

# Final Wrap-Up

With 2,116 bills introduced in total (752 Senate Bills; 1,364 House Bills), 265 were passed into law.

## Budget Bill (HB 2005)

The FY 06 Budget, passed in 2005, is \$3.19 billion. A breakdown in approximate percentages goes as follows:

**Public Education = 51%** at \$1.6 billion of the General Revenue budget. Further funding for public education includes an additional \$50.5 million, provided by lottery revenue.

### Other public education dollars include:

- \$450,000 to address low student enrollment. This appropriation entry complies with SB 604 and provides additional funding to counties, qualified by the State Superintendent, that are below 1,400 FTEs (Full Time Equivalents) or full time students per county.
- \$100,000 Hi-Y Youth in Government

**Higher Education = 9 %** at \$287.2 million of the General Revenue budget (1) this is a decrease of \$19 million from FY 05 based on the Governor's recommended 5.5% cut in the budget for FY 06; but, (2) the Legislature restored 2.5% over the current year and included \$4 million in peer equity funding in its final calculations. Further funding from lottery accounts allowed for an additional \$42.9 million for Higher Ed.

### Other Higher Education/Education and the Arts dollars (under the Education Secretary's budget) include:

- \$800,000 Professional Development Collaborative (formerly the Teacher Education Partnership)
- \$300,000 Center for Professional Development (CPD)-Math Initiative (funds a 5 year plan to address student achievement in mathematics with collaboration of the education department to collaborate with the CPD to implement professional development regarding the math initiative.

### Higher Education Policy Commission (HEPC)

- \$8,795,407 goes to Marshall Medical School having had a 5.5% base restored from cuts in the original budget proposal
- \$7,476,474 to WVU School of Health Sciences also is having its 5.5% base restored by the Legislature to its operating budget.
- \$800,000 goes to Brownfields and Professional Development. As listed in SB 603, brownfields are real property that have been contaminated by a previous user. Reuse by cleaning

up and reinvesting in these properties takes development pressures off of undeveloped land while improving and protecting the environment. West Virginia University and Marshall University have extensive projects which when funded allows them to develop property that can be used for economic development.

- \$4.5 million for peer equity funding was rolled into the institutional base budgets of the Policy Commission.
- \$800,000 was put into base budgets of Community and Technical Colleges for peer funding.

**Department of Health and Human Resources = 21.46%** of the General Revenue Budget at \$685.06 million. Overall, DHHR's budget was \$3.4 million over the Governor's recommended budget. The majority of this money was used to restore proposed cuts by the Governor who used FY 05's appropriation levels to base his recommendation for FY 06.

Medicaid funding has been a major topic of discussion although the state's portion of Medicaid funding was actually increased by approximately \$70 million. Extensive study is planned for funding Medicaid in the near future.

### Areas of interest in this department's budget include:

#### The Division of Health

- original cuts from the Governor's proposed budget to Level 1, 2 & 3 Trauma Centers were restored to fiscal year 2005's budget funding level
- A \$50,000 increase to the Governor's proposed budget was added to the Unclassified line item to include the AIDS coalition
- \$54,000 more was added to Primary Care Centers budget line item to pay for additional mortgages of day care center
- Primary Care Support was restored to the FY 05 level, which is an increase of \$400,000 over the governor's recommendation
- State Aid to Local Health Departments budget was increased by \$742,034.
- Emergency Response Entities Special Project account was restored to allow for the pursuit of grants to local EMS and Rescue departments
- The Center for End of Life was restored to \$195,000, the same amount provided in FY 2005

In all, an increase of \$2.5 million above the Governor's proposed budget was provided to the Department of Health.

The DHHR'S Consolidated Medical Services was funded in line with the Governor's recommended appropriation.

Included is a \$9,378 increase in for Employee Benefits, a \$765,293 reduction to institutional facilities operations; and, a \$2.1 million reduction to Colin Anderson Placement. Please note the \$765,293 reduction is being made up in Special Revenue via tobacco money and the Colin Anderson reduction is based on a declining population due to attrition.

The Drinking Water Treatment Revolving Loan Fund and the Human Rights Commission saw no changes from FY 05.

The DHHR's Division of Human Services

- The WV Teaching Hospitals' Tertiary/Safety Net was restored and increased by \$250,000 over the FY 05 appropriation amounting to a \$500,000 increase over the governor's recommendation. The new total is \$2 million.
- Indigent burials was decreased by \$100,000 from the Governor's proposed budget but an additional funding is expected to be provided in a supplemental appropriation
- "Rural Hospitals Under 150 Beds" was funded at \$750,000.

**Military Affairs and Public Safety = 7%** of the General Revenue Budget at \$250.6 million

General Revenue appropriations for other State Departments and Agencies:

- The Judicial Branch will receive 2.58% of the budget with \$82.4 million
- The Executive's Administration takes 1.79% at \$57.1 million
- Commerce will receive 1.57% or \$50.2 million
- The Executive Branch gets 1.31% or \$41.8 million; and,
- The Legislative Branch will receive 1.06% or \$33.9 million.
- The Department of Education and the Arts will receive 0.85% or \$27.1 million;
- The Department of Tax and Revenue will operate with 0.81% of general revenue funds amounting to \$25.7 million;
- The Department of Transportation is to receive 0.23% or \$7.3 million;
- The Department of Environmental Protection will work with 0.23% of the general revenue tallying \$7.3 million
- The Bureau of Senior Services taps into 0.03% or \$887,000 of General Revenue monies, as well as an additional \$38.7 million allotment through lottery revenue.
- The Court of Claims (filed against the state) will receive 0.03% or \$1.06 million

For further information regarding HB 2005, the Budget Bill, please check the Legislative website at [www.legis.state.wv.us](http://www.legis.state.wv.us), where it is posted in its entirety.

## Joint Resolutions

### **SJR 101 - Pension Bond Amendment**

A joint resolution was adopting asking the citizens of West Virginia to approve an amendment to the WV Constitution ratifying the sale of \$5.5 billion in revenue bonds to help pay down liabilities in state pension funds.

Although the Legislature tackled several major issues during the First Special Session of 2005, Senate Joint Resolution 101 was slated for easy passage, since members of the Legislature passed identical legislation (SB 175) during the 2000 Regular Session.

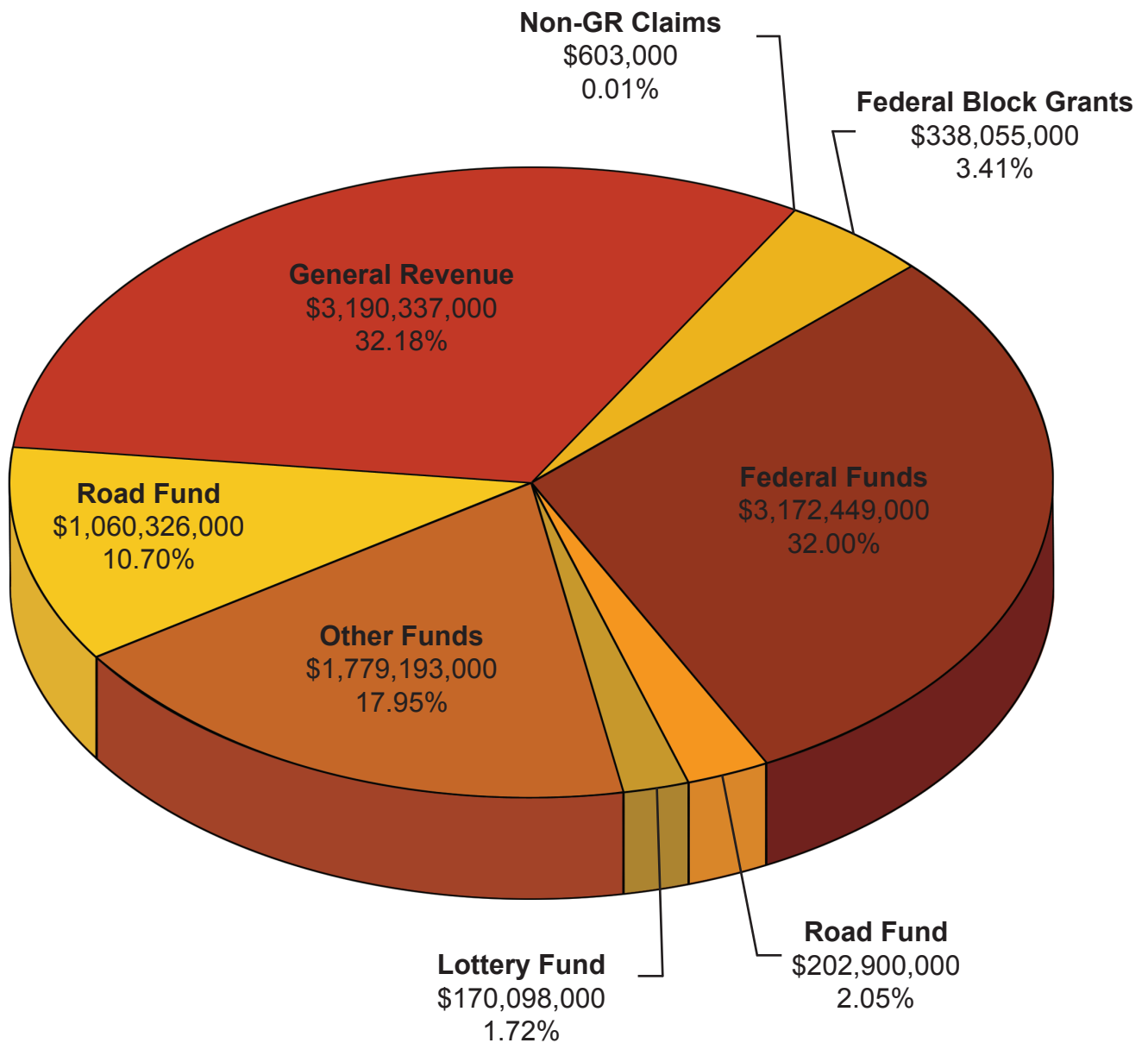
The State Supreme Court of Appeals found the measure, named the Pension Liability Redemption Act, to be unconstitutional, requiring the Legislature to adopt a resolution placing the bond issue on the ballot. The Legislature first passed the Act believing that if the state is obligated to make the future pension payments, then the bonds could be issued without a popular vote.

Consistent with the Supreme Court's decision and in the spirit of the Pension Liability Redemption Act, the Legislature passed the resolution. If approved by voters on June 25th during a special election, the state would sell the bonds to pay down all or part of the future liabilities in the pension funds, with the bulk of the unfunded liability in the Teachers' Retirement System, and the remainder in State Police and judicial retirement funds. This would enable government officials to better manage the state's long-term debt by refinancing the current liabilities with a fixed interest rate.

With the sale of these bonds, the state could "lock-in" pension debt payments of about \$350 million per year. Current estimates propose an allocation of \$348 million for FY 05 under the current "pay-as-you-go" 40-year plan, but that price tag jumps to over \$400 million in 2007-08 and to \$724 million by the 2033-2034 Fiscal Year.

Members of the Legislature adopted an amendment to the resolution not originally contained in the resolution. This amendment mandates that if any Legislature increases or expands the benefits within a pension plan they must provide a funding stream for the additional pension liability. The reasoning limits the reoccurrence of ballooned unfunded liabilities within the state's pension plans, which has required the issuance of bonds currently proposed.

## Total Budget - FY 2006



**Budget Total - All Sections**  
**\$9,913,961,000**

## Bills by Subject

### Actions & Suits

**Senate Bill 744** relates to clarifying the criteria for an employee to sustain a lawsuit for intentional injury. The law defines when an employer can be sued outside of the state's Workers' Compensation system for an on-the-job injury or death. It requires evidence that an employer had knowledge of a hazardous workplace to warrant a lawsuit.

### Acts

**Senate Bill 406** establishes the Uniform Environmental Covenants Act by explaining the rights and responsibilities of those who sign an environmental covenant, the eligibility of a covenant holder, providing for the enforcement of a covenant and its termination.

### Agriculture

**Senate Bill 580** relates to prohibiting political subdivisions from regulating the registration, packaging, labeling, sale, storage, distribution, and transportation of use of seeds.

**Senate Bill 741 (Vetoed)** exempts farming equipment and livestock from the personal property tax. More specifically, the measure would exempt all implements, equipment, machinery, vehicles, supplies, crops and livestock used to engage in commercial farming. The Tax Department has noted that it will incur a one-time programming cost of \$20,000, with no other additional administrative costs to the agency or to local governments predicted.

**House Bill 2368** increases the rabies vaccination fee from \$4 to \$8 if the vaccination is performed at a clinic sponsored by a county commission.

**House Bill 2650** relates to the Beef Industry Self-Improvement Assessment Program. This bill will look to promote and stimulate increased production, distribution, sale and use of cattle and beef products through research, education, advertising and other methods. More specifically, the bill provides a means and procedure for financing a promotional program for the West Virginia cattle industry through activities of the West Virginia Beef Industry Council. The bill will look to create this state program in the event the federal

beef research and information program is terminated by the federal government.

**House Bill 2663** This measure modifies and updates the law on the growing, digging, harvesting and selling of ginseng in the state. The changes recognize that purposefully planted ginseng is an agricultural product within West Virginia that holds significant export potential causing a need to distinguish the purposeful growing and harvesting of ginseng from the collection of wild ginseng.

The Division of Forestry is continued to regulate ginseng in the measure, requires ginseng growers and dealers to obtain a permit and sets forth the requirements for the purposeful planting of ginseng. The harvest season for ginseng has been shortened by two weeks and includes the certification requirements for the export of ginseng.

### Alcohol

**House Bill 2266** allows a "wine sampling" license, to permit wine sampling events be purchased by wine retailers for \$100 per year. There is also authorization for a special license to allow wine be sold and served by nonprofit charitable organizations during one day events, and a free heritage fair and festival one-day license for West Virginia farm winery to be sampled. A licensed restaurant may offer for sale sealed bottles of wine produced by a West Virginia farm winery.

**House Bill 2444** requires mandatory participation in the motor vehicle alcohol test and lock program for repeat DUI offenders. The bill provides that any person convicted of a DUI offense and has had a prior related conviction or revoked license within the past 10 years must participate in the test and lock program. The measure also states that the Department of Motor Vehicles (DMV) will control and regulate the test and lock program for individuals whose licenses have been revoked. In addition, the DMV Commissioner may extend the minimum period of revocation and the minimum period of participation in the test and lock program for individuals who violate the terms and conditions of the program. An individual participating in the interlock program will be able to operate a motor vehicle solely at his or her job site if it is required by his/her employment. The bill states that a job site does not include any street or highway open to the use

If you know the bill number, but not the subject heading of the bill you are seeking, please refer to the index of bills on pg.31.

of the public for purposes of vehicular traffic. Finally, the bill makes it a misdemeanor for any person to attempt to bypass the interlock system.

**House Bill 2478** removes provisions from current law mandating brewers of nonintoxicating beer to require distributors to submit certain balance sheets or financial records. Mandating these records are currently required for brewers to retain their franchise.

**House Bill 2522** authorizes the Alcohol Beverage Control Commission (ABCC) to grant licenses to mini-distilleries. Mini-distillery is defined as an establishment manufacturing no more than 20 gallons of alcohol annually. No less than 25 percent of raw agricultural products being produced by the owner on the premises can be used, and no more than 25 percent of raw agricultural products originating from any source outside this state can be used in the production of the products. Liquor sold must be consumed off the premise, although free complimentary samples are allowed. Licences will be granted at a cost \$50.

**House Bill 2960** allows licensed restaurants to sell sealed bottles of wine for consumption off the premises if the wine is produced by a West Virginia Farm Winery.

### Animals

**Senate Bill 235** provides that West Virginia will participate in the National Animal Identification System. Farm premise and animal identification information provided by participants will be exempt from disclosure under the Freedom of Information Act. The Commissioner of Agriculture will propose legislative rules for the collection of this data.

**Senate Bill 575** allows individuals with certain disabilities to participate in crossbow hunting during archery season if they obtain a Class Y hunting permit. This permit would be given to an applicant who holds a Class Q permit and has a permanent loss of function in one or both hands and shoulders.

**Senate Bill 588** expands the definition of cruelty to animals, increase current criminal penalties for animal cruelty and allow judges to require that offenders complete an anger management program. A juvenile allegedly committing an act of harm to an animal will be able to enter an Animal Cruelty Early Intervention Program as an alternative to the filing of a formal petition if a circuit court finds the juvenile eligible. The Early Intervention Program will develop skills and supports within families to resolve problems related to the juvenile engaging in animal cruelty. Services may include referring the

juveniles and parents or guardians and other family members to services for psychiatric or other medical care, or psychological, legal, educational or other social services.

**House Bill 2078** sets forth new provisions requiring cats and dogs adopted from shelters to be spayed or neutered either prior to entering the shelter or while in the shelter's care. An individual may adopt an animal that hasn't been spayed or neutered upon signing a written agreement stating that the new owner will have the procedure done by a licensed veterinarian within a specific time frame. In this situation, the shelter may require a maximum deposit of \$50 from the new owner prior to adoption to ensure the animal is spayed or neutered. The owner would receive a full refund after providing confirmation that this occurred. Failure to comply would result in a misdemeanor offense, punishable by a fine of \$150 to \$250.

**House Bill 2890** makes it unlawful to hunt or conduct hunts for a fee by using the Internet, other technology or means where a hunter is not physically present at the same location as the wildlife. The provisions from a former bill, HB 2874, were included in this bill to avoid a conflict in the West Virginia State Code. The provision authorizes the use of red colored artificial light to hunt coyotes.

**House Bill 2966 (Vetoed)** permits the development of a thoroughbred breeding industry in West Virginia. It creates West Virginia Thoroughbred Funds for each of the licensees or tracks and deductions from the pari-mutuel insurance pools will be deposited into a special fund, to be established by the Racing Commission. That fund will be used for the payment of breeder's awards, restrictive races and stakes purses. Money which is currently being set aside for breeder awards and capital improvements would be used for breeders awards, restrictive races and stake purses.

**House Bill 3051** expands the definitions for "big game" and "small game" as well as changing the definitions of "hunt" and "take" to exclude certain field trials, water races or certain wild hunts. This change will allow competitions involving field trials, water races and certain wild hunts to be held on Sundays without violating current Sunday hunting laws.

### Associations

**Senate Bill 703** updates language in the Uniform Liability Act, West Virginia Liability Act, West Virginia Business Corporations Act, West Virginia Nonprofit Corporation Act, Uniform Limited Partnership Act and as to limited liability partnerships. The new sections relate to the revocation of

withdrawal procedures for a foreign corporation under the West Virginia Corporation Act and a foreign corporation under the West Virginia Nonprofit Corporation Act.

### Audits/ Auditing

**Senate Bill 348** changes the requirements regarding audits of persons receiving grants or funds from the state. It changes the threshold amount of moneys received from the state before an audit is required from \$15,000 to \$25,000. A report must be filed regarding the disbursement of state grant funds. The report must be filed within two years of the end of the calendar year in which the disbursement of state grant funds by the granting agency was made. Also, the report must be made by an independent certified public accountant at the cost of the person receiving the state grant. Any person failing to file a required audit within the two-year period for state funds or grants disbursed after July 1, 2003, is barred from subsequently receiving state funds until the audit is filed and the person is in compliance.

**Senate Bill 524** transfers the centralized accounting system and all of the powers and functions of and funding for the Department of Administration's Financial Accounting and Reporting Section relating to the centralized accounting system to the Auditor effective July 1, 2005. It creates the "Centralized Accounting System Maintenance Fund," and the "Statewide Accounting Development Fund" to be used for the purpose of studying, evaluating, creating and implementing a new centralized accounting system and for payment of the operation and maintenance of the centralized accounting system. It also creates a Financial Services Oversight Committee to provide advice and guidance concerning the development and coordination of effective and efficient financial services for state government.

### Banking

**Senate Bill 122** allows state-chartered banks to organize as limited liability companies. A person can apply to the Commissioner of Banking to obtain a Certificate of Authority to organize and operate as a bank if that limited liability company is formed to have perpetual existence, a centralized management, limited liability, free transferability of interests and if the Federal Deposit Insurance Corporation (FDIC) has ruled that the bank will be eligible for federal deposit insurance. An existing bank structured as a corporation also can apply to the Commissioner to reorganize and operate as a limited liability company.

**Senate Bill 229** repeals and amends certain reporting requirements for banks and credit unions. The bill, providing certain regulatory relief, repeals the section of state law that mandates banks to submit an annual report to the Division of Banking containing office locations, amount of deposits per office and amount of loans per office. The measure removes similar requirements for credit unions but still mandates each credit union report the amount of deposits and shares held.

**Senate Bill 278** relates to the lists of stockholders of banking institutions and bank holding companies. The bill defines a bank holding company as any company that has control over any West Virginia state chartered bank, including financial holding companies as defined by the Bank Holding Company Act. Further, the bill requires every state banking institution and every bank holding company with a controlling interest in a state banking institution to submit annual lists of stockholders.

**Senate Bill 413** encourages competitive equality for state-chartered banking institutions with federally chartered institutions and other financial services providers in West Virginia. The West Virginia Commissioner of Banking will regulate the process.

**Senate Bill 473** relates to the crime of cyber-shoplifting. It expands the definition of shoplifting to when a customer receives delivery of merchandise but refuses a card-not-present or debit transaction and does not return the merchandise. Also, it defines those transactions as a credit or debit sale by telephone, mail order, Internet or other transaction that does not require the cardholder's signature.

**Senate Bill 558** creates the West Virginia Board of Treasury Investments and transfers the management of the Consolidated Funds to the Board as of July 1, 2005. Also, the authority of issuing loans from the Economic Development Authority will be the responsibility of the Board. The Board will consist of five members and hold quarterly meetings; adopt a fee schedule and a budget reflecting fee structures for the year; develop an asset allocation plan and an investment policy for each fund or pool at each annual Board meeting; have an annual financial and compliance audit and deliver a quarterly report to the Council of Finance and Administration; be required to charge fees for its services; and, will be sunset on July 1, 2010. The bill also will authorize the Board to establish investment accounts.

**Senate Bill 659** clarifies the definition of "money transmission" within State Code. The measure amends and updates current law with regard to this definition by stating that an entity conducts the business of "money transmission" if they transmits funds through wire, facsimile or other electronic

means, regardless of whether they obtained the funds from the customer before or after the transfer.

**House Bill 2471** establishes a financial responsibility program for inmates by requiring wardens to deduct a portion of inmates' earnings for the purpose of paying child support and legitimate court-ordered financial obligations. The Division of Corrections would work with inmates to determine a financial plan so that they can continue to provide their mandated amount of support. Nothing in this bill will limit the authority of the Bureau for Child Support Enforcement of the Department of Health and Human Resources from taking collection action against an inmate's moneys, assets or property.

**House Bill 2570** eliminates the need for a bank to post a bond or pledge assets for the deposit of county, municipal or school board monies if they are placed in certificates of deposit that meet specific requirements.

**House Bill 2789** authorizes the calculation of a bank holding company's annual assessment fee on its total deposits in West Virginia as of June 30 instead of December 31, as is currently required. The change in date will coincide with the bank's currently required reports to the Federal Deposit Insurance Company, (FDIC) and will allow the Banking Commissioner to use the federal report instead of requiring a separate state report to compute the assessment fee.

**House Bill 2973** allows stockbrokers or dealers, in addition to banks, to act as custodians of insurance company securities. Current law allows only banks to act as custodians. Giving stockbrokers such a position eliminates the need for physically transferring paper certificates that prove ownership of a security.

### Bed & Breakfasts

**Senate Bill 198** relates to fire safety standards for bed and breakfast establishments. Each bed and breakfast will be required to have smoke alarms in all common areas, guest rooms and hallways as well as heat detectors. Smoking will not be allowed inside and there must be well lit emergency exits.

### Boards & Commissions

**Senate Bill 194** will impose a \$20 fee on real estate title transfers and a \$20 fee for the transfer of a certificate of title for a mobile home. Both of these fees will be deposited into

the West Virginia Affordable Housing Trust Fund, and up to 10 percent of the transfer fees may be expended to defray administrative and operating costs and expenses that may be generated by the Fund. The bill also will reduce the number of members appointed to represent nonprofit organizations on the Fund's Board of Directors; remove the member who is chosen from the private directors; add a member from a nonprofit organization; and, add additional members to represent real estate and manufactured housing groups.

**Senate Bill 450** entitles state boards to provide compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission. But, no board member can receive compensation for travel days that are not on the same day as the official meeting or official duties. No member of any board can receive compensation as an employee of the board. By the guidelines of the Travel Management Office of the Department of Administration the board can reimburse actual and necessary expenses incurred for each day or portion of a day engaged in conducting official duties.

**Senate Bill 640** provides that stamped imprints will be acceptable official seals for notaries public and commissioners.

**Senate Bill 737** requires certain state examining and licensing boards to send a status report to any person who has filed a complaint report within 6 months of the filing of the complaint. The boards also will be required to issue a final ruling on any complaints within 1 year, unless the complainant and the board agree in writing to extend the time limit. If a board cannot find the licensee a complaint has been filed against within 60 days of the filing, the board will then be able to suspend the license without a hearing.

**House Bill 2534** extends the existence of the state's Tourism Commission until July 1, 2006. The West Virginia Tourism Commission was authorized by legislation in 1995. The private-public board serves without payment and acts as a board of directors for the Division of Tourism. During the 2000 legislative session, the Commission was expanded from a nine-member board to a 13-member board. Meetings are generally the 3rd Thursday of each month.

**House Bill 2782** allows a municipality to appoint three to seven members to a board of park and recreation commissioners, changing the existing code which currently allows a municipality to appoint three to five members.

**House Bill 3106** allows the Public Employees' Insurance Agency to participate in the investment pools of the Investment Management Board and retain earnings on those investments.

**House Bill 3151** requires dialysis technicians to be registered under the Board of Examiners for Registered Nurses. To be licensed under the Board of Examiners for Registered Nurses a dialysis technician must be of good moral character, acquired a high school diploma, successfully completed an approved dialysis technician training program, achieved national certification as a licensed dialysis technician and met any other qualifications required by the Board. A dialysis technician may perform various duties under the supervision of a registered nurse or licensed physician such as initiating, delivering or discontinuing dialysis care and preparation and initiation of dialysis access sites.

The Dialysis Technician Advisory Council is created, operating under the Board's supervision, which advises the Board regarding qualifications, standards for training, competency determination of dialysis technicians and all other matters related to dialysis technicians. The Council consists of a Board member serving as the chair, two dialysis technicians, two nurses who regularly perform dialysis and care for patients who receive dialysis and one physician who regularly treats patients receiving dialysis care. The Board can take disciplinary actions against a dialysis technician if the individual violates any rules or provisions required by the Board, or is convicted of a felony.

**House Bill 3280** shortens the time period during which the Public Service Commission must complete review for certificate of convenience and necessity when the project has been approved by the Infrastructure and Jobs Development Council.

**House Bill 3356** authorizes the powers and duties of the solid waste management authorities that operate commercial solid waste facilities. The board will need to conduct performance reviews biennially and maintain annual, quarterly or more frequent performance measures of county and regional solid waste management authorities. The Board also has the authority to intervene in the affairs of a county or regional solid waste management authority when serious damages are identified. For the Board to intervene there are five possible steps they can take and they are: appointing consultants to review and make recommendations on correct the impairments; directing the authority's board to prioritize and target funds toward correct the impairments; recommending the reappointment of one or more members of the board; designating the Solid Waste Management Board Director

to temporarily preside as chair of the authority board during the intervention; and, exercising powers of that supersede over the authority.

**House Bill 3360 (Vetoed)** requires the Director of Information Services and Communications Division to create and maintain an information systems disaster recovery system. The Director is also required to develop specifications, funding mechanisms, and participation requirements for all executive branch agencies. Each executive branch agency will assist the director in planning its specific needs and provide access to information systems or equipment required.

### Business & Economic Development

**Senate Bill 222** relates to the membership of the Workforce Investment Council. The legislation provides that the business representatives on the Council include business owners, Chief Executive Officers, business executives, representatives of business organizations and trade associations, as well as representatives of businesses with employment opportunities in West Virginia. Additionally, the bill adds the Chancellor of the West Virginia Council for Community and Technical College Education and the Chancellor for Higher Education to the membership.

**Senate Bill 238** adds steel to current statutory provisions involving the purchase of scrap metals by various commercial entities. The bill also modifies the criminal parts of the law for offenders who violate the law.

**Senate Bill 699** deletes a provision from the Business Corporation Act. The new provision will allow shareholders to participate in and be counted present at shareholder meetings, if they are using speakerphones or other means, which allow all the shareholders to simultaneously hear each other.

**House Bill 2510** allows some public sector monies to be used to meet the requirements of the Workforce Development Initiative, a program that encourages working partnerships between educational institutions and the business community. This measure was drafted during the Interims and proposed by the Legislative Oversight Commission on Workforce Development for Economic Development.

**House Bill 2869** allows a domestic corporation to convert to a domestic limited liability company. The corporation's Board of Governors will be required to submit a plan for conversion to the company's shareholders and adoption of such a plan will require approval from each shareholder.



**House Bill 3125** provides for biannual independent review of the Neighborhood Investment Program (NIP), beginning December 15, 2005. Previously, the program was reviewed annually. The bill also extends the program until July 1, 2008. The NIP increases charitable giving to local nonprofit organizations and allows 501(c)3 designated charitable organizations to apply for tax credit vouchers.

## Child Welfare

**Senate Bill 414** requires every driver who transports a child under the age of eight to ensure that the child is properly secure within the automobile. This will meet federal motor vehicle safety standards. This bill will also require the use of child safety booster seats for children less than six years of age, unless the child is at least 60 pounds.

**Senate Bill 492** requires the State Auditor to make payments to hospitals and funeral homes within the state which provided services to the state, but were not paid because the Department of Health and Human Resources and the Division of Corrections did not have enough money in their budgets to pay those businesses. These claims will be paid out of the state's General Revenue Fund and total \$487,369.22.

**Senate Bill 584** allows cases that deal only with child support modification to be presented to the Bureau for Child Support Enforcement and administratively dealt with in an expedited time period. Currently, most Family Courts have been scheduling hearings six to nine months in advance.

**Senate Bill 587** requires counsel for anyone other than the child in an abuse and neglect case may be appointed only upon a personal appearance with the request for the appointment of counsel. The child, his/her parents and his/her legally established custodian will have the right to be represented by court-appointed counsel at each stage of proceedings and will be informed by the court of the right to be represented and if they are unable to pay for the services of counsel, then counsel will be appointed.

Counsel for the child will be appointed at the onset of the case. If physical custody of the child is given to the state, the initial case will appoint counsel for the parents or, if the parents are separated or divorced, the parents or parent or other person or persons with custody of the child for the majority of the time in the period immediately preceding the petition. Representation will only continue after the first appearance if the parent or guardian cannot pay for the services of counsel and will only be appointed upon a request for counsel. The

same attorney will not be permitted to represent both the child and the other party or parties.

**House Bill 2150** expands the locations where one could file a child abuse or neglect petition. Current law requires the complaint to be filed in the county where the child resides, but this bill would expand the sites to the county where the offender resides, or where the abuse or neglect occurred. However, a petition may not be filed in more than one county if it is based on the same set of facts.

**House Bill 2174** requires the Department of Health and Human Resources to develop a procedure to notify licensed professionals to report suspected child abuse and neglect by Jan. 1, 2006.

**House Bill 2229** provides a procedure for law enforcement officers to take a juvenile into custody for an emergency protective order. The child's guardian or custodian would file a petition for an order upon accusation of domestic violence by the juvenile. The officer will notify the Department of Health and Human Resources and the child can only be detained in a non-secure or staff-secure location.

**House Bill 2271** corrects conflicts in the West Virginia Code. In 2002, the Legislature enacted authorization for the Department of Health and Human Services to set a fee schedule for the payment of professional services performed by a psychologist, psychiatrist, physician, therapist or other health-care professional in connection with child abuse and neglect cases and also juvenile delinquency cases. The other section of the Code requires the DHHR to set a fee schedule for the services in accordance with the Medicaid rate, if any, or the customary rate and then adjusts the fee schedule as appropriate. The conflict is in the language, which says in abuse or neglect cases, the court will pay for all such expert witnesses. This bill will remove the language that directs the court to pay expert witnesses.

**House Bill 2334** requires that when a court orders a child be placed in the custody of the Department of Health and Human Resources or placed in a setting which is not the child's home, the court is required to order that services for the child be received within the borders of the state. The exception to this rule would be if the Secretary of the Department of Health and Human Resources determines that out-of-state treatment or service is in the best interests of the child.

**House Bill 2492** creates a funding mechanism for teen court programs. The bill gives authority to all West Virginia magistrate, circuit and municipal courts to collect a maximum \$5 fee from all persons found guilty of violating state or local motor vehicle codes which occur in the county. If the county

chooses to administer the fines and participate in a teen court program, the clerk of the particular court would collect the fines and deposit them in a special fund designated for the administration of a teen court program.

**House Bill 2578** increases the ratios of professional and service personnel to students in net enrollment. The increases in the ratios of professional and service personnel per 1,000 students will be done in a manner that will reflect the greater need of counties with a low student population density for additional personnel.

**House Bill 2892** continues the Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement (BCSE) is the State agency that helps the person caring for child to collect child support from the child's other parent(s). The BCSE also helps divorced individuals to collect spousal support or alimony.

**House Bill 3098** expands the prohibitions and criminal penalties for sexual exploitation or sexual abuse of a child by a parent, or guardian or custodian by adding offenses to include those by persons who hold a position of trust in relation to a child. A "person in a position of trust in relation to a child", as defined in the bill, refers to any person who is acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities concerning a child or someone responsible for the general supervision of a child's welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.

### Claims

**Senate Bill 650** allows a taxpayer who has filed a dispute with the Office of Tax Appeals for an amount less than \$10,000 to have the option of having an informal hearing conducted in accordance with the rules and procedures of the Office of Tax Appeals. This hearing can take place only if the taxpayer, the Tax Commissioner and the Office of Tax Appeals are all in agreement. Prior to the start of the hearing the taxpayer can withdrawal their petition for a hearing, but if there are any discrepancies found with the dispute a hearing would still be conducted. The taxpayer may not appeal the decision of the hearing. If found that the taxpayer owed money to the state, it would need to be paid within 30 days of the decision.

**House Bill 2981** declares certain claims against the state and its agencies to be moral obligations of the state. The bill requires the State Auditor to issue warrants for the payment of several claims.

### Code Repealed

**Senate Bill 104** repeals a section of the West Virginia Code relating to prisoners working for county court systems, as the county courts are now called county commissions.

**Senate Bill 491** eliminates provisions of current state law that allow West Virginia to enter into an agreement with other states regarding out-of-state parolee supervision.

**Senate Bill 736** repeals old and unused sections of the West Virginia Code in the Planning and Zoning article, which deal with offers and conditions for final property and acreage approval.

**House Bill 2483** repeals an archaic section of the State Code that authorizes wardens to offer monetary rewards for the apprehension and return of escaped convicts.

**House Bill 2495** repeals the section of the West Virginia Code regarding jail inspection. Currently the code states that at least once every year the circuit court of each county must appoint three persons including a physician, to inspect the jail. These individuals are to inspect the jails and report its condition. This bill will repeal this section.

**House Bill 3094** relates to child support and enforcement. The bill updates the West Virginia Code to make it consistent with changes made during the past five years to the Bureau of Child Support Enforcement. It also repeals the Support Enforcement Commission's ability to promulgate legislative rules, since the Commission is only an advisory body.

### Communications

**House Bill 3104** authorizes the Division of Information Services and Communications within the Department of Administration to conduct a preliminary review of telecommunications charges billed to a state spending unit. The Division could reject charges it finds are not authorized by law or contract, not designated to a specific spending unit or are not in accordance with contract pricing. Upon rejection of such charges, the Division would be required to notify the vendor within 14 days of receiving the invoice. If the Division and the vendor cannot reach a resolution, then the Secretary of Administration would make the final decision.

**House Bill 3208** changes the way wireless enhanced 911 fees are distributed to counties. The base fee will be increased to \$3 a month. Ten cents from the wireless 911

fee will be distributed to the West Virginia State Police to be used for equipment upgrades to improve and integrate their communication efforts with those of 911 systems. Also, \$1,000,000 of the wireless enhanced 911 fee will be distributed by the Public Service Commission (PSC) to subsidize the construction of wireless reception towers. The PSC will seek a grant to provide financial assistance loans to state agencies, political subdivisions and wireless telephone carriers to acquire, equip and construct new wireless towers which will provide enhanced 911 service coverage where it would not have otherwise been available throughout the state because of lack of funding.

### Consumer Protection

**Senate Bill 456** relates to cure offers. As defined in the bill, “cure offer” means a written offer of one or more things of value, including, but not limited to, the payment of money, that is made by a merchant or seller and that is delivered by certified mail to a consumer claiming to have suffered a loss as a result of a consumer transaction or to the attorney for such person. The bill requires a notice of violation prior to initiation of law suits and authorizes attorney’s fees and costs where the seller or lessor is sued after performing agreed upon cure.

**House Bill 2477** will make changes to a bill passed last year that increased the amount of property persons subject to a forced sale or execution can protect as personal property. The 2004 bill failed to reference provisions in the Consumer Protection Act, and the proposed bill brings those two provisions into conformity.

### Contracts / Contractors

**House Bill 2937** allows the Insurance Commissioner to issue an emergency rule relating to the replacement of life insurance and annuities by establishing minimum standards of conduct for insurers and producers.

### Corrections

**House Bill 3293 (Vetoed)** would have authorized the West Virginia Regional and Correctional Facilities Authority to implement residential treatment programs for inmates who are abusers of alcohol and/or drugs. The treatment program would have offered individual and group treatment activities

for misdemeanor offenders. The program would have lasted at least three months and would have required participants to be segregated from the general inmate population if possible. Those who successfully would have completed the program would have been released from jail up to 30 days early. This measure was vetoed because of far-reaching fiscal consequences, according to the veto message. Too, it was noted, the measure could have become lawsuit fodder by individuals who might have considered the idea a mandated plan.

**Senate Bill 183** allows a warden to give authorization to an inmate to withdraw money from his or her mandatory savings account in order to prepare the inmate for reentry into society.

**Senate Bill 716** creates the Regional Jail Operators Partial Reimbursement Fund within the State Treasury. Revenues deposited into this fund will come from certain fees collected by Magistrate Courts and the funds used to reimburse those counties and municipalities participating in the regional jail system for the cost of incarceration.

**House Bill 2128** allows the Executive Director of the West Virginia Regional Jail and Correctional Facility Authority to establish an inmate furlough program so that inmates may attend funerals or make hospital visits to terminally ill family members. The Director will have the ability to determine which inmates are not likely to jeopardize public safety and could be granted a furlough or special escort through the program.

**House Bill 2476** provides that any person who has been released on parole three times and violated his or her parole each of these times is no longer qualified for parole release. Additionally, the bill authorizes the Commissioner of the Division of Corrections to issue subpoenas for parole revocation hearings.

**House Bill 2523** creates a misdemeanor crime for released inmates to contact correctional employees unless required. Penalty for the crime is 10 days in jail, a \$500 fine or both. Inmates must be advised of the restriction upon their release.

**House Bill 2991** provides criminal penalties for aiding escapes and specifies items that are unlawful to deliver to or be possessed by individuals in custody or confinement. The bill adds cell phones to the list of jail/prison contraband and creates offenses for possession by inmates of listed items of contraband. An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center who is found to have any poison, implement of escape, dangerous material, weapon or any controlled substance would be guilty of a felony and when convicted could face a fine of between

\$1,000 to \$5,000, sentenced to jail for one to five years or both. If it is the discretion of the court, then the person could be confined in jail up to one year and fined up to \$500.

**House Bill 3010** allows the Commissioner of Corrections to authorize the establishment of imprest funds by wardens or administrators of correctional facilities to reimburse employees for expenses when transporting inmates. The bill also removes a provision that requires a warden to reside in a designated or approved residence.

### County, Municipality & Local Bills

**Senate Bill 166** authorizes the sale of 2.25 acres of land located at Crites on Buffalo Creek in Logan County by the West Virginia Secretary of Administration. The Secretary may sell the land through an auction, held at least once a year until the property is sold, and all proceeds of the sale, except for the appropriate costs associated with the auction, will be placed into a special fund to be used by the Department of Administration for State Capitol Complex improvements and renovations. Additionally, the Secretary of Administration may set a price for the land regardless of its assessed value.

**Senate Bill 411** extends the time given to the Tyler County Commission to submit for approval or rejection by the Tyler County voters an excess levy that will finance vital public services.

**Senate Bill 417** provides for the organization and joint ownership of joint development entities by municipalities and certain authorities.

Through its research, the Legislature found that county commissions, municipalities and county boards of education today face numerous challenges regarding the management of their budgets and delivering services required by federal or state law. To address this concern, the Legislature passed **Senate Bill 419**, which will create the Local Government Flexibility Act of 2005. This act takes into account the fact that local units of government are often restricted by policies, rules and regulations. These restrictions can prevent them from carrying out their duties and responsibilities in a cost effective and timely manner. This act will create a pilot program, which includes a waiver program that will allow certain county commissions, municipalities and county boards of education to apply to the Governor to receive an exemption of a specific policy, rule or regulation. If the pilot program proves to be successful, then it may be taken into consideration for a statewide initiative.

This bill will divide the state into seven regions for the purpose of taking part in the Flexibility Act. Six of the regions will consist of counties that share a border with other states. The seventh region will include all of the interior counties that do not share a border with another state. The most populated county in each region will be designated as the pilot county. If they reject the program, then the pilot program will go to the next most populated county in the region, and so on. If the county chooses not to participate in the program, then any municipality within that county may choose to participate. These pilot counties can request a local waiver regarding a policy, rule or regulation they believe is preventing them from carrying out their duties and responsibilities in an effective manner. Applications for waivers must be submitted to the Secretary of Commerce, who will then conduct an investigation or inquiry to gather any additional information necessary to evaluate the application. The Secretary of Commerce will then submit their recommendations to the Governor for approval. If the Governor believes a statutory change is needed, then he will bring the matter to the attention of the Speaker of the House of Delegates and the President of the Senate.

**Senate Bill 522** authorizes the City Council of Hurricane to extend the time for its meeting as a levying body until May 31, 2005. The purpose of this extension is to submit to the voters of the city of Hurricane the continuation of an additional city levy to maintain the level of funding for the street department and the police department where necessary.

**Senate Bill 561** authorizes the Greater Huntington Park and Recreation District to impose fees and issue revenue bonds. Prior to the issuance of these fees and bonds, the members of the district must ratify the changes through a ballot question placed on the ballot of a primary or general election. The ballot must summarize the service fee, the manner in which it will be imposed and the general use to which the proceeds of the service fee will be placed.

**Senate Bill 669** transfers certain election duties from the circuit clerk to the clerk of the county commission. The bill also will remove unconstitutional provisions regarding nominating petitions.

**Senate Bill 749** authorizes a public service district to officially change their name in certain cases. The county or county commissions that have created public service districts will be able to change the name of the district, upon written request, as long as the public service district approves the change and the bond and note owners agree in writing. In addition, a certified copy of the order changing the name of the district must be sent to any county commission where the public service district extends.

**House Bill 2812** extends the time for the Preston County Board of Education to meet as a levying body for the purpose of presenting a special levy election for the voters in the county.

**House Bill 2813** removes the requirement that a public utility must first obtain a certificate of public convenience and necessity from the Public Service Commission before it can apply for all other necessary franchises, licenses and permits.

**House Bill 3045** allows the Public Service Commission (PSC) to better participate in certain hearings. The law requires county commissions to notify the PSC within 10 days of the time and the place of the hearing at which the County Commission will consider an order relating to the creation, modification or merger of a public service district.

**House Bill 3347** extends the time in which the Pocahontas County Commission may meet as a levying body from March 28th to May 2, 2005. The extension allows the Commission to continue its general business and particularly to act upon laying the regular county levy in order to maintain and provide for a county budget.

## Courts

**Senate Bill 435** changes the procedure for suspension of licenses for failure to pay fines and costs or for failure to appear in court for motor vehicle violations after the municipal court clerk gives notice to the Division of Motor Vehicles. At the time a judgment is imposed, the judge will provide the convicted person with a written notice that failure to pay the judgment could result in the withholding of any income tax refunds due to the person and in the person's license being suspended. If any person does not comply with this provision in a 90 day period from the date of notice given to the Division, then the municipal court clerk will notify the secretary of the Tax Commissioner, who will withhold any income tax refunds to the person that would have been granted in an amount that covers all the fees and fines. When the fees and fines are more than the tax refund, the Commissioner will withhold the remaining balance in consecutive years until all fees and fines are paid. Also, anyone who is noncompliant with these provisions will be reported to the Division of Motor Vehicles. A license suspension can occur if any persons fail to pay fines or penalties imposed because of a criminal conviction or for failure to appear in court to answer to criminal charges. To reinstate their license, it will cost the individual \$50 paid to the magistrate or circuit court.

**Senate Bill 514** increases the pay for certain state judicial officials during the 2005 Legislative Session. The raises, which will be available July 1, 2005, will bring pay levels in line with judicial counterparts working in other states. This measure also will increase the salaries of various state officials over the next year. These raises will be as follows for the judges: Supreme Court Justices receive an additional \$26,000, bringing the new salary to \$121,000; Circuit Court judges receive \$26,000, bringing the new salary to \$116,000; and, Family Court judges receive \$20,500, bringing the new salary to \$83,000. The original salaries for these judicial officials were \$95,000 for Supreme Court Justices, \$90,000 for Circuit Court judges and \$62,500 for Family Court judges.

Other officials receiving raises include the Governor, Attorney General, Secretary of State, State Auditor, Commissioner of Agriculture and State Treasurer. Raises for these positions are to take place on July 1, 2005 and also in 2009. For the July 1, 2005 pay raises, each of these positions will receive a \$5,000 pay increase. In 2009, the raises will be as follows: the Governor receives a \$55,000 increase, raising it to \$150,000; the Attorney General receives a \$70,000 increase, raising it to \$145,000; the Secretary of State receives a \$25,000 increase, raising it to \$95,000; the State Auditor receives a \$20,000 increase, raising it to \$90,000; the Commissioner of Agriculture receives a \$20,000 increase, raising it to \$95,000; and, the State Treasurer receives a \$20,000 increase, raising it to \$95,000. The original salaries for these state officials were \$90,000 for the Governor, \$75,000 for the Attorney General, \$70,000 for the State Auditor, \$70,000 for the Secretary of State, \$65,000 for the Commissioner of Agriculture and \$70,000 for the State Treasurer.

An additional raise went to Magistrates in Tier 1 (those who serve less than 8,400 people in the population) from \$33,645 to \$43,625 and in Tier 2 (those who serve more than 8,400 people in the population) from \$40,000 to \$50,000, starting on July 1, 2005.

**Senate Bill 583** extends the time period for Circuit Courts to hear appeals from Family Courts until 2010. Previous law required the appeals from Family Courts to be transferred to the Supreme Court of Appeals by June 2005. In 2010, the appeals will be transferred to the Supreme Court of Appeals unless the Legislature takes further action.

**Senate Bill 585** allows the disclosure of juvenile records to certain school officials if the juvenile has been charged for an offense that involves violence against another person, possession of a dangerous or deadly weapon and/or possession or delivery of a controlled substance.

**Senate Bill 616** extends the time period for Circuit Courts to hear appeals from Family Courts. Previous law stated

appeals from Family Court were to be transferred to the Supreme Court of Appeals. This bill allows the Circuit Court to continue hearing Family Court appeals through 2010.

**Senate Bill 661 (Vetoed)** relates to juvenile proceedings and multi-disciplinary teams. Under this legislation, the Division of Juvenile Services is charged with establishing a multi-disciplinary team treatment planning process for certain juveniles who are in the Division's custody. A team would include the juvenile, prosecuting attorney and school official, as well as the juvenile's probation officer, social worker, parents, guardians and attorney. After the examination and diagnosis, the Director of the Division will make a report to the court that outlines the team's recommendations.

### Crimes

**Senate Bill 146** establishes the Unborn Victims of Violence Act. The bill recognizes an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person, and it establishes that the pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims. Exceptions to the bill include: acts committed during a medical abortion; acts or omissions by medical or health care personnel as a result of medical services; acts or omissions by medical or health care personnel in performing lawful procedures involving embryos that are not in a state of development in utero; acts involving the use of force in lawful defense of self or another, but not an embryo or fetus; and, acts or omissions of a pregnant woman in respect to the embryo or fetus she is carrying.

**Senate Bill 268** changes state law to conform to federal requirements under the Juvenile Justice and Delinquency Prevention Act, which states that any person over age 18 but under age 21 found in the possession of beer or liquor is guilty of a status offense instead of a misdemeanor. Those found guilty will be referred to the Department of Health and Human Resources for treatment, rather than the \$1,000 fine or six-month incarceration penalties assessed to a misdemeanor.

**Senate Bill 548** relates to the crimes of assault and battery upon law-enforcement officers. The measure adds Public Service Commission motor service carrier inspectors to those law-enforcement officers who may be victims of various assaults and batteries.

**Senate Bill 729** authorizes Magistrate Courts to order home incarceration as an alternative sentencing measure instead of bail or bond as a condition of probation for any criminal violation under their jurisdiction.

**House Bill 2129** makes it a felony to record a motion picture in a theater without the express written permission of the theater owner. A first conviction would be punishable by a fine between \$500 and \$1000, confinement in a state correctional facility for one to 10 years, or both. Upon subsequent convictions of this crime, the person could be fined between \$1,000 and \$5,000, sentenced in a state correctional center for two to 15 years, or both. The owner or lessee of a motion picture theater is not required to post a notice of this law. Other provisions of this bill authorize theater owners to detain offenders without liability until the pertinent law enforcement arrives on the scene. Also, it exempts security individuals, personnel protective services and investigative agencies acting as part of lawfully authorized investigative, protective, law enforcement or intelligence gathering activities from this measure.

**House Bill 2482** relates to including jails within the context of certain criminal acts by incarcerated persons and provides a specific crime for setting fire to a correctional facility or jail. This bill amends current law to include the Executive Director of the Regional Jail and Correctional Facility Authority in the definition of whom a criminal must be in the custody of to constitute criminal culpability for illegal acts within correctional facilities.

**House Bill 3049** makes the intentional use of fire, which substantially causes the risk of death or serious bodily injury, a felony punishable by one to five years in a penitentiary, a \$250 to \$2,500 fine or both. The bill also extends to any person who, during the manufacture or production of an illegal controlled substance, uses fire and creates substantial risk of death or serious bodily injury to another. If that person is found guilty, the he/she will be guilty of a felony, be given to the custody of the Division of Corrections for one to five years or, at the court's discretion, confined in the regional jail for no more than one year, fined \$250 to \$2,500, or both.

**House Bill 3153** creates the offenses of reckless disregard for railroad property and for intentionally damaging railroad property. If railroad damage, as defined in the bill, does not exceed \$1,000 and no injury was caused to another person, then the individual found guilty will be fined a maximum of \$5,000 and/or confined in jail for up to one year. If the damages do exceed \$1,000 or if another person sustains injury, then the individual would be fined a maximum of \$10,000 and/or committed to the custody of the Commission of Corrections for one to ten years. These provisions do not apply to any railroad employees working within the scope of employment.

**House Bill 3178** relates to domestic violence. It clarifies when permanent injunctions may be granted in final divorce orders and extends domestic violence protections by declar-

ing that a shared residence is not the only legally protected residence.

**House Bill 3219** amends provisions of the West Virginia Crimes Victim Compensation Act to designate that individuals authorized to act on behalf of a victim, dependent or third person include those who hold power of attorney or others who hold authority to submit claims.

**House Bill 3306** allows fees that are collected for requests for information to the central abuse registry to be expended for criminal record keeping. Currently, such fees are only to be expended for central abuse registry purposes. This bill defines the term “criminal record keeping” as the compiling of fingerprints, photographs, criminal disposition reports, uniform crime report statistics and other relevant data regarding the arrest, conviction, incarceration and post-conviction status of criminal violators and sex offenders. “Criminal record keeping” does not include the creation of any data.

### Drugs

Launching the legislative battle against increasing methamphetamine production and abuse in the state, lawmakers approved legislation that addresses this issue, which has become one of growing concern nationwide, especially in rural areas such as West Virginia. According to the 2002 National Survey on Drug Use and Health, an estimated 12 million Americans have tried methamphetamine. And the United States Drug Enforcement Agency reports that clandestine methamphetamine laboratory activity in West Virginia has grown threefold in the past several years.

To curtail this escalating problem, **Senate Bill 147** restricts access to ingredients used in this narcotic’s production. These products include any that contain ephedrine, pseudoephedrine or phenylpropanolamine as single active ingredients, except products that are intended for pediatric use. Only physicians, pharmacists, pharmacy technicians or healthcare professionals are authorized to sell, dispense or distribute these medications in pharmacies. This legislation also prohibits pharmacies and individuals from displaying a drug product with these active ingredients where the public has clear access. Instead, these products must be placed behind a pharmacy counter where only pharmacists, pharmacy technicians and employees have access. Strict inventory control standards are to be maintained. Additionally, any person who purchases or receives these substances will be required to produce photo identification with his or her date of birth. Any time one of these products is sold, transferred or distributed, the authorized individual making the transaction will be required to report the date of the transaction; the

name, address and identification number of the person; and, the type of product sold, as well as its total gram weight, to the State Board of Pharmacy.

The Board is charged with setting rules to be followed by wholesalers, manufacturers or distributors of these drug products. They will be required to obtain registration and a permit from the Board to sell, manufacture and distribute the products. The Board also will be working with the State Police to identify other drug products, in addition to the ones mentioned above, commonly used in the production of methamphetamine.

In addition to the provisions pertaining to the sale of ingredients used in the production of this narcotic, the legislation also addresses circumstances in which innocent individuals are exposed to methamphetamine. Under the new law, any adult who causes or allows a minor to be present where the drug is being made will be guilty of a felony and if convicted, will serve one to five years in jail and/or be fined a maximum of \$10,000. If a child sustains serious injury from exposure, then the guilty adult would face three to fifteen years in jail and/or a maximum fine of \$25,000. Also, any person manufacturing this drug who causes dangerous exposure to first responders, including firefighters and police officers, that results in injury will be guilty of a felony and fined \$500 to \$5,000 and/or confined in jail for one to five years. If they have reason to believe an injury has been caused by exposure to methamphetamine, certain individuals in medical professions, including mental health professionals and emergency medical services personnel, then they are required to report this information to a law-enforcement agency. If any of these individuals intentionally fail to do so, then they will be guilty of a misdemeanor.

### Education

**Senate Bill 94** eliminates a requirement that activities on instructional support and enhancement (ISE) days be scheduled in a certain order. Before this bill passed, activities on ISE days had to designate two hours for instructional activities for students, two hours for a faculty senate meeting and the remainder of the day for other professional activities for teachers. Now the activities can be performed in any order. Additionally, the bill allows up to three days of accrued instructional time to be used for professional development.

**Senate Bill 248** replaces the Education Technology Strategic Plan Advisory Committee with a Governor’s Advisory Council for Educational Technology. The Council is composed of two ex officio members, and 13 members appointed by the Governor with the advice and consent of the Senate.

**Senate Bill 347** authorizes rules for the Higher Education Policy Commission and the Council for Community and Technical College Education. The rules address the Underwood-Smith Teacher Scholarship Program, the Engineering, Science and Technology Scholarship Program and the Medical Education Fee and Medical Student Loan Program.

**Senate Bill 401** establishes the adoption or transfer of orders, resolutions, policies, rules and obligations from Bluefield State College and Shepherd University to the newly established governing boards of New River Community and Technical College and the Community and Technical College of Shepherd. The bill also arranges for the division of assets and liabilities between the institutions and their administratively linked community and technical colleges, while also providing guidelines for financial audits.

**Senate Bill 521** requires the State Board of Education to conduct a study on the feasibility of requiring flood insurance and general property insurance on all buildings owned by a county board of education. The State Board must report their findings to the Legislative Oversight Commission on Education Accountability, including any recommended legislation.

**Senate Bill 603** provides flexibility measures for West Virginia University and Marshall University to work together more efficiently. The bill will allow both schools to participate in a pilot investment program, clarify responsibilities of the Attorney General in approving contracts, leases, etc., provide conditions for additional flexibility to certain other state institutions and limit the Higher Education Policy Commission Chancellor's salary to no more than 20 percent higher than the average of state-level higher education Chief Education Officers in states within the Southern Regional Education Board.

**Senate Bill 604** adds another factor in the school aid formula when dealing with increased enrolment. The bill will require that funds be appropriated for increased enrollment based on the projection of future enrollment. The bill also will authorize a grant allowance for certain counties with low student net enrollment under certain circumstances.

**Senate Bill 674** establishes policies for textbook sales at public institutions of higher education and prohibits employees from receiving incentives to purchase certain textbooks. The schools' governing boards will be permitted to require certain basic textbooks to be used for a reasonable number of years, to prevent students from having to buy numerous new editions of textbooks. Institutions will be required to post listings of required textbooks at certain campus locations.

**House Bill 2350** makes a technical correction to a portion of State Code that addresses the awarding of teaching certifi-

cates in West Virginia. The bill adds to existing requirements for receiving a teaching certificate that candidates must possess the minimum of a bachelor's degree or hold a certificate of eligibility issued by another state that certifies he or she meets all the requirements of the state for full certification.

**House Bill 2466** eliminates unlawful classifications based on race, and deletes other obsolete statutory provisions.

**House Bill 2527** allows employees of multi-county vocational schools to administer performance tests for service personnel in the counties served by the school. Current law only permits employees of the county board of education to administer the tests.

**House Bill 2528** amends a current law relating to the approval and operation of teacher education programs, which are an alternative to the regular college or university programs for the certification of teachers. The law is amended to make it more feasible to implement. The amendments include changing the eligibility requirements for holding an alternative program teacher certificate, changing the requirements for the instruction and phases of training required for an alternative teacher education program and others.

**House Bill 2783** authorizes the Director of the Division of Rehabilitation Services to allow school, youth and civic groups and organizations to use state vocational rehabilitation facilities. Additionally, the Director could charge a reasonable rent, provided that this revenue is used exclusively for the cost, maintenance, repair or replacement of the facilities.

**House Bill 2837** attempts to give high school students a better understanding of personal finance and managing money. The bill allows the State Board of Education to develop a program of instruction on personal finance that may be integrated into the curriculum of an appropriate existing course or courses for students in secondary schools.

**House Bill 3018** includes provisions relating to alternative education programs and the Mountaineer Challenge Academy. Attendees of both are given an extra year to graduate or pass the General Education Degree (GED) tests, subject to federal law. Additionally, attendees of the Academy are considered enrolled in the referring county, but only for the purposes of funding, attendance rates and graduation rates and only to the extent permitted by federal law.

### Elections

**Senate Bill 670** allows all registered voters in a conservation



district to vote for the supervisor representing their interests in the district. Also, it allows a county to elect two supervisors rather than one.

**House Bill 2950** requires that a paper copy of a voter's votes be generated when using an electronic system in case an election is contested or for a random count of precincts.

**House Bill 3002** clears up conflicts in State Code by removing the requirement that voters are to designate their party affiliation no later than 30 days before a primary election to be eligible to vote. Instead, voters are permitted to name their party no later than 20 days, at the end of voter registration, before a primary.

**House Bill 3281** makes it a misdemeanor for any person to knowingly or indirectly access, tamper with or delete any computer records that contain voter registration files. The bill also creates a misdemeanor offense for any person who accesses a computer or network containing voter registration files.

### Emergency Services

**House Bill 2111** authorizes Emergency Medical Service personnel to provide services in any setting, including hospitals. The bill directs the Commissioner of the Bureau of Public Health to promulgate rules to regulate these activities. The bill provides the rules be joint rules of the Board of Registered Professional Nurses and the Commissioner, and that the Emergency Medical Technicians (EMTs) are to be supervised by staff nurses. The amendment also limits the area in hospitals in which EMTs may work to only emergency rooms.

**House Bill 3328** changes the name of the Office of Emergency Services (OES) to the Division of Homeland Security and Emergency Management. This Division will assume all duties, functions and entities from the OES. Additionally, it provides that the Director of the Division must have a minimum of five years of experience in managerial or strategic planning, knowledge of the subject and federally issued security clearance. The bill further directs entities to work with the Secretary of the Department of Military Affairs and Public Safety on receiving federal funds for homeland security and emergency services purposes. The Governor is authorized to require reports from any entities receiving services, equipment, supplies, materials or funds as a requirement for receiving the same from the state.

### Environmental Protection

**Senate Bill 154** pertains to the beneficial use of water treatment plant sludge, which has beneficial components and can be used to protect citizens' health and the environment. To encourage favorable use of plant sludge, this legislation provides for legislative rules that will set forth methods for determining beneficial use characteristics and pollutant content of sludge. Among other provisions, the rules also will include storage requirements for water treatment plant sludge and permit requirements.

**Senate Bill 428** relates to the Rehabilitation Environmental Action Plan by addressing the improper management of commercial and residential solid waste, which can adversely affect West Virginia's natural resources and public health. To ensure these issues are managed efficiently, this legislation consolidates litter control, open dump elimination and reclamation, waste tire clean up and recycling programs into one program to be maintained by the Department of Environmental Protection. It also sets forth penalties for wrongful disposal of litter and to promote pollution prevention, it provides for litter control and recycling programs and education.

**Senate Bill 433 (Vetoed)** increases the number of members on the Environmental Protection Advisory Council from seven to 11 members. Members serving on the council prior to the effective date of this legislation will serve the remainder of their terms. Of the four new members to be appointed, two will serve a term that expires June 30, 2008 and two will serve a term that expires on June 30, 2010.

**Senate Bill 455** allows qualified electric-generating facilities with outstanding debts to issue bonds to finance the construction and installation of emission-control equipment. This legislation takes into account the fact that this equipment is costly and many utility companies would struggle to subsidize its installation. Since this equipment would be beneficial for the public health and economy of West Virginia through emission control and job growth, the Legislature passed this bill to provide companies with an appropriate funding mechanism.

**Senate Bill 42 (Vetoed)** would have limited the remediation liability of a property owner who purchased property where waste tires were deposited illegally. The owner's liability would have been limited to the difference between the fair market value of the property following remediation and the market value on July 1, 2001. However, SB 428 did incorporate similar language limiting the remediation liability of good faith purchases in a new Code provision. The provision of SB 428 will prevail.

**Senate Bill 513** eliminates the tax credits available under the Capital Company Act beginning July 1, 2005. Also, it modifies the time period in which the Economic Development Authority may allocate tax credits for the remainder of the fiscal year, which began on July 1, 2004. Credits can only be allocated to one or more qualified economic development and technology advancement center.

**Senate Bill 700** creates a Community Infrastructure Investment Program within the Department of Environmental Protection (DEP) to facilitate the construction of project facilities for the promotion of economic development and the protection of public health and environment in the state. Any public service district or municipality may accept a project facility if the cost is less than \$10 million, with the approval of the Secretary of the DEP.

**Senate Bill 748** removes the mitigation requirements for state streams that are isolated because permanent structures have been placed in the streams. Additionally, it requires the Department of Environmental Protection to give mining companies credit for mitigation executed by the Corp of Engineers.

**House Bill 3354** relates to the authority of the Secretary of the Department of Environmental Protection's Office of Oil and Gas to assess a permit fee for well work permits, deep wells, coalbed methane wells and reclamation funds fees. The bill increases permit fees for well work on shallow wells from \$250 to \$400, increases permit fees for deep wells from \$250 to \$650 and limits future fees that can be assessed for stormwater permits to \$100. In addition, the bill increases the reclamation fees assessed on each well permit from \$100 to \$150, maintains the permit fees for coalbed methane wells at \$250 and deletes the requirement to include proposed date for completion of drilling and proposed date for stimulation of wells with a well plat when an application is filed.

### Estates / Trusts

**Senate Bill 424** authorizes a personal representative of a decedent or a decedent's estate to sell, donate or amend a conservation or preservation easement in order to obtain federal estate tax exclusion. Before any of these actions can be completed, all heirs with interests in the real estate must give written consent; the will must direct the personal representative to sell or donate the land; or, the decedent must have a current application pending for the sale or donation of the land.

### Ethics

**Senate Bill 153** relates to ethical standards of public officers and employees. The bill will modify confidentiality provisions in relation to complaints filed with the Ethics Commission. A provision that requires persons filing a complaint to not disclose any information regarding the complaint during an investigation by the Ethics Commission will be removed. The bill also will prohibit the submission of false information and provide penalties for providing such information.

### Factory-Built Homes

**Senate Bill 691** allows either a tenant or landlord to terminate the tenancy of a factory-built home. However, a written notice must be given to the other party at least three months before termination.

### Fire Fighting & Prevention

**House Bill 2619** provides that moneys from revenues previously allocated to volunteer and part volunteer fire companies and departments may now also be used for the payment of dues to national, state and county associations.

### Fuel

**House Bill 2417** authorizes the safe transportation of compressed gas containers in open motor vehicles. The container is to be securely braced, equipped with a shut-off valve and protected by either: equipping the container with metal caps that are strong enough to protect the valves; putting the container in a box or crate to protect the valves, while still using metal caps; or, constructing the container so the valve is recessed or otherwise protected.

### Gaming

**House Bill 2780** increases the amount of net terminal income from racetrack video lottery that is paid into the pension fund for all racetrack employees of the Licensed Racing Association from 0.5 percent to 1 percent and reduces the licensee's take from 47 percent to 46.5 percent.

### Governmental Agencies

**Senate Bill 19** will eliminate the currently inactive Advisory Board for the Secretary of the Department of Health and Human Resources and also add the Office of Inspector General within the Department of Health and Human Resources. The Inspector General will be responsible for conducting and supervising investigations to providing quality control for Health and Human Resources Department programs.

**Senate Bill 728** permits the Director of the Purchasing Division to create procedures permitting cannibalization (the removing of parts from one commodity to use in the creation or repair of another commodity) of state equipment as an alternative to sending nonfunctional equipment to surplus, allowing state agencies to dispose of the commodities in a landfill. The Division of Purchasing, however, will need to design and establish a program of cannibalization of equipment and disposal of waste equipment.

**House Bill 2891**, which saw a long journey through both the House and the Senate as amendments were continually added and removed, passed the Legislature during the final hours of the 2005 Regular Legislative Session. The bill, which was by request of the Governor, restructures the Executive Branch of state government. Under this legislation, the Governor will serve as the Chair of the Educational Broadcasting Authority (EBA). He is granted the power to hire and fire an Executive Director for the EBA and to set his or her salary. An amendment to the bill provides that the Governor cannot control programming and that the Governor's control of the EBA expires after four years, as does the appointment he makes for the position of Executive Director. The bill also allows the Governor to serve as Chair of the West Virginia Parkways, Economic Development and Tourism Authority with the power to appoint an Executive Director and set his or her salary.

The reorganization bill also reduces the term of the Chief Administrative Law Judge of the Office of Tax Appeals from six years to four years. If the Chief Judge requests additional support, then the Governor may appoint up to two additional administrative law judges for the office. The bill also creates an Office of Technology within the Department of Administration to be headed by the Chief Technology Officer. The position was formerly overseen by the Governor's Office. The reorganization bill also transfers the Bureau of Employment Programs to the Department of Commerce.

The introduced version of the bill sought to eliminate the Governor's Cabinet on Children and Families and to transfer

its duties to the Department of Health and Human Resources (DHHR). It also would have transferred oversight of the Family Resource Networks to the DHHR. These provisions were removed from the bill's final version. In addition, the Missing Children Information Clearinghouse Council now has two additional members --- the council's membership is increased from four to six.

**House Bill 2939** designates the State Treasurer as the authorized official and representative for the Cash Management Improvement Act of 1990. The Cash Management Improvement Act established requirements and techniques for the receipt and disbursement of federal funds. This bill also will authorize and continue the Federal Cash Management Fund and the Federal Cash Management - Administration Fund.

### Health Care

**Senate Bill 191** adopts and implements modified mental hygiene procedures in four to six judicial circuits, beginning on July 1, 2006 and continuing for an initial period of four years. The primary focus of the adoption of modified mental hygiene procedures is to establish a pilot project in certain judicial circuits. Also, the focus is to determine if the modified procedures effectively reduce the cost of the hearing process involved in involuntary hospitalizations, while implementing judicial measures intended to more successfully address problems of persons suffering repeated mental health issues. In addition, the bill addresses the failure or refusal by individuals to take prescribed medication, which causes these individuals to become repeatedly involved in the current mental hygiene framework or criminal justice system.

**Senate Bill 236** requires health care facilities to train staff, employees and contractors on Alzheimer's disease and related dementia. Expanding on current law under the Alzheimer's Special Care Standards Act, this measure requires the Secretary of the Department of Health and Human Resources to propose legislative rules setting minimum standards for training in Alzheimer's disease care and other forms of dementia for all staff, employees and contractors that come into regular and direct contact with Alzheimer's patients. The standards established by the Secretary will apply to adult day care facilities, nursing homes, assisted living facilities and residential care communities that provide services under the supervision of a licensed operator.

**Senate Bill 240** gives state employees paid leave for organ donation. Any state employee can receive up to 120 hour of paid leave during every calendar year for the employee's

donation of any portion of an adult liver or the donation of an adult kidney or a donation of adult bone marrow. The employee will be compensated at their regular rate of pay for regular hours worked while absent during this time. It is the responsibility of the Division of Personnel to provide all state employees with this information.

**Senate Bill 427** relates to Health Maintenance Organizations (HMOs). The bill eliminates the requirement that a HMO be incorporated in this state in order to obtain a certificate of authority. The bill also eliminates the requirement of an annual application for renewal of certificates of authority as well as increases the time copies of grievances must be retained. Also, the bill clarifies that the Insurance Fraud Prevention Act does apply to HMOs.

**Senate Bill 531** updates the Hospice Licensure Act by requiring compliance with the Centers for Medicare and Medicaid Services and allowing administrative penalties to be imposed by the Secretary of the Department of Health and Human Resources.

**Senate Bill 550** designates certain rural hospitals for the Medicare Critical Access Hospital Program. Any hospitals located in a Metropolitan Statistical Areas county will be considered rural for the purpose of designating them as a critical access hospital. For the hospital to be classified as a critical access hospital, it must be enrolled in both Medicaid and Medicare, provide emergency health care services to indigent patients, maintain 24 hour emergency service and be located in a county that has rural population of 50 percent or greater as determined by the United States decennial census.

**Senate Bill 717** gives emergency personnel starting on July 1, 2005 and ending December 31, 2006 the authority to purchase service credits. Any person obtaining service credits will be required to pay the employee's share and the employer's share upon his or her actual salary for the years in question plus interest at the assumed actuarial rate of return for the plan year being repurchased. Also, Jobs for West Virginia's Graduates and the Wetzel County Hospital will provide a pension plan instead of the Public Employees Retirement System for employees hired on or after July 1, 2005.

**House Bill 2011** relieves health care providers of liability where an injury has resulted from a prescribed drug or medical device. The bill states that health care providers would be immune from liability if a person were injured from taking a prescribed drug or using a medical device issued by the provider. However, if a provider had previous knowledge that a drug or medical device was unsafe or failed to follow publicly announced changes in the administration of a drug or device, the immunity from liability would not apply.

**House Bill 2371** authorizes collaborative pharmacy practice agreements between pharmacists and physicians. A pharmacist engaging in collaborative pharmacy practice is required to have at their place of practice the collaborative pharmacy practice agreement. The bill provides for up to five pilot project sites that are to be jointly selected to participate in collaborative practice by the Board of Pharmacy, the Board of Medicine and the Board of Osteopathic Medicine. The bill indicates that pharmacy collaborative agreements in community settings shall continue to exist until July 1, 2008, unless sooner terminated, continued or reestablished.

**House Bill 2381** requires public or private hospitals, nursing homes, assisted living residences, unlicensed health care homes and residential care communities to allow patients to see nonrelative visitors, unless otherwise requested by the patient or legal designee. The patient or legal designee will have the option of refusing to see nonrelative visitors and the health care facility also retains the right to restrict any visitors who are causing harm or disrupting the facility.

**House Bill 2764** grants the Board of Medicine the discretion to consider applications of physicians who have had their licenses revoked because of a drug related felony conviction. Under current law, the Board is prohibited from considering any application of a physician who has had his license revoked in this or another state because of a felony drug conviction. This bill allows the Board to consider the application and grant a license if the Boards deem it appropriate. The applying physician has to have completed all sentence conditions associated with the conviction, and the Board can place whatever limitations it deems appropriate upon the re-licensed physician.

The Legislature passed **House Bill 2816**, creating the Healthy Lifestyles Office in the Department of Health and Human Resources.

The responsibilities of this office will include coordinating all efforts in the State to deal with obesity, prevent duplication of services and considering the resources of local health departments and recommending ongoing relationships between certain entities including local health departments. It would create a coalition appointed by the Governor to provide oversight as well as create a clinical advisory committee to assure a unified approach using the latest research. The office also will establish a statewide voluntary private sector partnership and recognition program for private sector businesses. The office must coordinate higher education training programs for dietary and exercise physiology students with rural health care providers as well as coordinate any existing health promotion initiatives to assure clear, concise and consistent communication.

Also, for an elementary school, middle school or junior high school, the bill prohibits the sale of soft drinks during the school day in areas that are accessible to students. For high schools permitting the sale of soft drinks through vending machines, those schools also must offer for sale 50 percent healthy beverages. Healthy beverages are defined in the bill as: water; 100 percent fruit and vegetable juice; low-fat milk; and, any juice beverages with a minimum of 20 percent real juice.

Also, kindergarten to 5th graders are required to participate in at least 30 minutes of physical education, at least three days a week. School children in grades 6 through 8 are required to participate in one full period of physical education each school day of one semester of the school year. Finally, 9th graders through 12th graders are required to participate in one full course credit of physical education and the opportunity in high schools to enroll in an elective lifetime physical education course. Schools that do not have the number of certified physical education teacher or the required physical setting are permitted to develop alternate programs that will allow current staff and physical settings to be used to meet the physical education requirements. Additionally, the bill requires kindergarten students, students in grades 4-8 and students enrolled in high school physical education courses to have their Body Mass Index (BMI) measured.

Lastly, the bill would require health education in public schools to include instruction on the importance of the role healthy eating and physical activity plays in maintaining a healthy weight, and requires the State Board to prescribe a standardized health education evaluation to be administered in the health education classes.

**House Bill 2885** lessens the amount of tuberculosis skin testing that will be conducted by school personnel. Prior to this measure, tuberculosis testing took place every other year, but studies over the years have shown school personnel to be at very low risk for contracting the illness. Also, the measure grants a physician or local health officer the ability to seek an individualized course of treatment for persons with tuberculosis that could reduce their risk of developing multi-drug resistant tuberculosis. The involuntary commitment of a person can take place if the Commissioner of Public Health or a local health officer in the circuit court of the county in which the person lives files an application.

**House Bill 2929** updates the administration of anesthesia by dentists. The bill establishes that there are now four classes or Certificates of Providers providing different types of anesthesia, ranging from relative analgesia, which induces minimally depressed consciousness, to general anesthesia, which indicates that the patient is unconscious. Different

training requirements are established and different types of equipment are required to ensure safety. The bill further updates the Code covering office evaluations. Amendments were added in the final version for additional training requirements for both dentists and their assistants in certain circumstances specifically related to children. They further require that no more than one patient can be under sedation at one time and that they must be observed at all times by trained personnel.

**House Bill 3105** creates a special revenue fund known as the “Occupational Safety and Health Fund” in the state treasury for the administration of an occupational safety and health program that is under contract with the federal Department of Labor.

**House Bill 3174** provides that any expressions of apology, responsibility, sympathy, condolence or a general sense of benevolence made by a health-care provider to a patient, a relative of the patient or a representative of the patient and which relate to the discomfort, pain, suffering, injury or death of the patient, will be inadmissible as evidence of admission of liability.

### Insurance

**Senate Bill 30** will discontinue the use of the prior approval system for insurance rate and form filing. No insurance policy form, group certificate form or insurance application form can be made a part of a policy and no rider, endorsement or other form can be attached to any policy by an insurer unless it has been filed and approved by the Insurance Commissioner.

**Senate Bill 254** modifies existing law to coincide with a National Association of Insurance Commissioners (NAIC) model, which authorizes the licensing of individuals as a reinsurance broker or manager. Reinsurance intermediaries act as go between for insurance companies looking for reinsurance.

**Senate Bill 256** requires insurance companies that provide fire insurance to inform policyholders if their particular policy does not contain flood insurance. The information must be stated on the policyholder’s bill. The bill also would require that farmer’s mutual insurance companies adhere to the same policy.

**Senate Bill 418:**

Citing a turbulent and troubled insurance climate in West Virginia, Legislative leadership stressed the importance of reforming current state laws pertaining to third-party bad faith

lawsuits and joint and several liability, both of which are part of a larger movement to reform West Virginia's tort system. Tort is a legal term for misconduct and is applied to people or companies who commit a "civil crime"; an act that creates a wrongdoing or injury to another person. According to proponents of a measure passed by the Legislature during the 2005 Regular Legislative Session, when not regulated properly, tort may have a significant negative effect on the availability and accessibility of affordable insurance policies.

With that in mind, lawmakers passed Senate Bill 418, which eliminates third-party bad faith lawsuits and expands the powers of the Office of Consumer Advocacy, which is contained under the Insurance Commission. Under previous law, third-party bad faith lawsuits permitted individuals to sue another person's insurance company through the state court system if they believed the insurance company failed to provide an adequate settlement, violating the Unfair Trade Practices Act (UTPA), specifically the Unfair Claim Settlement Practices Act contained within the UTPA. In its place, the bill provides a process in which the Insurance Commission would become the exclusive forum for third-party claims. Those individuals who believe an insurance company acted in bad faith may file an administrative complaint with the Insurance Commission. The Commission is then required to investigate the complaint and hold an administrative hearing and, if deemed necessary, seek the appropriate measures against an insurance company.

The proposal also would increase fines and penalties on those insurance companies that have been found to commit unfair acts and act in bad faith. A single occurrence of bad faith would accompany a fine of up to \$10,000 and several violations would see a fine of up to \$250,000. Judicial review of the Commissioner's ruling on the penalty would be available and would be carried out in the Kanawha County Circuit Court. In addition to the financial sanctions, the Insurance Commission also would have the power to revoke or suspend the license of the insurance company. Lawmakers also included in this legislation a fund, the Unfair Claims Settlement Practice Victims Fund, to help recover costs lost by consumers to companies that were found to have a pattern of bad faith actions. In addition, the insurance examination assessment fee will increase from \$1,050 to \$5,500, with \$4,200 deposited into the Fund. Non-economic damages cannot exceed \$10,000.

Provisions in this measure also eliminate 45 percent of the one percent surcharge fee issued by the state to citizens' insurance policies. Language in the bill will replace the removed funding, which is used to help fund the Teachers' Retirement System, with general revenue monies. The remaining 55 percent will be diverted to municipalities to help

fund police and paid firefighters' pensions, in the amount of approximately \$2 million.

Proponents of the bill state that eliminating third-party bad faith lawsuits will provide a better insurance climate in West Virginia and, over time, reduce the cost of premiums for auto insurance policies in West Virginia. In addition, by eliminating third-party bad faith lawsuits, West Virginia will be able to attract more insurance companies, thus driving the price of policies down. And by allowing the head of the Office of Consumer Advocacy to work on behalf of all insurance customers in West Virginia, rather than only looking into health insurance issues which was the case prior to the passage of this legislation, the high costs associated with legal actions against the insurance industry can be diverted to reducing policy premiums. The insurance lobby has stated that with the passage of this legislation they pledge to reduce all auto insurance policy premiums statewide by an average of \$100.

**Senate Bill 421** will change how damage payments are allocated in court cases involving more than one person inflicting the damage. The bill will allow for several separate liability settlements for certain defendants in a tort situation. Torts are damage, injuries or wrongful acts performed willfully or negligently. The previous law held that when multiple people were guilty of causing damage to another person, anyone with any degree of fault could have been liable for the entire damage amount even if that person was only a small degree liable. Under this method, the plaintiff received the entire damage amount whether it was paid by one person out of the group of individuals liable or divided any way among the individuals who caused the damage.

The new bill sets forth that if any of the defendants are ten percent or less at fault, then that defendant's liability in the case will be held separately rather than jointly and that person will only be liable for the damages he/she specifically caused. When a person is between ten and 30 percent liable, they could also be held for a small portion of another person's amount of liability of that person is bankrupt or otherwise cannot pay his/her amount. The court also would not be able to re-allocate any uncollected amount greater than that defendant's percentage of fault multiplied by the uncollected amount. Joint and several damages are pursued for anyone acting with the intent to inflict injury or damage; any party acting with another person as part of a plan or design to result in harm; any party who negligently or willfully causes the unlawful emission, disposal or spillage of a toxic or hazardous substance; anyone liable for the manufacture and sale of a defective product; or, anyone who negligently, unlawfully or recklessly sells or serves alcohol.

In a court case hearing the tort conduct of more than one defendant, the trial court will determine or have a jury de-

terminate the total amount of damage sustained by the victim and also the separate levels of fault of each person in the case. If a claimant is unable to collect damages from a liable defendant, then that claimant may request the amount not collected be re-allocated among the other liable parties. This claim would have to be made no later than six months after the judgment becomes final or when appeals have been exhausted, whichever occurs later.

**Senate Bill 459** allows a reinsurer to avoid having to pay a claim of a bankrupt insurer twice. The bill provides that a reinsurer has to pay the claim of a bankrupt insurer directly to the policyholder when the insurance contract includes a cut-through arrangement. These arrangements specify that in the event of bankruptcy of an insurer, any loss that would have been recovered by the bankrupt insurer from a reinsurer be instead paid directly to the policyholder.

**Senate Bill 666** extends the insurance companies exemption from the Business Franchise Tax and the Corporation Net Income Tax to private companies providing workers compensation insurance and to the new mutual company.

**House Bill 2878** relates to allowing the Insurance Commissioner's Fraud Unit to investigate the forgery of insurance documents. The bill clarifies that the Insurance Fraud Unit can participate in certain aspects of law-enforcement, such as exchanging law-enforcement information, conducting criminal background checks on potential employees of the Fraud Unit and investigate forgery of insurance documents. In addition, the bill allows the Insurance Commissioner to assign additional duties to the Workers' Compensation Fraud Unit after the Insurance Commissioner takes over the duties of that unit on July 1, 2005.

**House Bill 3014** clarifies that mandated accident and sickness insurance benefits do not apply to limited coverage policies unless expressly made applicable to those policies.

**House Bill 3138** requires health insurance plans to cover the cost of contraceptives. The measure ties into the Prescription Fairness Act of 2005 requiring individuals and group health insurance plans that provide benefits for prescription drugs. Also, plans that provide outpatient services have to provide coverage for outpatient contraceptive services to covered individuals. The insurers that will provide this coverage include hospital service corporations, Public Employees Insurance Agency (PEIA) and Health Maintenance Organizations (HMOs). Those that are excluded are federal governmental plans, Medicaid and other similar coverage. Religious employers also may exclude or restrict contraceptive coverage when the drugs are contrary to religious beliefs.

Contraceptives are to be treated in the same manner for coverage as other prescription drugs and prohibit co-pays and waiting periods in excess of normal requirements. No person can be denied coverage of insurance due to using contraceptives; also health care providers cannot be penalized for prescribing contraceptives and cannot be given enhancements for not prescribing them.

**House Bill 3152** clarifies that the Board of Risk and Insurance Management (BRIM) is not required to provide insurance for every property, activity or responsibility of county boards of education.

### Labor, Occupations & Salaries

**House Bill 2592** enhances the operations of the Design-Build Board. Current law states that agencies entering into design-build contracts, which are contracts that provide responsibility for both the building and the construction under a single contract, had to meet three criteria. The bill adds three additional rules; the agency must have the appropriate legal authority to enter into a design-build contract, must provide a written plan for funding the project and must submit a written application for approval and request for a meeting with the Design-Build Board. The agency must submit monthly reports to the board to detail the progress of the project. The board must also file a yearly annual report. The bill also states that while board members are not paid, they may be reimbursed for necessary daily expenses in conducting business.

**House Bill 2980** requires the Division of Labor to be responsible for the oversight and review of the activities of special inspectors. The Division has the authority to hire or contract inspectors to review the investigators' activities. The Division also may accept inspection reports from special inspectors instead of performing its own inspections of amusement rides or attractions. The Division will certify all special inspectors employed by insurance providers who write insurance policies for amusement rides and attractions. Also, the Division has authority to charge an annual certification fee of no more than \$50.

**House Bill 3068** authorizes private inspectors to conduct annual inspections of elevators in state-owned buildings. It also establishes the authority of the Division of Labor to conduct over-site inspections.

### Law Enforcement

**House Bill 2296** increases sheriff's office processing fees from \$20 to \$25. The West Virginia Deputy Sheriff Retirement Fund would receive \$2 from the increase with the remaining \$3 going into the corresponding county commission's general revenue fund.

**House Bill 3203 (Vetoed)** authorizes municipalities to issue revenue bonds for the purpose of eliminating existing unfunded liabilities of police and firefighters' pension plans.

### Licenses

**House Bill 3031** deals with the licensing of Landscape Architects. It clarifies that a person must graduate from a college accredited by the Landscape Architecture Accreditation Board. The West Virginia State Board of Landscape Architects is authorized to increase the fees it assesses and the fee increase will be for one year, starting July 1, 2005. Each increased fee may not exceed \$100. The bill also gives the Board rule-making authority.

**House Bill 3048** allows a person to show a hunting license from the previous season with a certification of hunter training on it when purchasing a new license or stamp rather than providing a certificate of completion for the course. It also allows hunters to confirm completion of the required course when purchasing licenses and stamps online.

### Military Affairs

**House Bill 2866** provides for the continuation of payments for tuition and fees for West Virginia National Guard members who have been discharged from military service because of injuries sustained in the line of duty.

### Mines & Minerals

**House Bill 3236** provides that the special reclamation tax and coal production tax apply to thin seam coal. It also provides that the special reclamation tax is subject to the West Virginia Tax Crimes and the West Virginia Tax Procedure and Administration Act.

### Motor Vehicles

**Senate Bill 735** provides a procedure for a motor vehicle distributor or manufacturer to terminate, cancel or renew an agreement with a dealer. Also, it provides a procedure for the dealer to challenge the manufacturer.

**House Bill 2497** allows a truck with four axles to tow a trailer with two axles, but the maximum weight cannot exceed 88,000 pounds, including a 10 percent tolerance.

**House Bill 2802** updates Commercial Drivers License (CDL) law to conform to federal law. Now, a holder of a CDL license cannot take advantage of prejudgment alternative disposition of certain traffic offenses in municipal court. Also, only commercial drivers who do not present a security threat are permitted to operate commercial vehicles carrying hazardous materials.

### Municipalities

**Senate Bill 237** The Legislature passed a measure during its 2005 Regular Session that is intended to generate greater revenue for recreation and tourism. As a result, West Virginia will be more attractive to new businesses and industries and existing ones will be more inclined to stay. This will provide economic security for the citizens of the state and advance business prosperity. Senate Bill 237 will allow municipalities to increase the tax which consumers pay to rent a hotel or motel room for a night. Under previous law, a municipality could only impose a 3 percent tax for the use of a room. Beginning July 1, 2005, a municipality will be able to increase that tax to no more than 6 percent.

If a county already has a tax imposed on a hotel or motel within the municipality's limits after January 1, 2005, then the county will be able to continue collecting that tax without the municipality being able to impose one. However, the tax will be limited to 3 percent. If the county commission discontinues the tax, then the municipality will be able to impose a tax no more than 6 percent. The total amount of taxable money cannot include charges for meals, valet service, room service, telephone service or any other charges not associated with occupancy of the room. All taxes collected will have to be referred to the taxing authority.

The tax revenue will be deposited into the municipality's or county's general revenue fund. At least 50 percent of the total revenue collected within a fiscal year must be spent to promote conventions and tourism. If a convention and



visitor's bureau were located within the municipality, then it would receive the additional funding. The county commission will determine the appropriation of funds if a convention and visitor's bureau is located within a county or region but not within a municipality. If there are two bureaus, then the city council or the county commission will determine how to divide the money between each. If there is not a bureau, then any hotel within the municipality, county or region may apply for an appropriation of the revenue. The hotel could only receive 75 percent of the amount which it collected and it must be used for the promotion of tourism and travel, which includes advertising, salaries, travel, office expenses, publications and similar expenses. Also, the hotel would have to submit a proposed budget of how the funds would be spent. Remaining funds would be expended to the regional travel council that serves the area where the municipality is located.

### Natural Resources

**Senate Bill 107** relates to hunting with dogs and provides that people would not be guilty of hunting without permission when the person's dog pursues an animal or wild bird onto another person's land without the person's direction or encouragement. The bill also makes clear that the criminal penalties would not be waived if the pursuit resulted in the taking of game, fish or fowl from the property, resulted in the killing of domestic animals or fowl on the property, or resulted in any other damage to the property.

**Senate Bill 287** transfers the authority to set forth rules relating to water quality standards from the Environmental Quality Board to the Department of Environmental Protection. This bill also establishes requirements for water protection, such as standards of purity and quality for groundwater.

**Senate Bill 476** allows hunters to use a red-colored artificial light when hunting coyotes. Current law allows for the usage of only amber-colored lights.

**House Bill 2333** establishes a program to encourage voluntary reclamation of lands to reduce water pollution caused by mining activities. The Legislature found that many land-owners, citizens and other groups that do not have the legal responsibility to reclaim lands are interested in engaging in reclamation efforts, but are hesitant because of possible liabilities. Under this legislation, an individual can submit a written reclamation or water abatement plan to the Division of Environmental Protection, which will give prior approval of all plans and can provide recommendations and advice to those participating.

**House Bill 2990** permits the Director of the Division of Natural Resources (DNR) to set the time and date for meetings of the Natural Resources Commission to be conducted in the interest of the public. Meetings are conducted in each quarter of the calendar year. The Director of the DNR has the discretion to determine the date and where the meeting takes place.

**House Bill 3023** raises revenues to subsidize West Virginia's participation in a federal coyote control program. Under this legislation, assessors are permitted to assess and collect a head tax of \$1 on all breeding-age sheep and goats, 10 percent of which may be kept by the assessor. The remaining 90 percent will go to the Commissioner of Agriculture, who will place it in a special account. These funds will be used for the state to work with the United States Agriculture Animal and Plant Health Inspection Service and Wildlife Services to extend the coyote control program statewide.

### Property & Housing

**House Bill 3016** addresses that secretaries of licensed real estate brokers and salespersons can make appointments with buyers and sellers or potential buyers and sellers of real estate from the capacity of the practice of real estate brokerage that is subject to licensing. The measure also gives secretaries the ability to accept and process rental reservations or bookings for no more than 30 consecutive days in a manner and procedure predetermined by the broker and can collect predetermined rental fees for the rentals that are paid to the broker.

### Public Safety & Law Enforcement

**Senate Bill 40** limits the time in which a purchaser of certain real estate that is considered to be erroneous or nonexistent at a sheriff's sale may claim a refund. The purchaser of the erroneous land must submit a refund claim before the end of December of the following year after the purchase, to receive a refund.

### Retirement

**Senate Bill 261** provides a mechanism for a special election to be held June 25, 2005 for state voters to ratify or reject the Legislature's proposed "Pension Bond Amendment" to the State Constitution. The amendment, adopted during the January 2005 Special Session, proposes to permit additional

general obligation bonds to be issued and not to exceed \$5.5 billion to help pay down the State Teachers Retirement System, the Judges' Retirement System and the Public Safety Death, Disability and Retirement System the State has already been paying.

**House Bill 2163** eliminates the offset against unemployment compensation benefits. Under current law, persons receiving unemployment compensation benefits have their benefits reduced by the amount of their Social Security benefits. This bill will do away with this act.

**House Bill 2984** provides that the Teachers Retirement System Plan Loan Program will not be available to any teacher or non-teacher who becomes a member of the system on or after July 1, 2005.

### Roads & Highways

**House Bill 3089** adds routes to the Coal Resource Transportation System in Braxton, Webster, Ohio and Nicholas counties. It also will add a second citizen member and a member of the largest organization representing natural resource transportation drivers to the Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee. The Governor will appoint both of these members.

### Rulemaking & Review

**Senate Bill 341** will authorize the Department of Health and Human Resources to promulgate legislative rules.

**Senate Bill 353** authorizes the Division of Highways to promulgate legislative rules relating to traffic and safety, the use of state roads rights-of-way and adjacent areas and the transportation of hazardous waste. This legislation also authorizes the Division of Motor Vehicles to promulgate legislative rules relating to administrative due process and the examination and issuance of driver's licenses.

**Senate Bill 357** authorizes the Department of Tax and Revenue to promulgate legislative rules.

**Senate Bill 382** authorizes the Department of Administration to promulgate legislative rules. The agencies that had amendments were Department of Administration, Consolidated Public Retirement Board, West Virginia Ethics Commission, Division of Information Service and Communications, Division of Personnel and Board of Risk and Insurance Management.

**Senate Bill 386** will allow the Department of Military Affairs and Public Safety to set forth and enforce legislative rules. The state Fire Marshal will be able to enforce rules relating to fees for licenses, permits, inspections and other services rendered; the State Police will be able to enforce rules pertaining to professional standards investigations within the State Police, employee rights, psychological assessments and discipline; the State Police will be able to establish a legislative rule for retired or medically discharged members to carry handguns; and, the Division of Veterans' Affairs will be able to set a rule relating to Veterans' Affairs' headstones or markers.

**House Bill 2669** authorizes miscellaneous boards and agencies to promulgate legislative rules.

**House Bill 2718** authorizes the Department of Commerce to promulgate legislative rules.

**House Bill 2723** authorizes the Department of Environmental Protection (DEP) to promulgate several legislative rules and authorizes the Environmental Quality Board to promulgate a legislative rule relating to requirements governing water quality standards.

### Sunset Laws

**Senate Bill 213** continues the Oral Health Program until July 1, 2007.

**Senate Bill 214** continues the West Virginia Acupuncture Board until July 1, 2008.

**Senate Bill 215** continues the West Virginia Board of Accountancy until the July 1, 2007.

**Senate Bill 281** continues the Emergency Medical Services Advisory Council until July 1, 2008. The Council assists in developing standards for emergency medical service personnel, as well as in establishing and maintaining adequate emergency services throughout West Virginia.

**Senate Bill 282** continues the School Building Authority (SBA) until July 1, 2007. The SBA was created in 1989 by the West Virginia Legislature and was empowered to facilitate and provide state funds for the construction and maintenance of school facilities to meet the educational needs of the people of the state in an efficient & economical manner.

**Senate Bill 283** continues the Health Care Authority until July 1, 2008. The Authority administers programs that generally

have two primary purposes: to constrain the rising cost of health care and to assure reasonable access to necessary health services.

**Senate Bill 285** continues the Division of Culture and History until July 1, 2007.

**Senate Bill 286** continues the Public Defender Services until July 1, 2008.

**Senate Bill 452** continues the West Virginia Board of Risk and Insurance Management (BRIM) until July 1, 2006. The primary responsibility for BRIM is to provide casualty insurance coverage for all State Agencies, which provides protection from lawsuits and other liability claims resulting from automobile accidents, employment practices, property, flood, general liability and medical professional liability at the respective teaching institutions. Currently, there are approximately 150 state agencies being provided coverage through BRIM. In addition, BRIM operates a similar insurance program for boards of education, county commissions, cities and towns, other governmental entities and many non-profit organizations around the state. With the exception of the boards of education, which are mandated to obtain coverage through BRIM, there are approximately 1,400 individual entities that voluntarily participate in this program statewide.

**Senate Bill 498** continues the West Virginia Prosecuting Attorneys Institute until July 30, 2011; change the Institute's responsibilities to include providing services to the entire staff of prosecutors; permits the Institute to train state and local law-enforcement and investigative and other investigative agencies; and, allows the Institute to partner with private groups or organizations to accept funds to reimburse expenses acquired because of the Institute's duties.

**House Bill 2449** continues the Board of Manufactured Housing Construction and Safety until July 1, 2011. The Board of Manufactured Housing Construction and Safety licenses manufacturers, dealers and manufactured home installers that conduct business in the state and also enforce federal manufactured construction standards. The Board investigates issues such as concerning installation of homes, construction of homes and warranty issues. The Board also issues violations to responsible licensees for correction of homes to meet code compliance and conducts a review of consumer contracts for misappropriation of consumer funds.

**House Bill 2623** continues the Board of Veterinary Medicine sunset date until July 1, 2009.

**House Bill 2666** continues the Department of Health and Human Resources until July 1, 2006. The Department of

Health and Human Resources administers programs that benefit the citizens of the state. Such programs include behavioral health, child support, public health and various medical services. Each of these programs forms an integral part in the health of most citizens in the state.

**House Bill 2667** continues the West Virginia Commission for the Deaf and Hard of Hearing. The WV Commission for the Deaf and Hard of Hearing was established in 1989 by the West Virginia Legislature, with the intent that it will break down barriers, promote independence, and provide access to services for those who are deaf and hard of hearing.

**House Bill 2846** continues the Real Estate Appraiser Licensing and Certification Board sunset date until July 1, 2013.

**House Bill 2893** continues the James "Tiger" Morton Catastrophic Illness Commission until July 1, 2008.

**House Bill 2958** continues the Public Employees Insurance Agency's (PEIA) Finance Board until July 1, 2008. The Finance Board of PEIA prepares an annual financial plan to generate sufficient funds for all expenses, including insurance, administrative expenses and acquired but unreported claims of the PEIA.

**House Bill 3046** continues the Board of Veterinary Medicine until July 1, 2007.

**House Bill 3361** updates the West Virginia sunset law. Continuation legislation voted on this session is incorporated into the article of code, which directs the Legislative Auditor's Performance Evaluation and Research Division reviews for the next several years.

### Supplemental Appropriations

**Senate Bill 269** supplements and amends existing appropriations from the State Road Fund to the Department of Transportation's Division of Highways' Fund for the fiscal year ending on June 30, 2005.

**Senate Bill 731** provides a supplementary appropriation of federal funds in the amount of \$1,612,202 to the Department of Transportation's Division of Public Transit. This was part of the appropriations made from available federal funds for the use of continuing programs.

**Senate Bill 732** makes a supplementary appropriation in the State Fund, General Revenue, to the Department of Transportation's Aeronautics Commission by decreasing and

increasing items of appropriation with no additional funds being appropriated. The total appropriated for this fund now reads \$1,320,820.

**Senate Bill 733** makes a supplementary appropriation of \$4,000 in federal funds to the Aeronautics Commission of the Department of Transportation.

**Senate Bill 734** makes a supplementary appropriation of federal funds to the State Mapping and Addressing Board.

**Senate Bill 739** makes a supplementary appropriation to the Department of Health and Human Resources' Division of Health Hepatitis B Vaccine Fund. The money consists of unappropriated funds from the fiscal year, which ends on June 30, 2005.

**Senate Bill 751** makes new appropriations available to various accounts under the Department of Transportation in the fiscal year starting June 13, 2005. The appropriations are as follows: personal services receives \$13,232,017; annual increment receives \$206,350; employee benefits receives \$5,678,059; and, unclassified receives \$ 19,876,868.

**Senate Bill 752** makes a supplemental appropriation from the federal government were granted to the Department of Environmental Protection. These supplemental appropriations will come from the Federal Treasury from the balance of federal moneys remaining unappropriated from the 2005 fiscal year. The total amount appropriated to the Department of Environmental Protection is \$10,000,000.

**House Bill 3181** makes a supplementary appropriation to the Bureau of Commerce - Economic Development Authority

**House Bill 3363** is a supplementary appropriation bill to enhance, change, reduce, and add a new item to the existing allotments in the Department of Military Affairs and Public Safety. The money, \$325,000 from the state's General Revenue Fund, will be for expenses through the 2005 fiscal year with no new money is being appropriated.

## Taxation

**Senate Bill 253** permits the Insurance Commissioner to waive or reduce the penalty for filing a late tax return. The taxpayer will be liable for a \$25 fee for each day it is late. Also, a taxpayer will be liable for a fee of 1 percent of the total for each day payment is late.

**Senate Bill 463** allows a county assessor to make a supplemental assessment on personal property when it was mistakenly omitted from record books for a period of less than five years. The assessor will then present supplemental assessment to the sheriff. The sheriff will then apply the levy rate for the applicable tax year or years, prepare a tax bill and collect the taxes due plus interest at a rate of six percent and any penalties.

**Senate Bill 614** updates the meaning of certain terms used in the Corporation Net Income Tax Act. This bill also provides the Tax Commissioner with additional remedies for noncompliance and for errors in computing federal taxable income.

**Senate Bill 623** updates the meaning of "federal adjusted gross income" and other terms used but currently not defined in the West Virginia Personal Income Tax Act by bringing the terms into conformity with the federal income tax meanings and purposes. The American Jobs Creation Act, signed into law in 2004, includes a federal tax benefit for certain domestic production activities. This new section of State Code will disallow the deduction when determining West Virginia personal income tax liability.

**Senate Bill 643** provides that in determining West Virginia taxable income of electing small business trusts, income attributable to S corporation stock held by a trust must be included. The bill also corrects erroneous cross-references to code sections concerning part-year residents with regard to personal income taxes.

**Senate Bill 646** exempts from taxes the gross income of a nonprofit homeowners' association received from assessments on its members for community services such as road maintenance, common area maintenance, water service, sewage service and security service. The measure also defines what a homeowners association is and defines who is a member of this association.

**Senate Bill 657** clarifies that the current 60-day time limit for filing an appeal with the Office of Tax Appeals would not apply when other sections of the West Virginia Code assert different time limits. For example, a portion of the Code says that when a jeopardy assessment is made against a taxpayer, that person is required to file a petition for reassessment within 20 days after receiving notice of the jeopardy assessment.

**Senate Bill 667** authorizes those who sell or deliver motor fuel to the federal government or its agencies to claim a refund of the tax paid by the seller and to change the time for claiming a refund to a quarterly basis if the federal government refuses to pay the Motor Fuel Excise Tax.

**Senate Bill 684 (Vetoed)** reduces the current severance tax rate on natural gas from five percent to three percent for wells drilled on or after December 1, 2005. The bill also will remove the current five-year severance tax exemption for coal bed methane wells drilled on or after December 1, 2005. The severance tax rate on coal bed methane will be reduced from five percent to three percent. Severance taxes are the fees charged for the privilege of “severing” or removing natural products such as coal, timber and gas.

**Senate Bill 692** requires a city manager only to be a resident of the city at the time of his/her appointment. The bill also removes an unconstitutional provision currently in the West Virginia Code which states that the mayor, a recorder and councilmen were required to have been assessed and also paid real or personal property taxes to a municipality for the year preceding their election.

**Senate Bill 705** delays the effective date of the Municipal Sales and Service Tax and the Municipal Use Tax until July 1, 2008. This postponement was needed to provide the Tax Commission with time for the installation of a new computer system that will be used for processing these taxes.

**Senate Bill 746 (Vetoed)** reduces the rate of tax imposed on the gross value of timber produced from 3.22 percent to 1.22 percent, for timber produced after December 31, 2005. The bill reduces the severance tax imposed on natural gas produced from wells placed in service from 5 percent to 4 percent on or after the December 1, 2005. The bill also reduces the severance tax on gas produced from coalbed methane wells from 5 percent to 4 percent on or after December 1, 2005 and dedicates and distributes 10 percent of the coalbed methane severance tax for the benefit of counties and municipalities.

**House Bill 2777** makes technical changes concerning high-tech research zones, parks and technology centers and tax incentives that relate to these facilities. The bill also will initiate a plan to specify qualifications to be met in order to receive approval by the Development Office as a research zone, park or technology center or as a qualified business. The Development Office will designate the particular geographic area comprising the zone, park or technology center.

**House Bill 3012** exempts property being acquired by the state, a county, district, city, village, town or other political subdivision, state college or university from property tax.

**House Bill 3033** extends the temporary special reclamation tax on coal for an additional 18 months. The bill also requires the Secretary of the Department of Environmental Protection (DEP) to pursue cost effective alternative water treatment strategies and to conduct studies every two years

on the Special Reclamation Fund. The bill also will allow the Secretary to implement a full cost bonding program, a water quality trust fund program or other funding mechanisms in lieu of the per ton coal tax or a portion of it.

**House Bill 3211** will establish standards to govern reimbursement from one commercial entity to another. When a motor fuel contract requires one party to reimburse another for federal motor fuel excise taxes, the party making the reimbursement, will have the option to wait to reimburse the other party until one business day before the other party is required to submit the taxes to the Internal Revenue Service.

**House Bill 3357** makes technical changes in the West Virginia Code to definitions found in the section addressing the Streamlined Sales and Use Tax Agreement. It also states that West Virginia will have four representatives on the governing board of the Streamlined Sales and Use Tax Agreement.

### Technology

**Senate Bill 639** recognizes and authorizes the use of an electronic postmark as part of digital signatures and electronic commerce. An electronic postmark is defined as an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Post Office. The bill also allows the use of an existing federal certificate authority program, an official program established by an agency of the United States government for the issuance and authentication of digital signature certificates or other secure electronic authorizations to individuals for use in electronic transactions, by the state.

### Veterans

**House Bill 2285**, provides for the administrative process and the implementation of the Veterans Bonus Amendment of 2004 which was approved overwhelmingly by the voters in November 2004. I am happy to see the state moving so quickly to get this program up and running and to see this be fully implemented.

The Division of Veterans Affairs will administer the bonuses and the Governor may appoint a Veterans Advisory Committee to advise the Director of the Division of Veterans Affairs in this endeavor. The cash bonuses will be available to veterans and the relatives of deceased veterans of the

Kosovo, Afghanistan and Iraq conflicts and who are or were residents of the state.

The bonus amounts are \$600 for veterans who were in active service inside the combat zone in Kosovo, Afghanistan and Iraq and \$400 for veterans who were in active service during the time periods specified for the Afghanistan and Iraq conflicts outside of the combat zone. A \$2000 payment would be awarded to the families of deceased veterans when the veteran's death was connected with or was caused by their service.

The bill also creates the Veterans Bonus Fund for any money appropriated by the Legislature. Moneys in the fund may be used to pay the bonuses and for the cost of administration of the program. Felony penalties are created for making false statements in support of a claim for a bonus and filing more than one application with the intent to defraud.

**House Bill 2286**, encourages high school musicians to learn to sound "Taps" at military funerals. The Legislature, in studying this measure, has found it is often difficult to find someone to sound Taps when the families wish to bury a deceased veteran with a military honors funeral. Some funerals have used a tape recording instead of a bugler to sound this haunting tribute to a fallen soldier.

To encourage students to take up this important duty, the State Board of Education would need to develop guidelines and contact information for the counties to adopt policies for a school level program for students in grades 6 - 12.

The county policies must address the distribution of information to music and band teachers for their use in notifying students and obtaining parental consent for voluntary registry and assisting in the funerals. The policies should also reflect the credit toward community service or work-based learning that the student will receive and the limits on regular classroom instruction that the student may miss.

## 2005 Second Special Session

Second Special Session - Approximately \$350 million remained unappropriated from FY 05's general revenue account. This revenue reflects a higher-than-expected amount in taxes and fees coupled with \$139.2 million in higher-than-planned lottery collections. The surplus helped fund six spending measures meant to supplement the FY 05 budget. Six supplemental bills numbered from **HB201** to **HB206** distributed dollars to various areas:

- \* \$10.9 million for Promise Scholarships funding it at a total of about \$38 million. The original Promise plan totaled \$27 million but an agreement has been made with the administration that a cap will be put on funding for this program.
- \* \$22 million for the State Tax Department to replace an antiquated computer system.
- \* \$14.5 million to pay for damage from recent floods.
- \* \$9.3 million to cover regional jail expenses.
- \* \$2.5 million to pay for increased enrollment at public schools in high-growth areas like the Eastern Panhandle.
- \* \$6 million to fund veterans' bonuses
- \* \$1.25 million for maintenance and construction of State Police barracks in Berkeley and Jackson counties.
- \* Almost \$3 million for tourism projects and promotion.

The bulk of the surplus was earmarked to assist the underfunded State Police Retirement Plan A by \$225 million. This influx of dollars now makes that retirement plan 86% funded.

## Veto Messages (16)

- SB 42** - Vetoed by Governor 4/18/05
- SB 433** - Vetoed by Governor 5/4/05
- SB 513** - Vetoed by Governor 4/16/05
- SB 584** - Vetoed by Governor 4/16/05
- SB 616** - Vetoed by Governor 4/16/05
- SB 661** - Vetoed by Governor 5/4/05
- SB 684** - Vetoed by Governor 5/4/05
- SB 741** - Vetoed by Governor 5/4/05
- SB 746** - Vetoed by Governor 5/4/05
- HB 2381** - Vetoed by Governor 4/16/05
- HB 2782** - Vetoed by Governor 4/16/05
- HB 2966** - Vetoed by Governor 5/4/05
- HB 3178** - Vetoed by Governor 4/16/05
- HB 3203** - Vetoed by Governor 5/4/05
- HB 3293** - Vetoed by Governor 4/18/05
- HB 3360** - Vetoed by Governor 5/4/05

## Bill Status

For bill history information and full bill text of all Legislation from the 2005 Regular and Special Sessions, please go to: <http://www.legis.state.wv.us/> and select the "Bill Status" link.

## All Bills Passed (265) - Index

<b>SB 19</b> , pg. 19	<b>SB 419</b> , pg. 12	<b>SB 692</b> , pg. 29	<b>HB 2522</b> , pg. 5	<b>HB 3045</b> , pg. 13
<b>SB 30</b> , pg. 21	<b>SB 421</b> , pg. 22	<b>SB 699</b> , pg. 8	<b>HB 2523</b> , pg. 11	<b>HB 3046</b> , pg. 27
<b>SB 40</b> , pg. 25	<b>SB 424</b> , pg. 18	<b>SB 700</b> , pg. 18	<b>HB 2527</b> , pg. 16	<b>HB 3048</b> , pg. 24
<b>SB 42</b> , pg. 17	<b>SB 427</b> , pg. 20	<b>SB 703</b> , pg. 5	<b>HB 2528</b> , pg. 16	<b>HB 3049</b> , pg. 14
<b>SB 94</b> , pg. 15	<b>SB 428</b> , pg. 17	<b>SB 705</b> , pg. 29	<b>HB 2534</b> , pg. 7	<b>HB 3051</b> , pg. 5
<b>SB 104</b> , pg. 10	<b>SB 433</b> , pg. 17	<b>SB 716</b> , pg. 11	<b>HB 2570</b> , pg. 7	<b>HB 3068</b> , pg. 23
<b>SB 107</b> , pg. 25	<b>SB 435</b> , pg. 13	<b>SB 717</b> , pg. 20	<b>HB 2578</b> , pg. 10	<b>HB 3089</b> , pg. 26
<b>SB 122</b> , pg. 6	<b>SB 435</b> , pg. 13	<b>SB 728</b> , pg. 19	<b>HB 2592</b> , pg. 23	<b>HB 3094</b> , pg. 10
<b>SB 146</b> , pg. 14	<b>SB 450</b> , pg. 7	<b>SB 729</b> , pg. 14	<b>HB 2619</b> , pg. 18	<b>HB 3098</b> , pg. 10
<b>SB 147</b> , pg. 15	<b>SB 452</b> , pg. 27	<b>SB 731</b> , pg. 27	<b>HB 2623</b> , pg. 27	<b>HB 3104</b> , pg. 10
<b>SB 153</b> , pg. 18	<b>SB 455</b> , pg. 17	<b>SB 732</b> , pg. 27	<b>HB 2650</b> , pg. 4	<b>HB 3105</b> , pg. 21
<b>SB 154</b> , pg. 17	<b>SB 456</b> , pg. 11	<b>SB 732</b> , pg. 27	<b>HB 2663</b> , pg. 4	<b>HB 3106</b> , pg. 8
<b>SB 166</b> , pg. 12	<b>SB 459</b> , pg. 23	<b>SB 733</b> , pg. 28	<b>HB 2666</b> , pg. 27	<b>HB 3125</b> , pg. 9
<b>SB 183</b> , pg. 11	<b>SB 463</b> , pg. 28	<b>SB 734</b> , pg. 28	<b>HB 2667</b> , pg. 27	<b>HB 3138</b> , pg. 23
<b>SB 191</b> , pg. 19	<b>SB 473</b> , pg. 6	<b>SB 735</b> , pg. 24	<b>HB 2669</b> , pg. 26	<b>HB 3151</b> , pg. 8
<b>SB 194</b> , pg. 7	<b>SB 476</b> , pg. 25	<b>SB 736</b> , pg. 10	<b>HB 2718</b> , pg. 26	<b>HB 3152</b> , pg. 23
<b>SB 198</b> , pg. 7	<b>SB 491</b> , pg. 10	<b>SB 737</b> , pg. 7	<b>HB 2723</b> , pg. 26	<b>HB 3153</b> , pg. 14
<b>SB 213</b> , pg. 26	<b>SB 492</b> , pg. 9	<b>SB 739</b> , pg. 28	<b>HB 2764</b> , pg. 20	<b>HB 3174</b> , pg. 21
<b>SB 214</b> , pg. 26	<b>SB 498</b> , pg. 27	<b>SB 741</b> , pg. 4	<b>HB 2777</b> , pg. 29	<b>HB 3178</b> , pg. 14
<b>SB 215</b> , pg. 26	<b>SB 499</b> , pg. 27	<b>SB 744</b> , pg. 4	<b>HB 2780</b> , pg. 18	<b>HB 3181</b> , pg. 28
<b>SB 222</b> , pg. 8	<b>SB 513</b> , pg. 18	<b>SB 746</b> , pg. 29	<b>HB 2782</b> , pg. 7	<b>HB 3203</b> , pg. 24
<b>SB 229</b> , pg. 6	<b>SB 513</b> , pg. 18	<b>SB 748</b> , pg. 18	<b>HB 2783</b> , pg. 16	<b>HB 3208</b> , pg. 10
<b>SB 235</b> , pg. 5	<b>SB 514</b> , pg. 13	<b>SB 749</b> , pg. 12	<b>HB 2789</b> , pg. 7	<b>HB 3211</b> , pg. 29
<b>SB 236</b> , pg. 19	<b>SB 514</b> , pg. 13	<b>SB 751</b> , pg. 28	<b>HB 2802</b> , pg. 24	<b>HB 3219</b> , pg. 15
<b>SB 237</b> , pg. 24	<b>SB 521</b> , pg. 16	<b>SB 752</b> , pg. 28	<b>HB 2812</b> , pg. 13	<b>HB 3236</b> , pg. 24
<b>SB 238</b> , pg. 8	<b>SB 522</b> , pg. 12	<b>HB 2005</b> , pg. 1	<b>HB 2813</b> , pg. 13	<b>HB 3280</b> , pg. 8
<b>SB 240</b> , pg. 19	<b>SB 524</b> , pg. 6	<b>HB 2011</b> , pg. 20	<b>HB 2816</b> , pg. 20	<b>HB 3281</b> , pg. 17
<b>SB 248</b> , pg. 15	<b>SB 531</b> , pg. 20	<b>HB 2078</b> , pg. 5	<b>HB 2837</b> , pg. 16	<b>HB 3293</b> , pg. 11
<b>SB 253</b> , pg. 28	<b>SB 548</b> , pg. 14	<b>HB 2111</b> , pg. 17	<b>HB 2846</b> , pg. 27	<b>HB 3306</b> , pg. 15
<b>SB 254</b> , pg. 21	<b>SB 550</b> , pg. 20	<b>HB 2128</b> , pg. 11	<b>HB 2866</b> , pg. 24	<b>HB 3328</b> , pg. 17
<b>SB 256</b> , pg. 21	<b>SB 558</b> , pg. 6	<b>HB 2129</b> , pg. 14	<b>HB 2869</b> , pg. 8	<b>HB 3347</b> , pg. 13
<b>SB 261</b> , pg. 25	<b>SB 561</b> , pg. 12	<b>HB 2150</b> , pg. 9	<b>HB 2878</b> , pg. 23	<b>HB 3354</b> , pg. 18
<b>SB 268</b> , pg. 14	<b>SB 575</b> , pg. 5	<b>HB 2163</b> , pg. 26	<b>HB 2885</b> , pg. 21	<b>HB 3356</b> , pg. 8
<b>SB 269</b> , pg. 27	<b>SB 580</b> , pg. 4	<b>HB 2174</b> , pg. 9	<b>HB 2890</b> , pg. 5	<b>HB 3357</b> , pg. 29
<b>SB 278</b> , pg. 6	<b>SB 583</b> , pg. 13	<b>HB 2229</b> , pg. 9	<b>HB 2891</b> , pg. 19	<b>HB 3360</b> , pg. 8
<b>SB 281</b> , pg. 26	<b>SB 584</b> , pg. 9	<b>HB 2266</b> , pg. 4	<b>HB 2892</b> , pg. 10	<b>HB 3361</b> , pg. 27
<b>SB 282</b> , pg. 26	<b>SB 585</b> , pg. 13	<b>HB 2271</b> , pg. 9	<b>HB 2893</b> , pg. 27	<b>HB 3363</b> , pg. 28
<b>SB 283</b> , pg. 26	<b>SB 587</b> , pg. 9	<b>HB 2285</b> , pg. 29	<b>HB 2929</b> , pg. 21	
<b>SB 285</b> , pg. 27	<b>SB 588</b> , pg. 5	<b>HB 2286</b> , pg. 30	<b>HB 2937</b> , pg. 11	
<b>SB 286</b> , pg. 27	<b>SB 603</b> , pg. 16	<b>HB 2296</b> , pg. 24	<b>HB 2939</b> , pg. 19	
<b>SB 287</b> , pg. 25	<b>SB 604</b> , pg. 16	<b>HB 2333</b> , pg. 25	<b>HB 2950</b> , pg. 17	
<b>SB 341</b> , pg. 26	<b>SB 604</b> , pg. 16	<b>HB 2334</b> , pg. 9	<b>HB 2958</b> , pg. 27	
<b>SB 347</b> , pg. 16	<b>SB 614</b> , pg. 28	<b>HB 2350</b> , pg. 16	<b>HB 2960</b> , pg. 5	
<b>SB 348</b> , pg. 6	<b>SB 616</b> , pg. 13	<b>HB 2368</b> , pg. 4	<b>HB 2966</b> , pg. 5	
<b>SB 353</b> , pg. 26	<b>SB 623</b> , pg. 28	<b>HB 2371</b> , pg. 20	<b>HB 2973</b> , pg. 7	
<b>SB 357</b> , pg. 26	<b>SB 639</b> , pg. 29	<b>HB 2381</b> , pg. 20	<b>HB 2980</b> , pg. 23	
<b>SB 382</b> , pg. 26	<b>SB 640</b> , pg. 7	<b>HB 2417</b> , pg. 18	<b>HB 2981</b> , pg. 10	
<b>SB 386</b> , pg. 26	<b>SB 643</b> , pg. 28	<b>HB 2444</b> , pg. 4	<b>HB 2984</b> , pg. 26	
<b>SB 401</b> , pg. 16	<b>SB 646</b> , pg. 28	<b>HB 2449</b> , pg. 27	<b>HB 2990</b> , pg. 25	
<b>SB 406</b> , pg. 4	<b>SB 650</b> , pg. 10	<b>HB 2466</b> , pg. 16	<b>HB 2991</b> , pg. 11	
<b>SB 411</b> , pg. 12	<b>SB 657</b> , pg. 28	<b>HB 2471</b> , pg. 7	<b>HB 3002</b> , pg. 17	
<b>SB 413</b> , pg. 6	<b>SB 659</b> , pg. 6	<b>HB 2476</b> , pg. 11	<b>HB 3010</b> , pg. 12	
<b>SB 414</b> , pg. 9	<b>SB 661</b> , pg. 14	<b>HB 2477</b> , pg. 11	<b>HB 3012</b> , pg. 29	
<b>SB 417</b> , pg. 12	<b>SB 666</b> , pg. 23	<b>HB 2478</b> , pg. 5	<b>HB 3014</b> , pg. 23	
<b>SB 418</b> , pg. 21	<b>SB 667</b> , pg. 28	<b>HB 2482</b> , pg. 14	<b>HB 3016</b> , pg. 25	
	<b>SB 669</b> , pg. 12	<b>HB 2483</b> , pg. 10	<b>HB 3018</b> , pg. 16	
	<b>SB 670</b> , pg. 16	<b>HB 2492</b> , pg. 9	<b>HB 3023</b> , pg. 25	
	<b>SB 674</b> , pg. 16	<b>HB 2495</b> , pg. 10	<b>HB 3031</b> , pg. 24	
	<b>SB 684</b> , pg. 29	<b>HB 2497</b> , pg. 24	<b>HB 3033</b> , pg. 29	
	<b>SB 691</b> , pg. 18	<b>HB 2510</b> , pg. 8		

### **West Virginia Legislature's Web site**

Over the past year, the Legislature's Web site has undergone many changes to strengthen your connection to West Virginia's legislators and the laws that govern this state. By navigating the Legislature's Web site, you will discover how to contact your lawmakers, read bills online and track the status of specific legislation. The Legislature's online Bulletin Board maintains prompt information during legislative sessions through the Legislature's Calendars, Meetings, Abstracts, Indexes and Journals. Citizens also can view the entire West Virginia Code, interactive district maps, committee agendas and membership information at: <http://www.legis.state.wv.us>

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**May 15 - 17**  
**June 12 - 14**  
**July 10 - 12**  
**August 7 - 9**  
**September 11 - 13**  
**October 2 - 4**  
**November 6 - 8**  
**December 11 - 13**  
**January, 2006 8 - 10**

**2005 - 2006  
Interim Committee  
Meeting Dates**

**Note:** All dates are subject to change - no decisions have been made as to whether there will be any out-of-town interims.