average cost of residential housing in each county. It showed the average housing value in West Virginia is about \$110,000.

However in 36 counties values are below \$100,000 and in six counties the average is below \$50,000. McDowell County's senior homeowners got the biggest tax break because it has the lowest average value at \$18,000. This would mean that Homestead Exemption eligible homeowners in McDowell County pay literally nothing in property taxes.

The legislature cannot just adjust the homestead exemption because it is part of the constitution. Therefore lawmakers would have to re-introduce another bill calling for a vote on a new constitutional amendment that would increase the exemption. Similar efforts have failed in past legislative sessions.

Proponents of an increase in the exemption favor an exemption based on a percentage basis set by the legislature rather than just a set amount. An example given was a house currently valued at \$100,000 goes to \$200,000 years from now, the homeowner would still get a given percentage of the home value taken off rather than just be stuck with the \$20,000 set amount.

Joint Meeting - Gov. Operations/ Gov. Organization

PERD Reports

Members heard several presentations regarding legislative Performance Evaluation and Research Division (PERD) reports.

The first report related to the Higher Education Policy Commission. The first issue addressed in the audit report was that an affordable higher education for state residents would require actions by the Higher Education Policy Commission (HEPC), the Council for Community and Technical College Education, and the individual state institutions to halt the long-term trend away from affordability.

The report issued five recommendations to increase affordability. First, HEPC and the Council for Community and Technical College Education should establish a definition of affordability, perhaps based on the portion of the educational cost the State considers affordable for students to share.

Second, HEPC and the Council for Community and Technical College Education should develop specific affordability measures that comprise an affordable percentage increase in tuition and fees; annual and projected target goals to increase the number of low-income students attending college; and annual and projected target goals to decrease the percentage of students borrowing to start college and continue college.

Third, HEPC, the Council for Community and Technical College Education and the educational institutions should identify ways to operate more cost effectively through the required development of cost-management plans for each institution.

Fourth, HEPC should establish a tuition and fee policy as required by the 2010 legislative session. Such a policy should incorporate and reinforce the requirement of institutions to control costs.

Fifth and finally, HEPC should examine financial aid policies in order to determine whether the extension of financial aid to students completing their eighth semester with 98 credits or more who meet other prescribed requirements might allow for degree completion prior to six years.

The next report related to WorkForce West Virginia and unemployment compensation.



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The issue addressed by the legislative audit is that the unemployment tax schedules that are tied to the trust fund balance raise tax rates on only a portion of the employers when the trust fund is declining, which does not raise adequate revenue to support a healthy trust fund during recessions.

According to the report, the West Virginia Unemployment Compensation Trust Fund (Trust Fund) has been on a downward trend since April 2008. During the 2009 legislative session, the Legislature made significant legislative changes to the unemployment insurance system to avert the projected insolvency of the Trust Fund. The statutory changes were successful in keeping the Trust Fund solvent through calendar year 2010.

However, the most recent projections show the Trust Fund balance becoming insolvent in March 2011 by over \$2 million, and having a balance of only \$9.7 million by December 2011. Although structural changes to the unemployment insurance system were made in 2009, the system still has major structural weaknesses that are contributing to the current situation. These structural weaknesses need to be addressed in order to provide for a healthy unemployment insurance system, and to alleviate the current financial problems.

To address these structural weaknesses the audit makes several recommendations to the Legislature.

First, the Legislature should consider amending the unemployment tax schedules that are tied to the trust fund balance so that the unemployment tax increases on all employers. Second, the Legislature should consider raising the tax rates on debit employers at a higher tax rate differential than non-debit employers.

Third, the Legislative Auditor recommends that the Unemployment Compensation Division work closely with the Tax Department in order to utilize the Employer Violator System requirements of West Virginia Code and continue to revoke business licenses for lack of payment. Fourth, the Legisla-

tive Auditor recommends that if the Legislature increases the unemployment tax rates as this report proposes, it should consider assigning the highest tax rate to a higher ratio of excess charges to average annual payroll than the current 10 percent. And finally, the Legislative Auditor recommends that the highest tax rate be assigned to at least a 25 percent ratio of excess charges to average annual payroll.

Finally, the joint committee heard an audit report regarding the Legislature's Court of Claims and the issue of the claims review process of the West Virginia Court of Claims for small claims against the state is unduly burdensome to citizens and costly to the state.

As identified, PERD reviewed the adjudication process of the West Virginia Court of Claims for small claims filed against the State by the general public during the years 2008 and 2009. Over 70 percent of all claims were filed against the Division of Highways (DOH) for mostly road hazard incidents. The review also shows that 84 percent of claims filed are under the value of \$2,500, and the average amount claimed in those cases is \$475. However, the average cost to the State to completely adjudicate one claim is \$1,339. Most of the per-claim cost is associated with staff having to attend hearings.

Despite holding over 30 hearings for small claims annually, with 20 claims per hearing, the Court has 840 cases, \$2,500 or under, that are pending a small claims hearing. During 2008 and 2009, claims were filed against a variety of state agencies, but the Department of Highways (DOH) was the only agency that denied every claim, thus forcing a hearing.

It is the Legislative Auditor's opinion that the DOH practice of denying every claim is a way of taking advantage of the fact that generally half of the claimants do not show for a hearing and therefore no award will be recommended by the Court and the DOH will not have to pay the claim. While this practice has saved the DOH money, it has contributed to a large number of pending cases, increased the costs to the State, and placed an undue burden on the public.



As a result of this audit PERD has several recommendations to address this issue. First, the Legislature should consider amending state law to establish a non-hearing administrative review procedure for claims against the State under \$2,500. Such a procedure should require that the recommendation to the Legislature be approved by a Court of Claims judge. In addition, the recommended statutory change should include language that would allow for an appeal by either the claimant or state agency.

Second, if the Legislature decides to comply with the first recommendation, the Legislature should consider allowing the non-hearing administrative review process to be used retroactively for all currently pending claims under \$2,500. Third and finally, any procedural changes that may be implemented should be reviewed by the Legislative Auditor within one to two years after the start of the process.

All of the reports were accepted by the committee and will be passed on further to the entire Legislature.

Government Organization Subcommittee B

HCR 101

The Executive Director of the West Virginia Board of Dental Examiners talked about HCR 101, which requests a study of the law governing the board.

The director told the committee that the board is currently undergoing a performance audit into every phase of the organization.

The director also discussed his hope that changes will come to the complaint system patient's use and the disciplinary action that can be taken against dentists that abuse patients. He says that the American Dental Association code of ethics that they currently adhere to is not sufficient to run with a complaint. He encouraged lawmakers to put in code a means for disciplining dentists that abuse patients.

He said the amount of patient abuse that they see is not widespread but the rare cases they do see are very disturbing. According to him the code of ethics cannot stand up against legal challenges from offenders and hopes that the legislature will look into toughening up their ability to discipline offenders.

Government Organization Subcommittee C

Vendor Preferences Policy

House Concurrent Resolution 97 (HCR 97) was the topic of discussion for members of this interim subcommittee during November interim meetings.

HCR 97 states that the establishment of consistent policies and procedures for the contracting for commodities and services is necessary for the smooth operation of the various agencies in state government and certain consideration is given to persons and businesses that are located in this state or that employ residents of this state.

Also, the Legislature recognized the need to determine whether current vendor preferences result in the accomplishment of the goals set forth by the Legislature in enacting the vendor preferences.

Members were told that this issue needed more discussion and would be further examined in the coming weeks to be ready for the regular session.

Health - Select Committee

Health Care Reform and Community Health Centers

Chief Executive Officer of the West Virginia Primary Care Association and Chief Executive Officer of Valley Health



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addressed the health committee regarding the impact of health care reform on health centers.

Community health centers must be located in medically under-served areas or serve an under-served population. Among other services, they must provide primary care for all ages, have a sliding fee scale and provide a variety of health care services on site, such as basic lab, emergency care, radiological services, pharmacy, preventive health and dental care, case management and after hours coverage.

According to data provided to the committee, West Virginia Community Health Centers include 28 which are federally qualified centers, include 160 clinical sites with 14 on-site dental programs and seven school-based dental health sites. There are also 48 school-based health centers, 15 onsite behavioral health programs and 28 onsite 340b pharmacy programs.

The centers serve one-in-five West Virginians a year with 31.2% of patients below the federal poverty line, 25.7% uninsured and 24.5% on Medicaid. With the support of 182 physicians, 145 midlevel practitioners, 930 nurses and other medical personnel, 48 dentists, hygienists, assistants, 34 mental health providers, 76 pharmacy staff and 103 enabling services, the centers are reaching out to the state's population, according to the community health care spokesman.

The informational presentation to lawmakers called for recognition of what local health centers presently are providing to local communities, resulting in better nutrition, better health support and lower costs by keeping people out of hospitals.

Appealing to lawmakers to consider their service to local community health, the spokesperson reminded the committee to ensure fair funding from both the state regarding Medicaid reimbursements.

Some lawmakers noted a lack of 100% of reimbursement from Medicaid to other health care providers In addition;

Medicaid's reimbursement for dental health services stirred discord as well.

Infrastructure, Select Committee on

The impact of the oil and gas industry's use of state roads was provided to lawmakers by the State Highway Engineer, a spokesperson for the West Virginia Oil and Gas Association and counsel for the Independent Oil and Gas Association.

The Northern part of the state road system is a concern to the State Highway Engineer. While the highway department has been working with the gas and timber industry to control road weights, the amount of traffic on the highways does a lot of damage and he told lawmakers there was a lot of work to do in the coming years.

He told lawmakers that since the spring the division has been working with those industries. He plans to meet with groups on each well site, which are divided into vertical and horizontal sites, to try to help with damage on roads.

He has the industries to notify him when they get a well permit so the division can review the roads, which would be used to transport the material. Collectively, he said, all are in agreement and working on the problem.

If wells are divided by numbers of barrels of water regarding the manufacture of Marcellus Shale, then there's a 14-day notice to meet with the site operator and address road reparation. The agreements are standard and take into consideration exceptions, such as school bus usage and other road users.

Smaller gas wells don't have the impact of the larger Marcellus Shale but still the highway department meets with the people in the district and oftentimes it films certain stretches of highway.



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The larger well's toll on the roads will take longer to maintain and the engineer has proposed some bonding levels based on usage. Lawmakers indicated concern regarding the equitable issuance of bonds when multiple companies may use the same road. Size and profitability of the industries are to be taken into consideration as well. Other forms of security are also undertaken to ensure the road is put back to its original form and keep it operational for the driving public.

Other factors being considered are the size of the equipment and repetitive use, among bonding issues.

Also before the committee was a proposal to establish the West Virginia Transportation Commission.

The purpose of the commission would be to provide loans and other financial assistance to government units for transportation infrastructure.

Legislative findings note that traditional transportation financing methods in the state cannot generate the resources necessary to fund the cost of transportation facilities that are required for the continued economic viability and future economic expansion. It calls for the state to have the ability to provide alternative methods of financing highway and transportation system. Counsel for the committee noted that no funding was tied to the bill that would be implemented by legislative rule.

The bill does have a list of guidelines with no provisions for referendum. It is not subject to federal banking laws because the commission would be dealing with political subdivisions not the public.

It wouldn't compete with local entities but act as a support system if a county or city is already saturated with bonds.

Also in attendance at the meeting was the Commissioner of the Kentucky Department of Motor Vehicles. The commissioner provided insight into Kentucky's "one-stop-shop" serving commercial trucking vehicles.

The state has placed all of the licensing, permits, medical permits, insurance, coal hauling permits, among other regulatory requirements including payment of ad valorem taxes under one agency as opposed to three or four agencies.

The Kentucky DMV Commissioner told lawmakers it took six years to finalize and implement the program but it was designed to develop a trucking friendly state.

He noted many changes were made technologically and a motor carrier division within the DMV could be effective. He suggested using some of the people who have some sort expertise in all areas relative to trucking. Cross training process could take time but in the long run but could also prove to be cost savings.

Judiciary Subcommittee A

Marcellus Shale and other legislation

Lawmakers of this subcommittee heard a presentation about the relatively new practice of drilling horizontally for natural gas trapped underground in Marcellus Shale. The state's natural gas industry has increased exponentially over the past few years and that growth is expected to continue and the committee has been discussing the proposed Hydraulic Fracturing and Horizontal Drilling Gas Act.

A member of the West Virginia Surface Owners' Rights Organization spoke to legislators about his group's position on requiring surface owners within a certain proximity to a Marcellus gas well to sell their gas rights. He explained that unitization is when a number of mineral tracts can be drawn together to be produced by one well. For example, if a gas company gets a certain percentage of mineral owners in an area to agree to drill, the holdouts could be forced into agreeing, too.

The speaker stated his group would support forced unitization, with certain caveats, like requiring surface owners



to be properly compensated, and that well sites couldn't be forced on owners. It is his groups position that unitization ultimately benefits everyone because of the way drilling horizontally for natural gas works.

However, he stated that if you're the forced mineral owner, it's better for everybody else and in addition, you're going to get more than a 1/8 royalty, you're going to get a net share of the other 7/8, a much bigger royalty share and more money. Conversely, if you don't agree, drillers can drill these wells down the side of you and drain the gas out from underneath you anyway, at least from some of your land, if not all of it.

Also during this meeting members discussed several proposed draft legislation. One would address the issue of who owns coalbed methane, as the gas is developed as an alternate energy.

Another bill addresses funding for wastewater treatment plant improvements in the Eastern Panhandle. This is in response to an executive order signed last year by President Obama calling for greater pollution controls in the Chesapeake Bay. The Environmental Protection Agency is requiring reduced discharges on all areas in the Chesapeake watershed, which includes West Virginia's eastern counties. This would mean upgrades in technology at a cost of \$180 million and this bill seeks to address different ways of funding the improvements.

The draft bill that legislators are discussing would direct some excess lottery money to fund the infrastructure improvements and would also allow water bills for affected citizens to be raised to 1.5 percent of the median family income.

Members will review copies of all proposed draft legislation and meet next month with any amendment or changes they may wish to discuss.

Judiciary Subcommittee C

The committee heard a presentation of draft legislation pertaining to autism. The draft legislation discussed puts autism with the mental health parity statute, putting it on level footing with other mental illness. The bill would include autism with serious mental illnesses already covered by the West Virginia Code.

The committee reported this draft legislation to the Joint Judiciary Committee with the recommendation that it pass.

In other news, the commissioner of the state's Division of Labor discussed HCR 100, which requests a study of the laws governing the West Virginia Occupational Safety and Health Act for public employees.

The commissioner explained that in 1987 the Legislature passed the state's OSHA Law that covered state employees and said that employees have the right to a workplace free of clear and present danger. Under this law the Division of Labor is charged with inspecting the workplace and the commissioner told the committee that 50 percent of the inspections must be funded by the state in order for them to continue.

Minority Issues, Select Committee on

Herbert Henderson Office of Minority Affairs

Continuing an earlier discussion from a past monthly interim meeting this committee further examined changes proposed to a bill which failed to pass during the last regular session and is the work of several years of interim meetings.

Last regular session, House Bill 4161 would have created the Herbert Henderson Office of Minority Affairs. That bill passed the House of Delegates nearly unanimously but was still in the Senate Finance Committee when the ses-

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sion ended, as was Senate Bill 329, the same as Senate version.

As previously noted, this office would provide a forum for discussion of issues that affect the state’s minorities, identify and promote best practices in the provision of programs and services to minorities. Also, under the proposed bill the office would review information and research that can inform state policy with regards to the delivery of programs and services to minorities and make recommendations in areas of policy and allocation of resources.

When appropriate, the office would award grants, loans and loan guaranties for minority affairs programs and activities in West Virginia and provide recommendations to the governor and the

Legislature regarding the most appropriate means to provide programs and services to support minority groups.

This committee hopes to have a finalized draft version of this proposed legislation for the December Interim meetings and a final version to vote on for the full West Virginia Legislature to consider during the 2011 Regular Session.

PEIA, Seniors & Long Term Care, Select Committee on

Under the direction of House Concurrent Resolution 74 (HCR 74) adopted during the 2010 Legislative Session, lawmakers heard from the Interim Executive Director of the West Virginia Health Care Association (WVHCA). The resolution called for a study of the use of independent third party peer review in the informal dispute resolution (IDR) process for nursing homes.

The incorporation of an informal dispute resolution process is directed to the state and provided for by the Centers for Medicare and Medicaid Services (CMS) that provides guidance to State Survey Agencies (SAs). This guidance allows the state to develop and implement the IDR process

protocol, including the use of independent third party peer review. According to the resolution the current process of IDR should be reviewed to consider any appropriate and necessary revisions to the process to ensure prompt, fair and impartial arbitration.

An IDR process is a survey and certification function. While states are granted some flexibility as to how survey and certification activities are conducted, the states must adhere to federal law and regulatory requirements and to the State Operations Manual (SOM). The manual sets forth IDR requirements. Other entities outside the SA are allowed to conduct certain survey and certification processes such as IDR, the SA retains final certification authority and responsibility for all Medicare and dually participating providers.

The Office of Health Facility Licensure and Certification (OHFLAC) is seriously behind in reviewing facilities regarding processing days for IDR cases upon receipt of a request for review, according to material provided the legislative committee. In 2003, the number of days it took to process an IDR was 18. In 2009, it took 82 days to process and IDR.

Also, according to the interim health care director, an IDR may list deficiencies but provide no reason as to why there are deficiencies. Costs incurred by the nursing homes for the delay are increased.

Lawmakers heard that subcontractors could provide an independent review in the interest for efficiencies in the IDR process. The more nursing homes and licensors argue, the more a third independent party would assist in arbitration and resolution.

With 20 states moving to implement independent third party reviews, the nursing home advocate is seeking legislation that would assist in some transitional and efficient changes.

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Pensions & Retirement, Joint Standing Comm. on

Defined retirement option plan (DROP) for municipalities

According to Senate Bill 4007 (SB 4007) passed in 2009, a recommendation to the Joint Committee on Government and Finance must be made regarding a new program for fire and police pension plan coupled with some sort of recommendation.

DROP stands for Deferred Retirement Option Plan, which is a defined benefit (DB) plan design feature originating in the 1980s in East Baton Rouge Parish, Louisiana. The original purpose of the DROP plans was to encourage law enforcement officers and firefighters to work past their normal retirement date. The plan evolved through the years.

According to material provided to the committee, “the typical design of a DROP allows the option to be exercised only when a member is eligible for normal retirement. DROP periods in such plans are typically for one to five years in length. When a member chooses a DROP option, the member continues to work for the covered employer. Once the DROP period begins, the monthly benefit the member is eligible or receives goes into an account rather than to the member. At the end of the DROP period, most DROP plans pay the lump sum of the account to the member, but some plans permit a rollover into an IRA or similar tax-deferred account.

Essentially, the DROP design features an opportunity for a person to extend their employment by one, two, three or five years and deferring their benefits. They would sign an agreement and draw their benefits when they quit.

There are options and features, including inclusions of COLAs and payout options. Elements have to be written into the plan. Minimally, the committee has to do something to provide for input for the final report.

A motion was made and adopted to continue to study the DROP issue further.

Regional Jail & Correctional Facility Authority

Agency Updates

During November’s interim meeting, committee members received updates from representatives with Regional Jails, the Division of Corrections and the Division of Juvenile Services.

The Deputy Director of the Regional Jail and Correctional Facility Authority presented to the committee a report that included two charts and proposals for jail overcrowding in West Virginia.

The charts within the report compared an eight-hour work shift versus a 12-hour work shift. The regional jail facilities around the state were instructed to go to 8-hour shifts last year. At that time, there were only three facilities working in 12-hour shifts. Recently, all facilities were given the option, if they met the criteria, to go to a 12-hour schedule. To date, five facilities have opted to go to 12-hour shifts.

The jail overcrowding proposals within the report were recommendations by the Chief of Operations and Regional Jail’s Construction Manager. The Construction Manager provided three housing alternatives for the Regional Jail Authority. The first alternative would entail the construction of an additional housing pod at three regional jail facilities. A housing pod can be constructed for approximately \$9 million and would add at least 100 cells and could hold about 600 additional bunks if doubled up. The completion of a pod would be between 12-18 months, which includes time for obtaining the architect and bidding of each project.

The second alternative listed in the Construction Manager’s report would call for Northern Regional Jail and Correctional Facility are converted in a Division of Corrections Facility and build another regional jail facility. Costs to convert the facility would be approximately \$125,000. Replacement costs to build a new regional jail facility would cost between \$30 million and \$48 million depending on size. Building time would be a minimum of three years.



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The third alternative given by the Construction Manager would be to convert the gymnasiums at three regional jails into dorm space for housing of inmates. Costs to convert the space would be approximately \$1 million or \$1.5 million per gymnasium and would house an additional 100 inmates at each jail. The timeline for this option would be six months or less. However, the Construction Manager feels this is the least desirable option due to operational issues that would more than likely be brought forth.

In the opinion of Chief of Operations, the addition of pods at three regional jails would cost \$27 million but doesn't account for additional staff during the construction period, which pushes the total, cost over \$28 million. The Chief of Operations also believes that further expansion will only add more stress to an already overworked physical plant. The conclusion regarding this alternative is that there are a number of issues that need to be addressed before building more pods.

The second alternative of turning the Northern Regional Jail and Correctional Facility over solely to the Division of Corrections is supported by Chief of Operations since the facility is already occupied by both the Division of Corrections and the Regional Jail Authority so turning the facility over to the Division of Corrections wouldn't be too difficult. The first issue if going this route would be the site location for the new regional jail facility followed by operational costs.

Lastly, the last alternative of converting a gymnasium into more housing space is not a solution that should be considered, according to the Chief of Operations. The reason for this is because it would compromise the integrity of the facility from an operational standpoint.

The Deputy Director asked the committee if there were any questions of him and a few members raised questions regarding the large number of lawsuits that have been filed mainly from Southern Regional Jail. Another representative with the Regional Jail Authority told the committee that there are approximately 12-15 lawsuits between the Regional Jail Authority and the Division of Corrections and two or three corrections officers have been named in the lawsuits.

Next to address the committee was the Deputy Commissioner for the Division of Corrections who briefly updated the committee on the Jackie Withrow Hospital expansion. Most work has been completed on the facility and will be opened in the very future. The expansion holds 70 additional beds that will house nonviolent inmates.

Last to update the committee was the Deputy Director for the Division of Juvenile Services who informed them of an open house that was held on October 28 at the Dr. Harriet B. Jones Treatment Center. This center will house approximately 38 juveniles who have been committed to the Division of Juvenile Services due to sex offending behaviors. The facility is located on the grounds adjacent to the Industrial Home for Youth.

Other highlights from the Division of Juvenile Services include:

- Beginning of the design stage for the renovations of the Davis Center that will become a post dispositional residential treatment facility for female juvenile offenders.
- Advocating for three additional youth reporting centers for the next fiscal year.

Continued work with DHHR to establish community-based and residential programs to treat West Virginia youth within the state.

Veterans' Affairs, Select Committee on

Challenges of Women Veterans

The Vice President of Atlas Research gave a report to the committee discussing the issues and challenges unique to women veterans.

Currently, 15 percent of the nation's active military are women. There are 11,870 women veterans in West Virginia and that number is expected to increase steadily to 12,484



by 2015. A major issue for women veterans is the balance of military service and family care. Questions such as who takes care of families when veteran parents deploy become paramount.

According to the representative, women experience challenges with advancing in the military as well as sexual harassment and assault while serving. According to the vice president women have indicated that they want education and jobs to use their military training and skills. They also want to be taken seriously about their service and military contributions and their health and mental health needs. They also want gender-specific care and services.

Currently there are 3,412 West Virginia women veterans enrolled in the U.S Department of Veterans’ Affairs, of which 3,202 have used VA services in the past month.

Another challenge for women veterans and all veterans is post traumatic stress disorder (PTSD). Services provided for women veterans in West Virginia with PTSD increased significantly between 2007 and 2010. Services increased by 76 percent at the Clarksburg catchment, 71 percent in Beckley, 55 percent in Martinsburg, and 42 percent in Huntington.

Homelessness among the state’s women veterans was also discussed by the vice president as another problem.

The speaker gave some recommendations to the committee to help women veterans in West Virginia:

- 1.) Conduct a study to determine how many West Virginia veteran are falling through the cracks:
 - Those served by Health Rights, CHCs, FQHCs,
 - Work with VA Hospitals’ outreach programs to assess links with civilian yellow ribbon programs.
 - Make recommendations on improved coordination.
- 2.) Develop mini-grants program for civilian yellow ribbon programs
 - Help identify rural, women and wounded veterans who may benefit from provisions of the caregiver bill.

- 3.) Develop and implement coordinated statewide effort to educate non-profit community based support networks.
 - clergy
 - safety net services (food pantries, etc.)
 - involve VA outreach, eligibility & benefit services
- 4.) Develop study with the West Virginia Primary Care Association and the State Medical Society regarding Tricare.

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Unemployment Compensation Fund

The Interim Director for Workforce West Virginia updated the committee on the Unemployment Compensation Fund during November’s meeting.

Started in 1936, the Unemployment Compensation Fund pays a maximum of \$436 a week for up to 26 weeks. The average check paid out in unemployment in 2009 was \$230. In 2008, the trust fund had \$250 million and in 2010 has bottomed to \$58 millions. However, the Interim Director told the committee that this year is better than last year but is still not back to where we were two years ago. Unemployment figures will be higher in the upcoming months due to the seasonal unemployment that hits West Virginia this time every year. With this, by March the unemployment fund could go to \$0, but that is only a projection at this point. However, a boost of \$30 million with state funds would prevent costly federal borrowing. The currently unemployment rate in West Virginia is lower than the national rate but is twice the rate as it was in 2008. There are currently around 38,000 people receiving unemployment benefits and 18,000 are receiving national funds.

Marcellus Shale Jobs

Next to address the committee was the President of West Virginia Northern Community College (WVNCC) on how



technical colleges are addressing career needs arising from the Marcellus Shale industry.

The President of WVNCC told the committee that WVNCC partnered with 8 community colleges and 15 Workforce Investment Boards (WIB) in Southwest Pennsylvania, Eastern Ohio, and Northern West Virginia on a grant proposal to fund training initiative for high priority occupations in the Marcellus Shale industry. The partnership received a \$4.9 million grant through the U.S. Department of Labor and the consortium is called Marcellus ShaleNet.

One element of the initiative is the development of a Marcellus ShaleNet Matching System in order to help insure that individuals are appropriately advised with regards to realistic expectations of the job.

WVNCC and Pierpont CTC will begin offering a deckhand (roustabout) training course in New Martinsville in December. WVNCC is also applying for funding in order to offer welding courses in Wetzel County to prepare welders for gas drilling and distribution employers. They are also looking into options to make CDL and Heavy Equipment Operator training available. ▲

Interim Committee Information

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Interim Committee Meetings

2010/ 2011

December 13 - 15, 2010
January 9 - 11, 2011

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