

The Legislature

West Virginia School Boards Association



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Week's bills reviewed

by Howard M. O'Cull, Ed.D.

The following W. Va. Senate and House of Delegates bills were introduced Jan. 14-16 during the first week of the 2004 regular legislative session. Bill reviews are included in two primary categories – “Public Education” and “Public Education-Related”. Bills also of interest are included in the categories of “Miscellaneous Bills” and “Briefly Mentioned.” Senate bills are listed first.

If you would like more information about any bill reviewed, please contact me at hocull@wvsba.org or 304.346.0571.

A total of 72 education and education-related bills are reviewed in this issue.

– O'Cull is W.Va. School Boards Association executive director.

PUBLIC EDUCATION

Alternative Education

\$8 million for alternative schools

House Bill 4037. Revised §18-9A-21 would provide at least \$8 million for alternative education programs. (Current law says “an appropriation may be made to the state department (of education) to be distributed to county boards for the operation of alternative education programs...”)

The first \$2 would be distributed, based on net enrollment, and the remainder of dollars would be distributed on a “competitive grant basis for pilot or innovative alternative education programs.”

Pilot alternative education programs would vary, including programs that allow students to “work their way back into the regular classroom through improved behavior” and programs that ensure “safety in regular classrooms and alternative education strategies to help improve student behavior and learning.”

A second bill provision specifies what juvenile records are to disclose when provided to county superintendents, including copies of arrest reports, investigations, copies of psychological testing reports and results, records relating to probation or facility placement and “other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others.”

There are certain restrictions, including a stipulation that the person “designated by the circuit court is required only to disclose material that had not previously been disclosed in the juvenile’s record to the county superintendent and the school if multiple disclosures are required...”

Under terms of the bill—§49-5-17(14)—county superintendents are to designate a school psychologist or other “appropriately trained

person to receive the juvenile's psychological test or mental health records." This person, in reviewing the records, would "disclose to the principal... (of the school) that the juvenile attends, and other school employees who would have a need to know the results of the juvenile's psychological test, mental health and any behavior that may trigger violence or other disruptive behavior by the juvenile, including, but not limited to, any teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the subject juvenile is regularly transported to or from school."

There are other provisions.

Sponsored by House Education Committee Vice Chairman Larry A. Williams (D-Preston). Introduced Jan. 15. Referred to House Education Committee, then House Finance Committee. (*Similar proposals have been introduced in past sessions.*)

Americans with Disabilities Act

ADA coordinator established

Senate Bill 140. Under provisions of this bill—part of Gov. Bob Wise's legislative proposals—a state American With Disabilities Coordinator position would be created within the Department of Administration to ensure compliance with 42 U.S.C. § 12101, et. seq., the federal Americans with Disabilities Act.

Sponsored by Sen. Pres. Earl Ray Tomblin (D-Logan) and Vic Sprouse, Senate Minority Leader. Introduced Jan. 14. Referred to Senate Government Organization Committee, then Senate Finance Committee.

The companion measure is **House Bill 4009**, sponsored by House Speaker Robert S. Kiss (D-Raleigh) and Charles S. Trump IV (R-Morgan), House Minority Leader. Introduced Jan. 14. Referred

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to House Government Organization Committee, then House Finance Committee.

Both bills have been introduced at the request of the governor.

Compulsory Attendance

18 proposed for drop-out age

Senate Bill 21. Revised §18-8-1 would raise from age 16 to age 18 the period of compulsory school attendance in West Virginia. NOTE: This bill was discussed last year by the Senate Education Committee and during an interim committee session.

The purpose of the legislation, according to the bill sponsor, is to keep students in school rather than having them quit school and thus being without gainful employment, marketable employment skills or engaging in unwholesome activities.

Sponsored by Sen. Mike Ross (D-Randolph). Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee. The bill calls for a Fiscal Note. (*Similar legislative proposals have been introduced or considered in past sessions.*)

County Superintendents

Bonding proof required

House Bill 4045. Revised §18-4-2 (4)(c) would require evidence to be submitted to the State Superintendent of Schools that a county superintendent has given bond as required pursuant to §6-2-10.

Sponsored by House Education Committee Chairman Jerry L. Mezzatestata (D-Hampshire) and Del. Williams. Introduced Jan. 15. Referred to House Education Committee. NOTE: The committee approved this legislation at a Jan. 15 meeting.

Curricula

Firearms instruction requested

Senate Bill 24. Revised §18-2-8a would require the state Board of Education to provide an orientation program for grades 7-9 relating to "the safety of firearms."

The program would be offered over a two-week during the school year.

The program would deal with the "protection of lives and property against loss or damage as a result of the improper use of firearms." It also would cover use of firearms in hunting, sport competition and the care and safety of firearms in the home. Materials used could be provided by "any national nonprofit membership organization which has as one of its purposes the training of people in marksmanship and the safe handling and use of firearms."

County superintendents are to arrange for the orientation program.

The program is to be provided in conjunction with the Director of the Division of Natural Resources.

Sponsored by Sen. Billy Wayne Bailey (D-Wyoming). Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee. There is no House companion measure. (*Similar proposals have been introduced in past sessions.*)

Bill extols mastery of 3Rs

House Bill 4043. Proposed §18-2E-3f would establish the priority for Early Childhood Education instruction, requiring mastery of the basic skills of reading, mathematics and English language arts as a “priority for (ECE) programs.”

The bill calls for “intensive instruction, early detection and intervention to correct student deficiencies in the basic skills of reading, mathematics and English language arts (in ECE programs).”

The WVBOE, in order to meet the bill’s mandates, would be required to adopt rules to effectuate the intent of the legislation. These rules are due by July 1, 2004.

The rules must stipulate that “Reading, mathematics and English language arts are the only subjects that are required to be taught daily in (Grades K-2) ECE programs.”

Other instruction is to “be oriented to reinforce instruction in reading, mathematics and English language arts.”

Various strategies are to be employed during the instructional term to detect deficiencies in these curricula areas, including “allowing flexibility in student schedules to provide additional time and instruction for students who are below mastery in these subjects in Grades 3-4.”

The bill has other provisions.

Sponsored by Del. Mezzatesta. Introduced Jan. 15. Referred to House Education Committee, then House Finance Committee.

Public Education Generally

Veterans to get diplomas

Senate Bill 93. The purpose of this legislation is to provide high school diplomas to veterans who didn’t graduate from high school, leaving elementary or middle through twelfth grade prior to graduation for military service.

Sponsored by Sen. Roman W. Prezioso Jr. (D-Marion). Introduced Jan. 14. Referred to Senate Military Committee, then Senate Education Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Teacher empowerment detailed

Senate Bill 167. This 45-page proposal includes several of the education proposals outlined by Gov. Bob Wise in his Jan. 14 State of the State address. These are among bill provisions:

1. Prior to admitting a pupil to “any public school, the principal of that school...shall consult the...(W. Va. Education Information System)...to determine whether the pupil requesting admission is, at the time of the request for admission, serving a suspension or expulsion from another public school in West Virginia.

Under terms of this proposed statutory revision, the W. Va. Board of Education is to “disallow the recording of the enrollment of any pupil who is, at the time of attempted enrollment, serving a suspension or expulsion from another public school in West Virginia, and for that system to notify the user who has attempted to record such enrollment that the pupil may not be enrolled, and to notify that user of the reason therefor.”

2. Faculty senates would be given authority (“shall select”) to determine faculty who will serve as mentors for beginning teachers (beginning teacher internship program).

3. A new section of Code would be created, §18-5A-7, relating to the establishment of county faculty senates. These county senates would be comprised of “the chairs of each public school faculty senate in the county, all of whom shall be voting members.” Members of the county faculty senate would elect a chair, vice chair and secretary.

The purpose of the county faculty senate is to “provide members with periodic opportunities to meet as a group and with the county superintendent and members of the county board of education to discuss issues common to teachers in all county schools.”

The bill provides that the county superintendent must meet with county faculty senate members at least once annually.

4. The Education and State Employees Grievance Board would be expanded to five members. Three members are to be “citizens of the state” (current law). The other two members “shall be classified employees, one from education and the other from government.”

Members would be appointed by the governor with consent of the Senate for overlapping two-year terms. (Also refer to **Senate Bill 142** and **House Bill 4005**.)

5. When selecting “from among eligible substitute teachers for initial assignments, school administrators shall give first priority to teachers who have been laid off and second priority to teachers who are certified to teach in the classroom for which a substitute teacher is sought.”

6. Teacher mentors would include, among other members, “an experienced classroom teacher selected by the faculty senate at the school” who teaches the same or similar subject and grade level as the beginning teacher. (Existing law is not specific regarding “who” appoints the classroom teacher.)

NBPTS Coordinator

7. County superintendents would be required to designate a “coordinator for (National Board for Professional Teaching Standards) certification.” The state board is to provide training for these individuals. The position is necessary, according to the proposed statutory revision, because the NBPTS process “can be difficult and confusing for teachers.”

8. As stated by the governor in his State of the State address, teachers receiving NBPTS certification would receive a \$3,500 annual stipend “for the life of the certification, but in no event (for more) than (10 years) for any one certification.”

9. Under a newly proposed statute, “school personnel” would receive free admittance to “interscholastic athletic events hosted by the public school at which they are employed.”

10. Teachers would be granted the right to appeal principals’ decisions regarding disciplinary action to the county superintendent or his or her designee. (This section of Code relates to excluding students from class and for related infractions.)

The teacher’s “appeal” is to be in writing along with a copy of the “principal’s written communication of the type of disciplinary action, if any, taken. The teacher shall provide the principal with a copy of his or her appeal.”

The county superintendent or designee “may conduct an informal hearing and shall provide the teacher, the principal, and the pupil’s parent(s), guardian(s), or custodian(s) with written notice of his or her decision. The superintendent’s decision shall not be subject to appeal.”

The provision apparently applies only to principals’ decisions regarding teacher discipline.

11. Student suspensions or expulsions are to be “recorded (in the WVEIS) system” by the school principal within 24 hours of the imposition of the suspension or expulsion.

12. Detailed records regarding expulsions or suspensions are to be made, including “the reason for the suspension or expulsion” and its beginning and ending dates.

13. The WVBOE is to “collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any pupil enrolled or seeking to enroll at that principal’s school.”

These proposed provisions, according to the bill, will allow principals to fulfill their statutory duties to “determine whether a pupil requesting to enroll at a public school in West Virginia currently (is) serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about pupils’ disciplinary histories.”

Paperwork Advisory Committee

14. The bill creates a Paperwork Advisory Committee whose purpose is to “examine ways to reduce the time that teachers, guidance counselors, and other school personnel are required to spend on paperwork.”

15. The 11-member committee would include five members appointed by the governor, “at least two of whom must be knowledgeable of public school paperwork requirements and/or technological automation”; three members appointed by the WVBE; the president of the W.Va. Federation of Teachers; the president of the W. Va. Education Association; and, the president of the W.Va. Association of School Administrators (or their designees). The governor is to designate the council chairperson. Members serve without compensation, but may receive expense reimbursement.

16. The PAC is to examine the amount of paperwork required of teachers, guidance counselors and other school personnel, sources of paperwork, opportunities to eliminate paperwork, and opportunities to “simplify and/or automate necessary paperwork.” The goal for the group is to “submit proposals that result in a (10 percent) reduction of paperwork over each of the next three years.”

The W.Va. Department of Education is to provide “all necessary assistance, including clerical support, to the council in order for the council to perform its work.”

17. Committee reports or recommendations are to be made by Dec. 1 2004, 2005, and 2006. The Committee would cease to exist on April 1, 2007.

Sponsored by Sens. Tomblin and Sprouse and Dels. Kiss and Trump. The bills were referred to the respective Senate and House Education and Finance Committees. These bills were introduced at the request of the governor.

School Aid Formula

Ratio cap exemption allowed

Senate Bill 150. Revised §18-9A-4 would allow the state superintendent of schools, as delineated by state Board of Education policy, to “waive the maximum ratio of (53.5 professional educators per 1,000 students – adjusted enrollment)...in those cases where the state superintendent determines that that student population density justifies the waiver(s).”

County boards would have to petition for the waiver.

NOTE: This bill is designed so that sparsely populated counties can receive “relief” from statutory professional personnel ratio requirements.

Sponsored by Sens. Tomblin and Sprouse. Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee.

The companion measure is **HB4018**. It is sponsored by Dels. Kiss and Trump. Introduced Jan. 14. Referred to House Education Committee, then House Finance Committee.

Both are part of the governor’s proposed legislative package. (*Similar legislative proposals have been introduced in past sessions.*)

School Building Authority

SBA subject to legislative rules

Senate Bill 84. Under terms of this bill, W. Va. Code §18-9D-3, 18-9D-15 and §18-9D-16 would be amended so that county boards could expend School Building Authority of West Virginia funds on any school that has been included in an approved Comprehensive Educational Facilities Plan (CEFP).

The legislation also would specify that no one SBA funding criterion, especially the ‘economies of scale,’ would dominate other statutory criteria when the SBA makes decisions to award grant moneys.

Additionally, the bill places the SBA under legislative rule-making review, with its guidelines to be approved as legislative rules.

In terms of ‘economies of scale,’ the bill requires the SBA to “(take) into account that population sparsity affects school sizes, transportation times and costs.”

The legislation also establishes statutory bus travel times, including 30 minutes for Grades K-5.

Sponsored by Sen. Ross. Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee. (*Similar legislative proposals have been introduced in past sessions.*)

School Personnel

Sub. tenure days revised

Senate Bill 15. Revised §18A-4-7a would remove the requirement that substitute teachers work at least 133 days in a school year to count that employment toward seniority for full-time employment hiring purposes.

Sponsored by Sen. Andy McKenzie (R-Ohio). Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee.

A related bill is **House Bill 4042**. It states that a retired teacher will be employed as a substitute teacher in an area of critical need and shortage only when “no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment.”

NOTE: These provisions were included in **House Bill 2268**, a carryover bill adopted by the House Education Committee Jan. 15.

Sponsored by Del. Mezzatesta. Introduced Jan. 15. Referred to House Education Committee, then House Finance Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Citizen coaches would get tenure

Senate Bill 61 would allow a public school coach who has served for at least one year to continue to serve as a coach for a term of one-three years.

Sponsored by Sen. Jon B. Hunter (D-Monongalia). Introduced Jan. 14. Referred to Senate Education Committee.

Also refer to **House Bill 4039**. Revised §18A-3-2a would permit contracted coaches who have been employed in the same position for at least three consecutive years to be employed in that position in subsequent years without the requirement that the position be posted annually.

Sponsored by Del. Mezzatesta. Introduced Jan. 15. Referred to House Education Committee.

NOTE: This legislation was approved by the HEC Jan. 15. (*Similar proposals have been introduced in past sessions.*)

Good Friday to be holiday

Senate Bill 64. Revised §18A-5-2 would require schools to be closed on Good Friday. Sponsored by Sen. Bailey. Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee. A Fiscal Note is requested. (*Similar proposals have been introduced in past legislative sessions.*)

Counselor's duties redefined

Senate Bill 92. This bill has several provisions. It would:

- Provide that no more than 25 percent of a counselor's duties could be administrative in nature.
- Stipulate a ratio of 250 students per school counselor by 2010, with salary supplements assigned to counselors with more than 275 students.
- Provide counselors who are nationally-certified a \$2,500 salary supplement.
- Allow counselors to receive reimbursement for expenses incurred in attaining national certification.
- Prohibit counselors from "filing student records and forms; data entry; duplication of documents and materials for distribution; and other activities of a clerical nature that limit the amount of time available for counselors to spend on their counseling duties."

The bill also would require counselors to receive annual staff development. It has several other provisions.

Sponsored by Sen. Prezioso. Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee. Fiscal Note requested. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Athletic training regulated

Senate Bill 124. This bill has several proposed sections relating to the regulation of athletic trainers.

It defines the practice of athletic training and athletic injury; creates an athletic trainers' licensure board, and establishes extensive training and licensure requirements for athletic trainers, including provisions relating to continuing education.

The bill would "grandfather" athletic trainers who practice under state Board of Education certification as of July 1, 2004.

Sponsored by Sen. Michael A. Oliverio II (D-Monongalia). Introduced Jan. 14. Referred to Senate Government Organization Committee, then Senate Finance Committee. (*Similar legislative proposals have been introduced or in past sessions.*)

Grievance group funds detailed

Senate Bill 142. Revised §29-6A-13 would create a special revenue account for the operation of the Education and State Employees Grievance Board. It would be funded by employers whose employees are covered by the board.

Under bill provisions, county boards would be "directed to transmit to the (Education and State Employees Grievance Board) for deposit in the special revenue fund by (August 15 the amount of .2 of 1 percent) of its annualized expenditures based on filled full-time equivalent positions as of (April 1)."

A second bill provision requires the state superintendent of schools to "determine the amount each must pay as of (April 1) for the next fiscal year."

The Department of Administration could exempt "that transfer only upon a showing by the requesting public employer that its combined operation is dependent upon receipt of the exemption."

Legislators would receive an annual report regarding the amount of moneys in the special revenue fund.

Sponsored by Sens. Tomblin and Sprouse. Introduced Jan. 14. Referred to Senate Finance Committee.

The companion House bill is **HB4005**. It is sponsored by Dels. Kiss and Trump. Referred to House Finance Committee.

Arbitration

Also refer to **Senate Bill 20** relating to creation of an arbitration mechanism to resolve controversies between parties agreeing to enter into arbitration. The bill has several extensive sections. (*Similar legislative proposals to Senate Bill 20 have been introduced or considered in past legislative sessions.*)

Sponsored by Sen. Ross. Introduced Jan. 14. Referred to Senate Judiciary Committee.

Senate Bill 142 and **House Bill 4005** were introduced at the request of the governor.

Bill addresses past evaluations

House Bill 4040. Revised §18A-4-7a would make a change in statute so that use of past evaluations of instructional personnel for filling of vacancies would be based on the "previous two evaluations" rather than evaluations conducted "over the previous two years." This is necessary because some professional personnel are not evaluated every year, based on their evaluation track.

Sponsored by Del. Mezzatesta. Introduced Jan. 15. Referred to House Education Committee.

NOTE: This bill was approved by the House Education Committee on Jan. 15.

School Transportation

Measures relate to CDLs

Senate Bill 73. Under provisions of this bill, persons who hold suspended Commercial Drivers Licenses could continue to operate a commercial motor vehicle under certain circumstances, including

failure to have the required security in effect on a vehicle used solely for noncommercial purposes and reinstatement for not having verifiable proof of insurance. There are other similar stipulations.

A related bill is **Senate Bill 173**. It would authorize a disabled commercial-licensed driver to have a personal driving permit for up to five years without loss of status as a commercial-licensed driver.

Senate Bill 73 is sponsored by Sen. Ross. Introduced Jan. 14. Referred to Senate Transportation Committee.

Senate Bill 173 is sponsored by Sen. Larry A. Rowe (D-Kanawha). Introduced Jan. 15. Referred to Senate Transportation Committee, then Senate Finance Committee.

Bus travel times delineated

Senate Bill 134. Proposed §18-5-46 would establish bus travel time limits for school students, establishing 30 minutes for elementary students; 45 minutes for middle school students, and 60 minutes for high school students.

The bill would require county boards to “establish, maintain, and adhere to (these) schedules for the transportation of students to and from school,” with the schedules to “set forth the times for picking-up and dropping-off students.”

The bill would prohibit county boards from “(creating) a new bus route in which the times allotted between initial pick-up and final drop-off of any student exceeds (the statutory timelines).”

Sponsored by Sens. Tomblin and Sprouse. Introduced Jan. 14. Referred to Senate Education Committee.

The companion bill is **House Bill 4023**. It is sponsored by Dels. Kiss and Trump. Introduced Jan. 14. Referred to House Education Committee, then House Finance Committee.

Senate Bill 134 and **House Bill 4023** were introduced at the request of the governor. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

State Board of Education

\$500 monthly salary proposed

House Bill 4053. Revised §18-2-3 would establish a \$500 per month stipend for W.Va. Board of Education members. Accordingly, members would be prohibited from receiving a per diem allowance, as now provided by law.

Sponsored by Del. Mezzatesta. Introduced Jan. 16. Referred to House Education Committee, then House Finance Committee.

State Superintendent

Salary would be increased

House Bill 4044. The purpose of this bill is to set the pay of the state superintendent of schools at “(80 percent) of the maximum allowable salary of the chancellor for higher education.”

Accordingly, the bill establishes the chancellor’s pay at an amount not to exceed \$252,500 annually.

Finally, the bill allows the state school board to establish the salary for the executive director of the state Office of Education Performance Audits in an amount not to exceed \$107,250.

Sponsored by Del. Mezzatesta. Introduced Jan. 15. Referred to

House Education Committee, then House Finance Committee.

Student Scholarships

Scholarship program outlined

Senate Bill 99. Introduced in several past legislative sessions, this bill would create the “West Virginia Dollars for Scholars Loan Program.” These are among its provisions:

1. The legislation essentially replaces the “state higher education student assistance loan program.” The ‘Dollars for Scholars’ program would be available for students who graduate from a state high school with a “C” average or better and who are accepted for enrollment at an institution of higher education in West Virginia.

2. Students receiving loans under this program are eligible for “loan forgiveness if (they) graduate from an approved institution of higher education in this state and continue to reside in the state upon graduation.”

3. If a person continuously resides in the state upon graduating for a period of one-five years, his or her loan would be forgiven in an amount equal to 20 percent of the total loan for each full year of continuous residence.

4. A student discontinuing state residency prior to forgiveness of the loan would have to repay it “within six months of discontinuing residency under the terms and conditions of the loan agreement.”

5. The loan rate is 2 percent annually.

There are other provisions.

Sponsored by Sen. Donna J. Boley (R-Pleasants). Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee. A Fiscal Note has been requested. (*Similar proposals have been introduced in past sessions.*)

EDUCATION-RELATED

Alcohol

Bills relate to DUI

Senate Bill 22. Introduced by Sen. Ross, this measure stipulates that a court-accepted plea of nolo contendere (no contest) to a criminal charge of Driving Under the Influence of alcohol, controlled substances or drugs as having the same effect as a conviction in administrative license revocation proceedings.

Introduced Jan. 14. Referred to Senate Judiciary Committee, then Senate Finance Committee. A Fiscal Note has been requested.

A related bill is **Senate Bill 45** sponsored by Sen. Rowe. The bill was introduced Jan. 14. Referred to Senate Judiciary Committee.

Bills relate to 0.08 DUI conviction

Senate Bill 132 would reduce the allowable blood alcohol content for DUI from 0.10 to 0.08 of one percent of body weight.

Sponsored by Sen. Unger. Introduced Jan. 14. Referred to Senate Judiciary Committee.

Senate Bill 166. This is the governor’s legislation to reduce the allowable blood alcohol content for DUI from 0.10 to 0.08 of one percent of body weight.

It was introduced by Sens. Tomblin and Sprouse. Referred to Senate Judiciary Committee, then Senate Finance Committee.

The companion measure is **House Bill 4032**. It is sponsored by Dels. Kiss and Trump. Introduced Jan. 14. Referred to House Judiciary Committee.

NOTE: The Senate has adopted **SB166**, which was introduced at the request of the governor along with **House Bill 4032**.

(Similar legislative proposals have been introduced or considered in past sessions.)

All-Terrain Vehicles

ATV-users must wear helmets

Senate Bill 90. This bill would require persons under age 18 who operate all-terrain vehicles to wear helmets.

Additionally, it prohibits persons under age 16 from operating ATVs with motors of 250 cubic centimeters or greater.

It also prohibits passengers from riding ATVs unless the vehicle is made to accommodate additional passengers.

Finally, the bill prohibits ATVs from being operated on state roads or highways “unless crossing the road or highway or unless the road is unpaved.”

Sponsored by Sen. Oliverio. Introduced Jan. 14. Referred to Senate Transportation Committee, then Senate Judiciary Committee.

Wise’s ATV plan detailed

Senate Bill 153. This bill would establish “The All-Terrain Vehicle Safety Regulation Act.” It would require minors to wear protective helmets and prohibits anyone under age 18 to carry a passenger at any time. It also requires operators under age 18 to have a valid operator’s license. (ATV operators under age 16 could complete an ATV rider training course.)

This bill requires reportage regarding ATV injuries and accidents, and establishes criminal penalties for violation of its provisions.

Sponsored by Sens. Tomblin and Sprouse. Introduced Jan. 14. Referred Senate Transportation Committee, then Senate Judiciary Committee.

The companion measure is **House Bill 4022**. It is sponsored by Dels. Kiss and Trump. Introduced Jan. 14. Referred House Government Organization Committee.

Senate Bill 153 and **House Bill 4022** were introduced at the request of the governor. (Similar legislative proposals have been introduced in past sessions.)

Children’s Health Insurance

CHIP coverage expanded

Senate Bill 13. This bill would expand health coverage eligibility to children under the Children’s Health Insurance Program if the family’s income is less than 250 percent of the federal poverty rate.

Introduced Jan. 14. Referred to Senate Health and Human Resources Committee, then Senate Finance Committee.

A related bill is **Senate Bill 37**. It would provide presumptive eligibility for CHIPs coverage.

Introduced Jan. 14. Referred to Senate Banking and Insurance Committee, then Senate Finance Committee.

A final bill, **Senate Bill 47**, would expand health care coverage by requiring the CHIP Program Board to implement and develop a coordinated CHIP program with the Medicaid Program. The coordinated program would include a single system, name, identity and enrollment card.

Introduced Jan. 14. Referred to Senate Banking and Insurance Committee, then Senate Finance Committee.

Application wavier sought

Senate Bill 19. Under terms of this legislation, exceptions to the application and waiting period for the Children’s Health Insurance Program (CHIP) would be made available when existing family coverage is determined to be excessively expensive for families with private health insurance.

There are other provisions. Introduced Jan. 14. Referred to Senate Banking and Insurance Committee, then Senate Finance Committee.

NOTE: All bills were sponsored by Sen. Hunter. A Fiscal Note is requested for each measure. (Similar legislative proposals have been introduced in past legislative sessions.)

Crimes

Indecent exposure fines raised

Senate Bill 17. This bill creates escalating offenses for persons convicted of indecent exposure, including a felony offense upon conviction of a fourth of subsequent offense.

Sponsored by Sen. McKenzie. Introduced Jan. 14. Referred to Senate Judiciary Committee. (Similar proposals have been introduced in past legislative sessions.)

Voyeurism crime established

Senate Bill 32. This legislation would make it a criminal offense to engage in voyeurism where an individual has an expectation of privacy. (Exceptions are made for law-enforcement and security surveillance.)

Sponsored by Sen. McKenzie. Introduced Jan. 14. Referred to Senate Judiciary Committee. (Similar legislative proposals have been introduced in past sessions.)

‘Surveillance’ prohibited

Senate Bill 40. This proposed legislation would prohibit law-enforcement surveillance of individuals and groups of individuals who are participating in constitutionally-protected activities, “including political advocacy or the practice of religion...without particularized suspicion of criminal activity unrelated to the activity protected by the First Amendment to the (U.S. Constitution) and Article III of the West Virginia Constitution.” There are other provisions.

Sponsored by Sen. C. Randy White (D-Webster). Introduced Jan. 14. Referred to Senate Judiciary Committee. (Similar legislative proposals have been introduced in past sessions.)

‘Racial profiling’ banned

Senate Bill 74. Revised §17F-1-1 would require racial profiling data

to be collected by law-enforcement officers and agencies each time a motorist is stopped for an alleged violation of the law.

The bill also defines ‘minority group’ as “individuals of African, Hispanic, native American or Asian descent.”

The bill directs the state attorney general to conduct an analysis of traffic stops and to provide an annual report to the governor and legislature.

Sponsored by Sen. White. Introduced Jan. 14. Referred to Senate Judiciary Committee, then Senate Finance Committee. A Fiscal Note has been requested. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Cemetery vandalism fines raised

Senate Bill 79. Under terms of this bill, introduced in past legislative sessions, persons who intentionally desecrate any cemetery, graveyard, mausoleum, “burial site within a mausoleum, grave, gravestone or other grave maker” would be fined from \$500-\$2,000 and would receive a jail sentence of at least 10 days.

The bill also states that each grave site desecrated would be considered a separate offense. Persons convicted of desecrating four or more gravesites could receive a felony conviction.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Judiciary Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Multiple vandalism to be felony

Senate Bill 106. This legislation would make commission of multiple acts of vandalism a felony when total damage done exceeds \$5,000.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Judiciary Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Elections

Contribution levels to be raised

Senate Bill 96. This bill would increase from \$1,000 to \$4,000 the amount an individual may contribute in connection with any campaign for nomination or election.

Sponsored by Sen. H. Truman Chafin (D-Mingo). Introduced Jan. 14. Referred to Senate Judiciary Committee.

‘Ballot Protection’ introduced

SB105. Revised §3-9-8 would ensure that votes cast in any election are the “free, true and confidential expression of choice of a voter qualified to cast that ballot...”

The intent of the legislation is to prohibit voter identity in regard to ballots cast, especially through writing, encoding, pasting or otherwise placing “the name of any person, or any sign, signature, or device of any kind, as a distinguishing name, mark, code or writing by which to indicate the identity of a voter” who casts a ballot.

The bill also prohibits persons from entering into arrangements that would identify a ballot cast by a voter “whether or not the act is

committed or attempted to be committed.”

Those violating the statute could be fined and imprisoned.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Judiciary Committee.

Ballot issue solicitation okay

Senate Bill 125. This legislation would permit solicitation of non-elective, salaried employees of the *state or any political subdivision* for contributions to campaigns for or against ballot issues.

Sponsored by Sen. Jeffrey V. Kessler (D-Marshall). Introduced Jan. 14. Referred to Senate Judiciary Committee.

Flood-Related Measures

Flood plain agency created

Senate Bill 49. Revised §7-1-3v would allow county commissions to establish flood plain enforcement agencies. County assessors would determine whether or not proposed development could occur in a specified area, based on building permits.

The county commission president, president of the county planning commission or the county administrator would serve as flood plain manager and “administer all development determined to be within the specified area in accordance with the (county) ordinance requirements.”

These persons would have to receive training as specified by the National Flood Insurance Program.

In case of “flooding event,” the director of the county office of emergency services would be responsible for providing information and assistance to the flood plain manager. Additionally, the bill stipulates that the county surveyor or county engineer would be responsible for providing field inspections of permitted development and technical assistance as requested by the flood plain manager.

The bill directs the county prosecuting attorney seek injunctive relief “when appropriate” in regard to flooding events, and the county sheriff is directed to enforce orders of county commissions in regard to flood plain management.

New developments would have to comply with the county flood plain ordinance.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Government Organization Committee.

A related bill, **Senate Bill 83**, would clarify that county commissions may make affordable flood insurance available to property owners by setting different building restrictions in different levels of a flood plain.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Government Organization Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Initiative

Bill creates Voter Initiative Act

Senate Bill 120. Introduced in several past sessions, this legislation would provide state citizens the power of referendum.

In doing so, the public could propose rejection of laws or policies, rules and regulations of entities of the legislature or “other

elected or appointed governmental body at a regularly scheduled general election held less than two years after the filing of a proper petition to approve or reject the constitutional amendments, statutes or specific portions thereof, ordinances, rules, charter provisions and other legislation of every character by a simple majority of the votes cast on the issue.”

“Governmental body” would include county boards of education.

In order to initiate a referendum, proponents would have to secure the signatures of a number of voters in the “affected district equal to at least (12 percent) of all the votes cast for the office of governor in the district in the most recent quadrennial general election preceding the filing of the petition.”

Statewide referenda could be initiated through collection of at least 12 percent of all votes cast for the office of governor in the county in the most recent gubernatorial election. Votes would have to be collected from two-thirds of state’s counties.

Successful referenda relating to revenue increases or revenue-related matters would be effective in the succeeding fiscal year.

Referenda elections involving regional government jurisdictions or municipalities could be held in conjunction with regularly scheduled elections involving state and county offices.

The Secretary of State is responsible for promulgating rules for implementation of the statute.

There are several other provisions.

Sponsored by Sen. Boley. Introduced Jan. 14. Referred to Senate Judiciary Committee, then Senate Finance Committee. *(Similar legislative proposals have been introduced in past sessions.)*

Consumers Sales Tax

1 percent of tax back to county

Senate Bill 9. Under terms of this bill, one percent of all sales tax collected would be distributed to the county in which it was collected. These funds could be used for any governmental purpose, including public education. The bill’s provisions are phased-in over a three-year period.

Sponsored by Sen. Ross. Introduced Jan. 14. Referred to Senate Finance Committee.

Veterans’ groups to be exempt

Senate Bill 76. This legislation would exempt organizations that promote, support or publicize military veterans’ causes from consumers sales tax.

Sponsored by Sen. Bailey (D-Wyoming). Introduced Jan. 14. Referred to Senate Finance Committee.

Bills remove food sales tax

Senate Bill 114. Under terms of this bill, the sales tax on food would be eliminated through a “revenue-neutral” increase on other food-related products, including beer, liquor, soft drinks, cigarettes and other tobacco products.

The bill also would eliminate the sales tax on packaged food and fresh-grown food sold for human consumption “off premises where sold.”

There are other provisions.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Finance Committee.

Senate Bill 193 would phase-out the sales tax on food within three years.

Sponsored by Sen. Sprouse. Introduced Jan. 16. Referred to Senate Finance Committee.

Third tax holiday set in August

Senate Bill 135. This legislation, introduced at the request of the governor, would create a third “sales tax holiday” for purchase of back-to-school clothing and school supplies, including computers and computer accessories.

The tax holiday would be held August 6-8, 2004.

Sponsored by Sens. Tomblin and Sprouse. Introduced Jan. 14. Referred to Senate Finance Committee.

The House companion measure is **House Bill 4013**. It is sponsored by Dels. Kiss and Trump. Introduced Jan. 14. Referred to House Finance Committee.

Senate Bill 135 and **House Bill 4013** have been introduced at the request of the governor.

Fiscal Notes have been requested for all bills. *(Similar proposals have been introduced in past legislative sessions.)*

Personal Income Tax

Child care credit provided

Senate Bill 65. Revised §11-21-10b would allow a tax credit against corporate and personal income tax for employers who provide child care services to their employees.

Sponsored by Sen. Hunter. Introduced Jan. 14. Referred to Senate Finance Committee.

Earned income credit created

Senate Bill 69. This legislation would provide a non-refundable earned income tax credit (personal income tax) for taxpayers with qualifying children. The earned income tax credit is equal to 15 percent of the allowable federal credit.

Sponsored by Sen. Hunter. Introduced Jan. 14. Referred to Senate Finance Committee.

Fiscal Notes have been requested for both bills. *(Similar proposals have been introduced in past sessions.)*

Property Tax

In lieu of payment plans set

Senate Bill 26. Introduced in past sessions, this measure would prescribe uniform reporting and content requirements for payment in lieu of tax agreements. It requires all local governing bodies to approve a payment in lieu of tax agreement and to provide for allocation and distribution of payments in lieu of property tax.

The bill has a provision saying “the allocated state aid share under the school aid formula...is (to be) adjusted in any county receiving any payments of tax under agreements subject to (these statutes and school aid formula provisions...).

Sponsored by Sen. Plymale. Referred to Senate Judiciary Committee, then Senate Finance Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Valuations to be every five years

Senate Bill 51. Under terms of this bill, periodic valuations and assessments of real and personal property would be undertaken every five years—rather than every three years.

The bill also establishes a three percent cap on any increase in assessment in any one year.

Sponsored by Sen. Boley. Introduced Jan. 14. Referred to Senate Judiciary Committee, then Senate Finance Committee. A Fiscal Note is requested.

Senate Bill 104 is a related measure. It would authorize county commissions to prohibit reevaluations of real property that exceed 10 percent of the assessed value of the property that existed in the previous year.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Judiciary Committee, the Senate Finance Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Farm equipment to be exempt

Senate Bill 131. Under terms of this bill, farming equipment and livestock would be exempt from personal property taxation.

Sponsored by Sen. Karen Facemyer (R-Jackson). Introduced Jan. 14. Referred to Senate Finance Committee. A Fiscal Note is requested. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Miscellaneous Taxation

Recreation tax possible

Senate Bill 14. This bill would allow county commissions to collect a recreation and amusement tax. The tax would have to be approved by voters in that county. The tax could be collected for admission to recreation or amusement events such as athletic events, motor vehicle races, motorcycle races, theatrical performances, tours and programs at historical sites, carnivals or circuses, craft, art or antique shows, flea markets, rodeos, manufacturing shows, etc. Sales of certain products at these events, including alcoholic beverages, also could be taxed as well as various apparel such as skiing equipment.

The bill has several provisions.

Sponsored by Sen. Hunter. Introduced Jan. 14. Referred to Senate Government Organization Committee, then Senate Finance Committee. A Fiscal Note is requested. (*Similar legislative proposals have been introduced in past sessions.*)

The Legislature

WATCH FOR THE LATEST ON EDUCATION LEGISLATION.

Teachers Retirement System

Service for pension reduced

Senate Bill 27. The purpose of this bill is to reduce the Teachers Retirement System (TRS) time to qualify for a pension increase from 20 years to 15 years.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Pensions Committee, then Senate Finance Committee.

‘Rule of 80’ proposed

Senate Bill 35. Introduced in previous sessions, this bill would allow TRS members to retire, with full pension rights, when a member’s age plus years of contributing service equals or exceeds 80.

Sponsored by Sen. Hunter. Introduced Jan. 14. Referred to Senate Education Committee, then Senate Pensions Committee, then Senate Finance Committee. (*Similar legislative proposals have been introduced or considered in past legislative sessions.*)

Retiree benefits could increase

Senate Bill 55. This legislation would provide TRS members who are receiving disability annuities (having been retired for the past five years) or TRS members who are receiving an annuity and who are at least age 60 (and who have been retired for the past five years) an annual cost-of-living supplement. The supplement is equal to the percentage increase in the Consumers Price Index or 2 percent, whichever is lesser, multiplied by the first \$15,000 of the retiree’s annual annuity.

Sponsored by Sen. Chafin. Introduced Jan. 14. Referred to Senate Committee on Pensions, then Senate Finance Committee. (*Similar proposals have been introduced in past sessions.*)

Rules affect disabled retirees

Senate Bill 97. The purpose of this legislation is to include disability retirees within the eligibility rules for minimum retirement benefits (TRS). NOTE: This legislation also relates to the Public Employees Retirement System.

More TRS funds could be stocks

Senate Bill 121 would raise from 60 percent to 70 percent the amount of TRS assets that can be invested in equities. NOTE: This bill has several other provisions and is designed to broaden the authority of the state Investment Management Board.

Sponsored by Sen. Brooks McCabe (D-Kanawha). Introduced Jan. 14. Referred to Senate Government Organization Committee, then Senate Finance Committee.

Transfer to TRS allowed

Senate Bill 127. Under provisions of this bill, teachers and other educational personnel who were employed by the state prior to July 1, 1991, and who after that date became employed by a county board, to transfer from the Teachers’ Defined Contribution Retire-

ment System to the TRS. These persons would have been members of the PERS.

Once the decision to move to the TRS were made, it would be irrevocable.

According to the Bill Note, the legislation would allow persons who were employed by the state prior to the creation of the Defined Contribution System and who transferred to a county school system after creation of that system the same option as state employees who were employed by the state and transferred to a county school system prior to the creation of the Defined Contribution System.

Sponsored by Sen. Oliverio. Introduced Jan. 14. Referred to Senate Pensions Committee, then Senate Finance Committee.

Fiscal Notes have been requested for all bills.

(Similar legislative proposals have been introduced or considered in past legislative sessions.)

Tobacco

Schools to be tobacco free

Senate Bill 103. Simply stated, this bill would prohibit tobacco usage in all school buildings and grounds. Those convicted of tobacco usage on school property would be fined from \$50-\$250.

Sponsored by Sen. Rowe. Introduced Jan. 14. Referred to Senate Education Committee, then Senate Finance Committee. The bill requests a Fiscal Note.

A related bill is **Senate Bill 170**. It, too, increases penalties and fines for tobacco usage, and could result in minors losing their junior or graduated drivers licenses until age 18. If the person doesn't have a junior or graduated drivers license, he or she would be ineligible to apply for any type license until age 18.

Sponsored by Sen. Facemyer. Introduced Jan. 15. Referred to Senate Health and Human Resources Committee, then Senate Judiciary Committee. *(Similar legislative proposals have been introduced in past sessions.)*

Tobacco settlement receipts

Senate Bill 168. This is the governor's measure for the sale of all or a portion of revenues received under the Master Settlement Agreement and the subsequent issuance of bonds by a newly-created Tobacco Settlement Finance Authority. Funds would be used primarily for redeeming all or a portion of the unfunded actuarial accrued liabilities of the State Police and Judges' Retirement Systems and for improving the solvency of the state Workers' Compensation fund.

There are several provisions.

Sponsored by Sens. Tomblin and Sprouse. Introduced Jan. 14. Referred to Senate Finance Committee.

The House companion measure is **House Bill 4036**. It is sponsored by Dels. Kiss and Trump.

Both bills have been introduced by the request of the governor.

MISCELLANEOUS PROPOSALS

Several bills relate to abortion

Senate Bill 2 would make it illegal to transport a minor across state lines to obtain an abortion without written consent from both parents... **Senate Bill 48** would require a physician to receive written consent from at least one parent or legal guardian before an abortion is performed on an un-emancipated minor... **Senate Bill 107** would require collection of various statistics relating to abortions performed in West Virginia... **Senate Bill 184** would require all abortions performed during the second or third trimester be done in a hospital... **Senate Bill 185** would prohibit the performance of an abortion when the woman seeking it is doing so based solely on the fetus' gender.

Credit union coverage expanded

House Bill 4052 would increase the number of persons to whom credit union services could be extended to include "those who reside or work in a well-defined community, neighborhood or rural district..."

Measures concern privacy

Senate Bill 151 (House Bill 4019) would prohibit the Division of Motor Vehicles' sale and subsequent resale of personal information for bulk distribution of surveys, marketing and solicitations... **Senate Bill 138 (House Bill 4020)** would prohibit state entities from disclosing citizens' home addresses, Social Security Numbers, home telephone numbers, payroll deductions, credit card numbers, debit card numbers, driver's license identification number, marital status and maiden name to non-state entities. There is an exception for "(information) necessary to an essential function of a state agency or entity, or law enforcement agency, or as required by law." Two related bills, concerning Consolidated Public Retirement Board information, also have been introduced—**Senate Bill 152/House 4021**. NOTE: All bills were introduced at the request of the governor.

Purchasing/vending related

Senate Bill 100 would prohibit the state and its political subdivisions from contracting with vendors owing a debt to the state or to its political subdivisions... **Senate Bill 109** would require state agencies to make timely payments on telephone service invoices... **Senate Bill 146/House Bill 4006** would increase the state's vendor registration fee from \$45 to \$200 per fiscal year. (Limited waivers could be granted for vendors doing \$10,000 or less in business with the state.) There are several provisions. These bills were introduced at the request of the governor... **Senate Bill 189** would add the expected life of a product or commodity as a factor in standard specifications for state purchasing contracts.



On the Web at: wvsba.org

Regulatory flexibility sought

Senate Bill 191 would create the Regulatory Flexibility Act. The main purpose of this legislation is to subject proposed state agency rules to a cost-and-benefit analysis, especially their impact on small businesses. The Legislative Auditor would issue a statement to the agency containing comments on the impact of the proposed rule. There are other provisions. The measure has been introduced during the past several legislative sessions.

Cross index of forms to be maintained.

Senate Bill 177 would require the state's Chief Technology Officer to maintain a central cross index of forms used by state agencies. There are other provisions.

BRIEFLY MENTIONED

Senate Bill 12 would separate the Department of Health and Human Resources into two departments, the Department of Health and the Department of Human Resources...**Senate Bill 23** would create a tax incentive for creation, construction or enlargement of tourism attractions or amenities. Investors could recover up to 50 percent of qualified investments. A related bill is **Senate Bill 139**. It would create the state Tourism Development Act, providing for an inducement for construction of tourism development projects and expanding existing tourism attractions in West Virginia. The House companion bill is **House Bill 4028**...**Senate Bill 38** would prohibit sheriffs, prosecuting attorneys, county commissioners, county assessors, or circuit court clerks from holding any full-time state office...**Senate Bill 54** would make the prosecuting attorney's position in Mingo County as a part-time position...**Senate Bill 67/House Bill 4038** would require agency heads to submit a statement of compliance to the legislative auditor within six months of a fiscal or performance audit. The statement is to show that the agency is making a reasonable, good faith effort to implement recommendations of a legislative audit...

Personnel division abolished

...**Senate Bill 77** would abolish the division of personnel and the civil service system, allowing agencies and divisions to be responsible for their own personnel matters...**Senate Bill 88** would increase the Public Employees Retirement System multiplier from 2 percent to 2.25 percent. Other miscellaneous retirement bills include **Senate Bill 159/House Bill 4003**. Those measures would lower the state police retirement age from 55 to 50...**Senate Bill 95** would require a "jobs impact statement" for proposed legislation...**Senate Bill 111** would establish the Central West Virginia Highlands Highway Authority to include representatives of Braxton, Nicholas, Webster, Randolph, and Pocahontas Counties...**Senate Bill 113** would promote collaboration between regional planning authorities...**Senate Bill 117** would require food service establishments to advise customers when salad crispers are added to lettuce sold by the establishment...**Senate Bill 123** would create a state capitol renovation and improvement fund...**Senate Bill 126** would require the nomination or election of a candidate for magistrate office as the candidate receiving the highest number of votes within a numbered magisterial division...

Public/Private transportation

...**Senate Bill 156/House Bill 4024** would establish the Public-Private Transportation Facilities Act as relating to public-private

ventures regarding construction of public port facilities, roads, tunnels, etc. This is the governor's proposed legislation...**Senate Bill 162/House Bill 4017** would prohibit retailers from using gambling names and symbols in advertising, signage and directions to retail establishments offering limited video lottery games...**Senate Bill 187** would give certain tax exemptions for qualified new businesses in the 12 counties with the highest unemployment rates. There are other provisions.

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