The Legislature

West Virginia School Boards Association

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WVEA May Oppose 2005 Budget

W. Va. Education Association President Tom Lange has contacted the W. Va. School Boards Association, saying WVEA may oppose the state budget, which is expected to be adopted tomorrow or Sunday (March 20/21) in a special legislative session, if the budget reduces school aid formula Step VII, which relates to instructional programs.

The House of Delegates has proposed reducing Step VII by $18 million, a notion announced last Friday when the House adopted its budget. The Senate, meanwhile, has voted to retain funding at a level of $33 million.

House Education Chairman Jerry Mezzatesta (D-Hampshire) told the *Charleston Gazette* it is vital to take the $18 million to help the critically underfunded Teachers Retirement System.

Both budget bills appropriate $345.4 million to pay down the $5 billion unfunded liability in the retirement fund. Under a 40-year plan to retire that debt, that amount has to grow about 8 percent a year, and in the 2004-05 budget, it grows by $35.6 million.

The $18 million shift would reduce state funding for textbooks, instructional materials and equipment by $9.1 million. About one-fourth of the proposed funding shift, or about $4.6 million, covers salaries and benefits for school personnel. The proposed shift would eliminate about 100 jobs statewide, according to WVEA figures.

Mezzatesta said he recognized the shift would cost jobs, but said the Legislature has to respond to projections of budget shortfalls topping $1.4 billion through 2010.

There are some reports that the Step VII situation is in response to the House leadership's unsuccessful plans to eliminate the 2002 pre-kindergarten program.

WVSBA and the W.Va. Association of School Administrators has forwarded that information to counties, asking county officials to contact legislators about the desire to spare Step VII funding.

Senate Education Chairman Robert Plymale (D-Wayne) said the $18 million difference in the House and Senate versions of the instructional programs account is one of about seven differences between the House and Senate budgets that have to be resolved to finalize the $1.6 billion public education budget. Public education accounts for over half of the state's total general revenue spending.

Overview

STATS

Day of Session (extended session):	66
Bills Introduced (including House carrryovers):	2126
Bills Passed:	276
Education Bills Introduced (WVSBA count):	427
Education Bills Passed (WVSBA count):	39

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QUOTE

"That's the budget, Mr. Speaker. We call it 'budget lite.' "
– House Finance Chairman Harold Michael (D-Hardy) discussing the House's version of the FY05 state budget. Conferees have yet to develop a budget for next year, and will likely convene in special session Saturday (March 20).

12th Annual Spring Teleconference in April

The W.Va. School Boards Association's 12th Annual Spring Teleconference is set for Thursday, April 22, 2004.

The program will be broadcast live from W. Va. State College's W. Va. Educational Network (WVNET). Association Counsel Howard E. Seufer Jr., Bowles Rice McDavid Graff & Love, will present the main portion of the program.

Other invited presenters include Troy Body, who will discuss the pilot project for minority, disadvantaged and low-achieving students. That legislation is included in House Bill 4669, which the Legislature adopted March 13.

Materials for use in the teleconference will be mailed prior to the April 22 broadcast, and will include an analysis of the various bills passed as well as copies of relevant materials concerning court cases and grievances.

The program is designed so that, by paying one registration fee, there is no limit on the number of persons who may participate. (In fact, several county boards invite school administrators, principals and others to participate.)

Teleconference coordinates and other information will be made available prior to the WVNET production.

For more information on the program, please contact WVSBA conference registrar Shirley Davidson at sdavidson@wvsba.org.

Aimed at 'all children'

Bill Goal is to Close Achievement Gap

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

See related interview on page 11 for further details.

One of the most significant pieces of legislation adopted during the last several years deals with the development of a professional development school project for improving academic performance not only among disadvantaged, minority and low-achieving students but for "all children."

The bill, adopted by the House of Delegates March 3, was amended in the state Senate to mandate county boards to implement a dress code requiring students to wear school uniforms.

The House, in receiving the Senate message, voted to delete that provision, inserted by Senate Majority Leader Truman Chafin (D-Mingo), with the Senate then concurring with the measure as amended by the Senate Education Committee.

The purpose of the legislation is to establish a special five-year demonstration professional development school project which is to be overseen by the state superintendent of schools. The program would commence July 1.

As stated in the bill, "the intent (of the legislation) is to provide a special demonstration environment wherein the public schools included in the demonstration project may work in collaboration with higher education, community organizations and the W. Va. Board of Education to develop and implement strategies that may be replicated in other public schools with significant enrollments of disadvantaged, minority and under-achieving students to improve academic achievement."

Selection

As amended by the SEC, the state superintendent of schools, who oversees the project, is to "select…three public elementary or middle schools with significant enrollments of disadvantaged, minority and under-achieving students in each county in which the number of the African American students is five percent or more of the total second month enrollment."

According to the SEC, those counties are Berkeley, Jefferson, Cabell, Fayette, Kanawha, Marion, McDowell, Mercer, Ohio and Raleigh.

(The original House proposal outlined three schools which had to meet certain criteria, one criterion being that they shared the same school calendar. Three inner city Charleston schools reportedly were under consideration, all of which operate under a modified [year-round] calendar and which have a high minority population.)

Additionally, the House bill would require county boards to cooperate with the state superintendent in establishing the schools, and would require no additional outlay of county or state (legislative) appropriations.

Supporters contend the program will enhance educational opportunities for disadvantaged students, particularly minority students.

While teacher associations were opposed to a bill provision which would have allowed the state superintendent, in establishing the schools, to have greater flexibility with personnel statutes, and W. Va. Board of Education policies, rules and regulations, the final bill was amended to require county boards to "post the positions for school personnel employed at the demonstration project school that encompass the special qualifications and any additional duties that will be required of the personnel as established in the job descriptions…The assertion that the job descriptions and postings are narrowly defined may not be used as the basis for the grievance of an employment decision for positions at a demonstration project school."

Specialized Training

Accordingly, the bill states that personnel must have "specialized training and knowledge of the needs, learning styles and strategies that most effectively improve the performance of disadvantaged, minority and under-achieving students in demonstration project schools. These powers include, but are not limited to, the authority to craft job descriptions with requirements regarding training and experience and the right to specify job duties which are related to job performance that reflect the mission of the demonstration project school."

Under terms of the legislation, the state superintendent may:

- Require county boards in counties where a demonstration project school is located to cooperate to "facilitate program implementation to avoid any reallocation of resources for the schools that are disproportionate with those for other schools of the county of similar classification, accreditation status and federal Title I identification."
- Direct the W. Va. Department of Education, the W. Va. Center for Professional Development and Regional Education Service

The Legislature provides county board of education members, state policymakers, school administrators, and others information, opinion and commentary regarding West Virginia legislative issues. This publication does not necessarily reflect the official views, opinions or policies of the WVSBA, unless specifically stated.

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Agencies to provide technical assistance and professional development services to the schools "for (the project's) successful implementation." Examples of these services include early intervention "or other programs of the (WVDE) to assist low-performing schools."

- Collaborate and enter into agreements with colleges and universities "willing to assist with efforts at a demonstration school to improve student achievement, including, but not limited to, the operation of a professional development school model." Any corresponding WVDE expenditures would have to have state board approval.
- Require collaboration with "local community organizations to improve student achievement and increase the involvement of parents and guardians in improving student achievement."
- Provide for independent program evaluation.
- Recommend to the WVBE and county boards "the waiver of any of their respective policies that impede the implementation of demonstration project schools."

Additionally, the state superintendent is required to make various reportages, including forwarding of annual status reports to the Legislative Oversight Commission on Education Accountability and the WVBE, along with any "recommendations based on the progress of the demonstration project that he or she considers either necessary for improving the operations of the demonstration project or prudent for improving student achievement in other public schools through replication of successful demonstration school programs."

The state superintendent is to make a recommendation by 2010 as to whether or not the program should be continued, based on findings and recommendations of the independent evaluation. According to the bill, "these findings are recommendations shall be a major factor considered by the (state) superintendent in making his or her recommendation (regarding whether or not to continue the program)."

Bill sponsors include Dels. Tabb, Williams, Paxton, Beach, Crosier, Swartzmiller, and Long.

Professional development schools base a large degree of their programming on research, teacher professional development and collaboration.

The Pittsburgh, Penn., based Claude Worthington Benedum Foundation funds W. Va. University's PDF schools which operate in the North Central part of the state. Dr. Van Dempsey oversees these schools.

House Education Chairman Jerry Mezzatesta (D-Hampshire) praised the legislation for its innovation in a House floor speech.

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

Project Schools Rationale

The following are the Legislature's "findings" in regard to the special demonstration school project for improving academic achievement, legislation which is included in **House Bill 4669.** The new section of law is §18-2E-3f.

As stated in the bill, the Legislature makes the following findings:

(1) Well-educated children and families are essential for maintaining safe and economically sound communities;

(2) Low student achievement is associated with increased delinquent behavior, higher drug use and pregnancy rates, and higher unemployment and adult incarceration rates;

(3) Each year, more students enter school with circumstances in their lives that schools are ill-prepared to accommodate;

(4) Ensuring access for all students to the rigorous curriculum they deserve requires effective teaching strategies that include, but are not limited to, using a variety of instructional approaches, using varied curriculum materials, engaging parent and community involvement and support in the educational process, and providing the professional development, support and leadership necessary for an effective school; and

(5) The achievement of all students can be dramatically improved when schools focus on factors within their control, such as the instructional day, curriculum and teaching practices.

Bus replacements frozen for one year

SBA Could Lose $24 Million in Funds

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

House Bill 4601, which passed the House of Delegates Feb. 27 with a small increase in teacher increment pay, now addresses three objects: $19 million is extracted from School Building Authority of West Virginia's "pay-as-you-go" funds (state lottery-based moneys) for use as "legislative appropriation(s)" to balance the FY05 state budget; new school bus purchases are delayed for one year, again to balance the state budget; and, several sections of statute relating to SBA operations and funding procedures are rewritten and placed in one section of statute, §18-9D-16.

The bill proved controversial as it moved through both Houses, eventually ending up in a conference committee. Prior to conference, however, the Senate stripped the bill of its teacher pay provisions. While there was some discussion about the change in the bus replacement cycle, that issue didn't garner as much attention as the proposed SBA reduction of $19 million, with the conference committee adding legislators' abilities to take an additional $5 million if deemed necessary for legislative appropriation "for budget shortfalls."

There has been some disagreement as to whether or not the use of SBA funds will impact the SBA's bond sale of last year and the awarding of $180 million in SBA projects in December 2003. While legislators say there shouldn't be any impact – that was the tact taken by House Finance Committee Chairman Harold Michael (D-Hardy) when discussing the budget during the waning days of the session) – SBA executive director Clacy Williams says the moneys were needed to fully fund all projects approved last December.

Both SBA officials and legislators acknowledge, however, that work on no project has yet begun (except maybe for architect selection) and that some projects may be delayed—at least for one year, although those details have yet to be determined by the SBA, which meets March 29 in Charleston.

Williams is equally concerned with the precedent of taking funds

from the SBA for budget-balancing, having successfully fought off previous attempts by the Wise Administration to use SBA dollars to fund economic development projects.

Precedent

In that regard, Williams is quoted as saying, "This is an issue for which the entire educational community must be watchful in future years. The precedent has been set. It appears that school improvement and construction monies are easy prey. This loss generates a $50 million deficit in the projects as identified in December 2004 and it could take several years to recoup from that loss depending on the legislatures willingness to restore funding next year."

As for the other sections of the SBA bill, the House Education Committee staff worked to consolidate or package several existing statutes into a central or new section, §18-9D-16, which details how SBA dollars are to be spent. It does include language stating that SBA projects are to be evaluated by the agency and that the agency will "return to each county submitting a project proposal an explanation of the evaluative factors underlying the decision of the Authority to fund or not to fund the project."

The bill also allows the SBA to allocate 3 percent Statewide Grants for both vocational programs at comprehensive high schools or vocational schools cooperating with community and technical college programs. The legislation encourages county boards to cooperate with community and technical colleges in the use of existing or development of new vocational/technical facilities.

An additional bill provision allows the SBA to fund equipment and "equipment updates" at vocational/technical facilities.

In terms of newly-created §18-9D-16, county boards can submit preliminary facilities plans, plan "outlines" or a "proposal for a plan" to the SBA "prior to the submission of the facilities plan." This submission then becomes the "basis for a consultation meeting between representatives of the county and members of the (SBA), including at least one citizen member…"

The purpose of this meeting is to "assure the understanding of the general goals (of the statute) and the objective criteria by which projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and to assure efficiency and productivity in the project approval process."

In evaluating project submissions, the SBA is to evaluate individual projects based on several factors, including health and safety needs, economies of scale, history of efforts taken by the county board to propose or adopt local school bond issues or special levies, and regularly scheduled maintenance, among other items.

Prior to final action on approving projects for SBA funding, the SBA is to "submit a certified list of the projects to the (Legislature's) Joint Committee on Government and Finance."

The latter concept was endorsed by the House bill, then adopted by conferees. According to bill language, there are no additional guidelines for the Joint Committee once the "certified list" has been presented.

The original House bill would have captured $46 million in SBA funds, and would have allowed Authority funding only for projects as approved by the Legislature.

Although opposition to the bus replacement schedule was more muted, bill conferees didn't include language offered in the Senate Education Committee to provide an emergency $1 million for new buses. That amendment was offered by Sen. Michael Oliverio (D-Monongalia).

Former Del. Arnold Ryan (D-Summers), Raleigh County Schools Transportation Director, appeared at the Capitol during the last several days to protest the proposal, distributing copies of the Feb. 27 issue of *The Legislature* in which the bus replacement measure was first discussed.

Although W. Va. Department of Education officials provide legislators written assurance that eliminating bus replacement for "the coming school year is manageable in terms of providing safe school transportation," Ryan argues that bus inspections occur less often than in the past, and that several counties have older buses, including a 1987 bus model being used in Mineral County.

For more information about the original House legislation, refer to Issue 13 of *The Legislature.* Issue 15 has the changes made by the Senate Education Committee.

Ryan is a candidate for the Legislature from a district that includes Raleigh and Summers County. Del. Virginia Mahan (D-Summers) currently represents the district. Ryan last served in the Legislature in the early 1990s.

The additional teacher experience increment would have cost $4.9 million. According to House Education Committee Chairman Jerry Mezzatesta (D-Hampshire) it was to have been funded through the removal of the one percent discount for property tax (local share).

The Senate, in a Democrat Caucus, voted against adoption of any legislative pay increases – a notion to which the Senate held firm.

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

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Standards, accountability, assessment

HB4001 Became Session's Major Bill

Adopted by the House of Delegates Feb. 18, **House Bill 4001** would make a number of changes in several areas of education law. The original measure was a Wise Administration bill dealing with "teacher empowerment." The HEC stripped the bill of most of those provisions, although the SEC restored some of that legislation, especially that dealing with safe schools.

As passed by the House, the bill largely dealt with standards, accountability and paperwork reduction. In a series of meetings, an SEC subcommittee, headed by Sen. Jon Blair Hunter (D-Monongalia), worked on several Senate amendments.

The bill, as passed by the Legislature, would:

- Require Unified School Improvement Plans and Unified County Improvement Plans to be five-year plans, which must be revised annually in each area where a standard on the annual performance measures is not met. The revised annual plan also must identify certain other deficiencies, including "any deficit more than a casual deficit…" (Refer to bill provision relating to Office of Education Performance checklists. These are now listed in new subsection §18-2E-5 [k] which lists 22 additional items. Other items not subject to OPEA review during on-site inspections include "pupil-teacher ratio/split grade classes, planning and lunch periods, and excellence in job performance.")
- The plans are to be revised to include "each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the (W. Va. Department of Education) and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure."
- Direct the WVDE to make available on its Web site or through the W. Va. Education Information System an electronic "Unified School Improvement Plan" boilerplate.
- The W. Va. Board of Education is required to promulgate legislative rules to effectuate the statute's provisions.
- Designate the following three annual performance measures as the only measures for determining school accreditation and school system approval: (1) Student performance, (2) attendance, and (3) graduation rate.
- Measure student performance through use of a "statewide assessment program," in Grades 3-8 and Grade 10. Currently, the WESTEST is used. In Grades K – 2, indicators for student progress in reading and mathematics are to be measured through informal assessments. Assessments will be based either on the WVDE's informal assessment process or "other assessments, as determined by the school curriculum team." If the school fails to meet adequate yearly progress in reading and mathematics for two consecutive years, the county superintendent, school principal and curriculum team are to decide whether a "different assessment should be used to verify that benchmarks are being met." If the superintendent, school principal and curriculum team differ on what assessment is to be used, each entity is entitled to one vote.
- Allow the W. Va. Board of Education to require the West Virginia Writing Assessment at grade levels it considers appropriate.
- Direct the WVBE to study moving the Grade 10 assessment to Grade 11 and the need for end-of-course examinations in Grades 9 and 11.
- Allow the WVBE to provide other testing or assessment instruments for Grades K-12 "through the statewide assessment program for optional use by each school as determined by the school curriculum team to measure student performance and progress."
- Establish the school attendance rate at "no less than (90) percent in attendance" in all schools "that do not include grade (12)…"
- Exclude several type absences from the calculation of the attendance rate, including students who aren't in attendance due to "disciplinary measures" and "absent students for whom the attendance director has pursued judicial remedies compelling attendance to the extent of his or her authority."
- Set the high school graduation rate at "no less than 80 percent, or if the high school graduation rate is less than (80 percent), the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the (W. Va. Education Information System as of Aug. 15)."

Exemplary Performance

- Add indicators of Exemplary Performance and Progress, which includes "the percentage of graduates who declare their intent to enroll in college and other post-secondary education and training following high school graduation." Other indicators relate to "the percentage of graduates who receive additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation," and "the percentage of students who successfully complete advanced placement, dual credit and honors classes."
- Require the system of education performance audits include the evaluation of certain records, reports and other information "collected by the (WVDE) upon which the quality of education and compliance with statutes, policies and standards may be determined."
- Require certain specific items be included in the reporting formats/checklists developed by the OEPA for use by schools or school systems to document compliance with laws, policies and process standards. (Examples include assurance of personnel evaluation; participation of students in P.E. classes, personnel licensure, and that the school provides "multi-cultural activities.")
- Provide guidance to the WVBE for selecting schools or school systems where an on-site review will be conducted, specifically upon a determination that the performance and progress of the school or school system are "persistently below standard or other circumstances exist that warrant an on-site review."

- Exempt discussions of schools to be subject to an on-site review or dates for which on-site reviews will be conducted from the provisions relating to open governmental proceedings.
- Direct OEPA to conduct performance audits of a school or school system for the purpose of "investigating the reasons for performance and progress that are persistently below standard and making recommendations to the school and school system, as appropriate, and to the (WVBE) on such measures as it considers necessary to improve performance and progress to meet the standard." ("Persistently below standard" had been defined in the previous House and Senate Finance Committee measures as performance and progress being below standard for three consecutive years.")
- Require OEPA to examine compliance with the "laws and policies affecting student, school and school system performance and progress."
- Prohibit OEPA from conducting "duplicate reviews" or inspections of any compliance reviews or inspections conducted by the WVDE or its agents or other "duly authorized agencies of the state."
- Direct OEPA to "conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the (WVBE) unless specifically directed by the (WVBE) to conduct a review which covers additional areas."
- Require on-site review teams to "include a person or persons from the (WVDE) or a public education agency in the state who has expert knowledge and experience in the area or areas to be reviewed, and who has been trained and designated by the (WVBE) to perform such functions."
- Add the school curriculum team or teachers designated by the school curriculum team as persons required to be present at the exit conference of an on-site review.
- Clarify that the "purpose of the exist conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings."
- Require OEPA officials to report on-site review findings to the superintendent and principals within 30 days of the review.
- Eliminate reviews in some areas covered by "other mechanism and that additional accountability and oversight are not only unnecessary but counterproductive in distracting necessary resources from teaching and learning…" As stated above, some of these items include "staff development records," accounting practices, use of advisory councils and work-based learning records, among others.
- Allow the WVBE, when intervening in the operation of a school and removing the principal, to add the option of placing the principal on the transfer list.
- Allow students to transfer from a school which has failed to improve its status (seriously impaired) within one year, "following state intervention in the operation of the school to correct the impairment."
- Permit fully accredited schools "in which other deficiencies (besides deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the WVBE) are discovered" to remain on full accreditation status for "the remainder of the approval period…"
- Permit the WVBE, when intervening in the operation of a school system, to function in lieu of the county board in a transfer, sale, purchase or other transaction regarding real property. (This provision is found in **House Bill 4111,** the so-called McDowell County bill.)

Process for Improving Education Council

- Require that notice required to be given by the state board to the Process for Improving Education Council whenever amending rules relating to certain issues contain a summary and explanation of the proposed changes and that the notice be sent at least 15 days prior to filing the proposal. (The Council is comprised of the membership of the Legislative Oversight Commission on Education Accountability, the governor and the chancellor of the Higher Education Policy Commission. Designees for the latter may serve as Council members. Additionally, the governor and HEPC Chancellor are ex officio, voting members.) The governor or his designee is to convene Council meetings.
- Direct the WVBE to notify each Council member whenever the board proposes to amend its rules or to consider other issues such as education standards and certain assessment processes. The notification is to be in writing and is to include a summary and explanation of the proposed changes. Notices are to be given at least 15 days prior to filing the rule with the Secretary of State's Office.
- Provide for each suspension/expulsion to be recorded on WVEIS, and that WVEIS be consulted prior to the admission of a student to any public school.
- Disallow the enrollment of any pupil who is "at the time of attempted enrollment, serving a suspension or expulsion from another public school in (the state), and for the (WVEIS) to notify the user who has attempted to record the enrollment that the pupil may not be enrolled, and to notify the user of the reason therefore."
- Prohibit a teacher from being required to change a student's grade unless there is clear and convincing evidence that there was a mathematical error in calculating the student's grade.
- Require WVEIS to record "each suspension or expulsion imposed upon a pupil…" The school principal is to create an electronic record relating to the suspension or expulsion within 24 hours of the incident prompting that action. The information to be recorded must include the pupil's name and identification number, the reasons for the disciplinary action, and the beginning and ending dates of the suspension or expulsion. The WVBE is required to "collect and disseminate data so that any principal…can review the complete history of disciplinary actions taken by (schools in the state) against any pupil enrolled or seeking to enroll at that principal's school." According to the bill, the provision is necessary so that principals can determine the status of students seeking to enroll in schools and to allow principals to "obtain general information about pupils' disciplinary histories."
- Prohibit any state or county policy or rule governing special education from exceeding the requirements of federal law.
- Disallow school officials from requiring teachers to post their lesson plans on the Internet, although teachers may voluntarily post this information on the Internet.

See **HB4001** *on page 11*

Board / Employee Working Relationship Now Defined in Statute

Based on W. Va. Board of Education §Policy 5300, **House Bill 4001** includes a new statute which is designed to establish a "statement of policy and practice for the county boards and school personnel…in order to minimize possible disagreement and misunderstanding."

Under terms of §18A-2-12a, county boards, within the aegis of statute and W. Va. Board of Education policy, are "responsible for the management of the schools within their respective counties." Thus, "(county boards') powers and responsibilities…in setting policy and in providing management are broad, but not absolute."

The statute states that school employees share the responsibility for "putting into effect the policies and practices approved by the county board that employs them and the school personnel also have certain rights and responsibilities as provided in statute, and in their contracts." Thus, employees may meet together, form associations and work in concert to improve their circumstances and the circumstances of the schools.

The bill says that county boards and school personnel work together best by establishing "clear and open lines of communication," with school employees encouraged to make suggestions, proposals and recommendations, "through appropriate channels, to the county board." County board decisions regarding the "suggestions, proposals and recommendations should be communicated to the school personnel clearly and openly." Accordingly, employees are encouraged to attend county board meetings "without fear of reprisal."

A final bill section deals with employee evaluations. It concludes by saying that school personnel, based on evaluations, are entitled to opportunities to improve their performance prior to termination or transfer. Accordingly, the bill language states that personnel decisions are to be made on the basis of evaluations (except in cases of lack of need or as governed by specific statutory provisions unrelated to performance) "and not upon factors extraneous thereto," with employees entitled to due process for transfer, demotion or promotion.

Lastly, the bill section states that all "official and enforceable personnel policies of the county board must be written and made available to its employees."

During Senate deliberations, bill language was stricken which referred to school employees as having the right to form associations but not the right to strike. School personnel associations objected to that language as a matter of principle and because this right is not afforded employees, based on several court cases, one of which is a state Supreme Court of Appeals case arising from the 1990 teachers' strike.

A second provision lifted from the House bill referred to the validity of "accepted practice" in regard to personnel actions and protections. There was some concern among legislators that this provision could lead to litigation at the county level.

Measures Adopted During Session

The following is an abbreviated listing of several House and Senate education and education-related bills adopted during the 2004 regular legislative session.

Vendors Owing Debt

Senate Bill 100. This legislation would prohibit the state and its political subdivisions from contracting with vendors owing a debt in excess of $1,000 to the state or its political subdivisions, with the latter term being defined to specifically include county boards among other entities of local government.

State Police Advocacy

Senate Bill 208. Under terms of this bill, state police officers may engage in certain political activities while off duty or out of uniform, including actively campaigning for candidates for public office in partisan and nonpartisan elections, contributing to political organizations and attending political fund-raising functions. State police officers, however, couldn't be candidates for elective office in partisan or nonpartisan offices. (EDITOR's NOTE: The "Active Bills" information included in Issue 17 of *The Legislature* reported this provision inaccurately.)

CPD Board

Senate Bill 296. This bill would continue, under state sunset legislation, the Center for Professional Development Board. It is comprised of several persons, including W. Va. Board of Education members.

Growth Counties Facilities Fund

Senate Bill 408. This legislation creates the "Growth County School Facilities Act." Its provisions would apply to those counties having experienced an increase in second month net enrollment (excluding kindergarten students under age five without an Individualized Education Program) of 50 or more students during the last five years, as determined by the W. Va. Department of Education. County boards would opt into the program through board resolution. Under terms of the bill, moneys collected from an increase in new construction in these counties would be pooled into a "Growth Counties School Facilities Act Fund." These dollars, which are derived from applying the statewide regular school board levy rate to the new property values, then could be distributed to growth counties for "construction, maintenance or repair of school facilities." The rate is determined by the Legislature. Moneys could be carried over for an indefinite period of time, and the dollars could be used to match School Building Authority of West Virginia funding. Moneys in the fund wouldn't count toward the school aid formula "local share" calculation. The bill also allows the Legislature, after having conducting a public hearing, to "increase" the levy rate it has set statewide for county boards "if an increase is deter-

mined to be necessary." There are other provisions.

Senate Bill 694. This bill requires county boards (and other entities of government) to secure competitive bids from the "lowest qualified responsible bidder." That term is defined as meaning the bidder must certify that it is "ready, able and willing to timely furnish the labor and materials required to complete the contract," is in compliance with various laws of the state; and has provided valid bid bond or other surety. Records regarding the bid selection would be open to the public. There are other provisions.

Substitute Teachers

House Bill 2268. This bill, one of the first pieces of legislation adopted by the House of Delegates this session, relates to teacher substitutes. It would allow retirees to substitute teach for up to 140 days without penalty from the Consolidated Public Retirement Board. The bill also defines "area of critical need and shortage" as being an area of teacher certification and training in which the number of "available substitute teachers in the county who hold the certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers." Counties could employ retired teachers in "critical need and shortage areas" on an "expanded basis" as long as "…no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment." If a retiree is substitute teaching, the county board is required to "continue to post the vacant position until it is filled with a regularly employed teacher." Another bill provision states that students who intend to pursue teaching careers in areas of critical need and shortage, as determined by the W. Va. Board of Education, would be given priority for the Underwood-Smith Teacher Scholarship Program. That Scholarship was established several years ago to attract top students into the teaching field, including students who are in the upper 10 percent of their graduating classes.

Veterans' Diplomas

House Bill 2423. Amending legislation adopted in the late 1990s, this bill would provide diplomas for surviving veterans whose entry into the armed services during various 20th Century wars and conflicts prevented them from receiving high school diplomas. In order for veterans of the Korean Conflict or the Vietnam Conflict to receive these diplomas, they must have been "attending high school at the time (they) left prior to graduating and served in the armed forces of the United States."

Juvenile Records

House Bill 4037. This bill relates to what is to be contained in juvenile records received by county superintendents. Among items to be included are juveniles' arrest records, copies of psychological test results and mental health records, probation facility reports, and "any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others." There are certain restrictions relating to receiving the disclosures, including Health Insurance Portability and Accountability Act (HIPPA) regulations. County superintendents are required to designate school psychologists to received disclosure of the "juvenile's psychological test results and any mental health records." These individuals are to review the records and then may disclose to the principal of the school that the juvenile attends and other persons "who would have a need to know the psychological test results, mental health records and any behavior that may trigger violence or other disruptive behavior by the juvenile." This provision defines "other school employees" as "…any teacher who teaches a class in which the subject juvenile is enrolled and the regular driver of a school bus in which the subject juvenile is regularly transported to or from school." There are other provisions.

Professional Vacancies

House Bill 4040. This bill makes a technical change in statute in regard to the filling of vacancies. It refers to the "previous two evaluations" conducted pursuant to statute rather than the current language which reads, "receiving an overall rating of satisfactory in evaluations over the previous two years." According to House Education Committee testimony, evaluations over the previous "two years" is not applicable to some educators who may apply for a position.

Basic Skills Instruction

House Bill 4043. The purpose of this legislation is to establish the priority for early childhood education in the basic skills of reading, mathematics and English language arts. The Senate amended the legislation to include provisions of a Senate-passed bill declaring English as the official language of West Virginia, meaning, among other things, that no "state agency or political subdivision shall be required to provide, and no state agency or political subdivision shall be prohibited from providing, any documents, information, literature or other written materials in any other language other than English." The Senate Education Committee also amended the original House bill to allow the WVBE to promulgate rules regarding basic skills instruction.

Juveniles' Compact

House Bill 4055. This fairly extensive bill would create a compact for the supervision and return of juvenile offenders, juvenile run-aways and other juveniles.

Technology Plan

House Bill 4072. This bill would establish an "Education Technology Strategic Plan." Educational computer hardware and software are to be purchased as specified in the technology plan. The plan, as finally passed by the Legislature, would affect both public education and higher education. The purpose of the plan is to provide "unified approach to the administration and allocation of funds for technology that is used for public education and higher education in (West Virginia)…" Plan goals include flexibility, uniformity in hardware and software applications, collaborative service delivery, the "offering of new approaches to administration and accountability within the education system through technology application," and distance learning enhancement, among other goals. The committee has 16 members. Five members represent public education, five members represent higher education, one member represents business, the chief technology officers of Marshall and W. Va. Universities, two WVDE representatives and the W. Va. Library Commissioner. The business representative, who must be knowledgeable about technology, chairs the committee. The committee is responsible for developing a three- to five-year technology strategic plan which is to be updated annually. The plan must have several components relating to technology usage, one of which concerns county boards' and Regional Education Service Agencies' receipt of "assistance with the development

and implementation of technological solutions designed to improve performance, enrich the curriculum and increase student access to high level courses." The bill has several other provisions, including a section that emphasizes technology usage for "maximizing student access to learning tools and resources at all times including before and after school or class, in the evenings, on weekends and holidays, and for public education, non-instructional days, and during vacations for student use for homework, remedial work, independent learning, career planning and adult basic education."

'McDowell County Bill'

House Bill 4111. This legislation, which has been signed by the governor, allows the W. Va. Board of Education, in state takeover counties, to function in lieu of the county board in the "transfer, sale, purchase or other transaction regarding real estate." There are other provisions relating to schools in flood plain areas.

Cabinet on Children and Families

House Bill 4259. A fairly extensive measure, this bill revamps the Governor's Cabinet on Children and Families, including additional planning, provision of technical assistance to Family Resource Networks, and use of indicators to measure programmatic success.

Self-Administration of Asthma Medication

House Bill 4271. This bill relates to students' self-administration of asthma medication. Parental authorization is required, along with consent from the child's physician or advanced practice registered nurse. The student must demonstrate the ability to administer the medicine by "passing an assessment by the school nurse evaluating the student's technique of self-administration and level of understanding of the appropriate use of the asthma medication." County board employees would be exempt from liability, except for willful and wanton conduct, as a result of any injury arising from the self-administration of asthma medication. Accordingly, parents must indemnify and hold harmless the school, county board and its employees for claims arising out of the self-administration of asthma medication. Permission to self-administer the medication is granted for one year, and can be renewed. Permission can be revoked if the "administrative head of the school finds that the student's technique of self-administration and understanding of the use of the asthma medication is not appropriate or is willfully disregarded." The medication can be used in school, at school-sponsored activities, and before and after school. The W. Va. Board of Education is to develop rules regarding the statute's implementation.

Service Personnel Competency Testing

House Bill 4297. This legislation allows county boards of education and superintendents to designate sites for school service personnel competency testing. Sites other than county vocational schools may be used.

Board Financial Statements

House Bill 4478. Under terms of this bill, county boards would have 90 days in which to publish an end-of-the-year financial statement. The threshold amount for reportage of persons, firms and corporations that must be revealed in the statement has been raised from $50 to $250. Persons may request a copy of the published statement for the fiscal year, supplemented by a listing of the names of school personnel employed by the board during the year, including the amount paid to each, and a listing of the names of each firm, corporation, and person who received less than $500 "from any fund during such fiscal year showing the amount paid to each and the purpose for which paid." (The previous figure was $250.)

Solicitation of Minor

House Bill 4492. This legislation would create the criminal offense of soliciting a minor via computer in order to lure the minor to create illegal acts. The Senate added a bill provision saying the perpetrator must be at least four years older than the minor solicited.

Licensure Revocation

House Bill 4552. The purpose of this legislation is to clarify statutes relating to teacher licensure revocation. Accordingly, §18A-3-6 is amended so that the state superintendent of schools may, after 10 days' notice and upon proper evidence, revoke the certificates of any teacher for the following causes: "intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates." Certificates, however, can't be revoked for any matter for which the teacher was disciplined, less than dismissal, by their employing county board, nor for which the teacher is meeting or has met a county board improvement plan, "unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses (listed above) and his or her actions render him or her unfit to teach." Bill language then states that in order for any conduct of a teacher involving "intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job." Sen. Lisa Smith (D-Putnam) sought to amend the bill on the Senate floor to include battery on a child or parent as a reason for licensure revocation, as well as the "commission of acts which were in bad faith; (and) the commission of acts which were in a wanton or reckless manner." That amendment was defeated by the Senate. Her amendment also relied on the legal usage of proof by a "preponderance of the evidence" in regard to offenses warranting licensure revocation.

Out-of-State Certificates

House Bill 4553. This legislation would allow any teacher who has graduated from a teacher preparation program at a regionally accredited institution of higher education and who holds a valid teaching certificate(s) issued by another state to be, upon application, awarded a teaching certificate(s) for the same "grade level or levels and subject area or areas valid in the public schools of this state." The legislation is aimed at addressing teacher shortages in West Virginia, particularly in border counties. Out-of-state applicants apparently wouldn't have to take the Praxis or similar testing, according to committee testimony in February.

Service Personnel Leaves of Absence

House Bill 4554. This legislation would clarify that full-time school

service personnel employees have priority over substitute employees who may be filling vacancies caused by leaves of absences, employee leaves due to Workers Compensation, and employee leaves due to suspensions. If the leave extends for more than 30 working days, the county board is to post the position and fill as stipulated by §18A-4-8b (seniority basis). If the substitute is employed to fill the position for more than 20 working days, he or she is to be given regular employment status "until the regular employee returns to the position or ceases to be employed by the county board." If a regular or substitute employee is filling the position until the regular employee returns from leave due to receiving Workers Compensation, they are to return to their original position.

Child Advocacy Center Participant

House Bill 4649. This legislation provides for child advocacy center participation in multidisciplinary investigative teams. Among many other sections, the bill deals with the preference for in-state placement of juveniles and creates a Child Welfare Oversight Panel which is responsible for general monitoring, oversight and evaluation of the state's child welfare system. One duty of this group is to assist the W. Va. Department of Education in developing a plan to ensure that all children in "out-of-home care receive appropriate education services, including, but not limited to a plan for on-grounds schools at residential facilities." A related bill is **Senate Bill 319.** That measure concerns young adult offenders who are found to be unfit to remain at centers for young adult offenders. One significant bill provision relates to hearings for these individuals before the committing court and various standards that are to be used for their eventual placement including, in some circumstances, the record established at the center where they were housed. Another bill is **House Bill 4598,** which restricts courts from requiring conditions on the out-of-home placement of children inconsistent with existing licensing regulations.

TRS Contributions

House Bill 4737. This bill would provide an option for members of the Teachers Retirement System to make contributions for periods of temporary disability by personally paying for contributions to cover the leave time.

Other Measures

Senate Bill 166 would lower to 0.08 the blood alcohol limit for DUI. It has been signed by the governor.

Senate Bill 636, a retirement measure, was adopted with an amendment that would increase the pensions of legislators who are educators by several hundred dollars per month. The House Minority Leader and Senate Education Committee Chairman Robert H. Plymale (D-Wayne) have asked the governor to veto the bill. The governor has told *Charleston Gazette* reporters that he will examine the bill first prior to making a decision.

House Bill 2088 would increase the penalty for manufacturing, distributing or possessing controlled substances, marijuana or counterfeit substances within 1,000 feet of a park, playground, recreation center or for "any other recreation purposes." Municipalities could adopt signs designating such areas as "Drug-Free Recreation Zones."

House Bill 2200 would create the felony offense of injury, defacing or destruction of property causing damage, destruction or diminution in value of $2,500 or more.

House Bill 4022 is the state's "All-Terrain Vehicle Safety Regulation Act."

House Bill 4501 includes the third annual "sales tax holiday" among other provisions.

EDITOR's NOTE: This listing is not exhaustive in that it doesn't contain references to higher education and retirement measures. For a complete listing of bills passed, contact WVSBA. In cases where the enrolled bill – final bill version – is not available, legislative staff members from various committees have assisted in determining bill content.

Preschool Measure Among Failed Bills

House Bill 4444, a measure that would have eliminated the state's pre-kindergarten program, was among bills having died during the regular session, although budget conferees have continued to deal with that issue – specifically programmatic funding – during this week. According to W. Va. Department of Education sources, there is some disagreement as to program scope and funding, but the program is expected to survive, although it can be eliminated (or down-scaled) in future sessions. It was first adopted in 2002.

Other failed bills:

Senate Bill 196. This measure would have eliminated the order of activities during Instructional Support and Enhancement Days. The House Education Committee, during the waning days of the session, added an amendment that would have taxed services provided by attorneys, Certified Public Accountants, engineers and other professionals, saying the measure would raise $98.1 million annually in new funding ostensibly for public education. Education groups didn't rally behind the proposal partly because of no assurance that the preponderance of funds would go to schools, employees or education programs.

Senate Bill 240. Introduced during the past two years, this bill would have allowed boards and commissions having seven members to forego seconds for motions "unless the governing body adopts procedural rules requiring a second to a motion." In the last two sessions, the House has yet to consider the proposal.

Senate Bill 439. A legislative perennial, this measure would provide exemptions to compulsory immunizations. The House has never been friendly to the proposal.

House Bill 2323. This was year two for this proposal which would create a division of school personnel within the W. Va. Department of Education. One purpose of the legislation is to eliminate lawyer services and fees at the local board level. The WVDE, in providing these services, would be instructed to "develop a uniform standard of employment," advise counties "in personnel matters," and "provide information to the public and school personnel regarding questions relating to personnel issues such as, but not limited to, hiring, employment, seniority and certification."

House Bill 4005. This bill would have created a special revenue fund for the operation of the Education and State Employees Grievance Board. According to W. Va. Education Association data, the plan would have cost county boards about $500,000 annually.

House Bill 4039. A legislative perennial in some respects, this bill relates to non-educator coaches. Teacher associations, among other groups, were opposed to the bill.

House Bill 4044. The intent of this legislation was to increase the compensation for the state superintendent of schools from $146,100 to $200,000. In a strange twist to the last night of the session, the House did pass the measure – inadvertently that is when the clerk's staff read the wrong bill upon a mistake made by the Majority Leader. In that the Senate had possession of the bill, the 59-35 favorable vote was nullified.

House Bill 4045. One of two bills relating to superintendents, this bill would have required county superintendents to notify the state superintendent in regard to securing bond and good security. **House Bill 4081** would have required the posting of county superintendent positions. Both bills originated in regard to issues in Preston County in 2003, according to bill sponsors.

House Bill 4053. This legislation would have provided members of the W. Va. Board of Education up to $500 per meeting for compensation rather than per diem pay. The per diem pay proved controversial last year when it was discovered that there were no definitive provisions about what items were counted toward the $100 in per diem pay.

House Bill 4130. The purpose of this legislation, which was first formally discussed by the House last year, would be to reimburse teachers who attend WVDE professional development meetings. The Senate has shown little support for this type legislation.

House Bill 4284. Simply stated, this would have provided school service personnel a $250 bonus for their early notification for retirement. The current $500 applies only to professional educators. A rival group to the W. Va. School Service Personnel Association endorsed the measure.

House Bill 4290. This bill, among other provisions, would have required the W. Va. Board of Education to provide fiscal notes on policies, rules and programs that affect public schools. The Senate has never warmed to such legislation.

House Bill 4323. First introduced last year, this bill would have created an administrative assistant school service personnel classification for board or superintendent executive secretaries. Counties opting to create the position would have had to have used local funds. A related bill**, House Bill 4738,** created both this position and the position of "Cook IV." Again, the positions would have been paid from local funds.

House Bill 4440. This is a "salary waiver bill" for public officials. It would have applied to "statutorily-appointed board members, commissioners, full-time or part-time salaried or hourly officials, officers or employees of the state." Elected officials, however, would have been prohibited from waiving their salaries. The waiver would have been revocable.

House Bill 4441. The purpose of this legislation was to have expanded newborn testing to include sickle cell anemia and congenital adrenal hyperplasia.

House Bill 4545. This measure would have combined the state's two teacher retirement systems.

House Bill 4574. First introduced this year, this measure would have required the WVBE to prescribe instruction on personal finance in secondary schools.

House Bill 4626. The purpose of this legislation was to provide a salary supplement for providers of Medicaid eligible services in the public schools.

House Bill 4697. At first considered an innocuous bill, this measure would have exempted homes that provide independent and assisted living services from property taxation. The cost was estimated at several millions in lost property tax revenues.

House Bill 4714. Moved from the Senate Education Committee on the last day of the Session, this proposal would have recognized the Appalachian Education Initiative for its promotion of the role of art education in the public schools.

Finally, the Legislature defeated a bill that would have recognized a floor of 1,250 students for school aid funding purposes. That measure is **House Bill 4018**.

EDITOR's NOTE: Listing is not exhaustive.

HB4001

continued from page 8

- Add a new section that establishes a statement of policy and practice for the county boards and school personnel to minimize possible disagreement and misunderstanding. (See related story.)
- Make each county board solely responsible for the administration of discipline in the public schools, with boards required to adopt policies consistent with bill provisions to "govern disciplinary actions." Policies must encourage use of alternatives to corporal punishment.

The bill's effective date is July 1.

The bill amends §18-2E-5 and 5c, §18-5-15f, §18-20-5, §18A-2-12 and §18A-5-1 and 1a; and, would add §18-5-46 and §18A-2-12a as new Code sections.

Source: Senate Education Committee.

Wisdom

A politician thinks of the next election; a statesman of the next generation. A politician looks for the success of his party; a statesman for that of his country. The statesman wishes to steer, while the politician is satisfied to drift.

– James Freeman Clarke

Interview

'Consensus of Concern' Vital to Pilot Schools

The following is an interview between Howard M. O'Cull, Ed.D., W. Va. School Boards Association executive director, and Troy Body of the Governor's Minority Students Strategies Council in regard to ***House Bill 4669*** *and related issues. The interview was conducted March 17 in Charleston.*

Question: Please explain how the Governor's Minority Students Strategies Council came into being, and what was the goal or the purpose the governor had in mind in appointing the Council?

Response: The council grew out of a larger group that was meeting monthly with the governor to discuss minority issues in general. The Secretary of Education and the Arts (Kay Goodwin) convened a preliminary education meeting and the idea for the council – to focus specifically on closing the achievement gap – took root. We sought the names of individuals, statewide, with interest and knowledge and experience in the area of educating minority students to high standards. That is how the council was created.

Q. What are two or three of the council's major recommendations? Please elaborate.

R. The council recommended funding for the development and implementation of "parent universities" to be located throughout West Virginia, but especially in the targeted counties (those counties with minority student population of five percent or more).

Parent universities are designed to challenge parents and community organizations to develop community support groups and networks to more effectively work with students and schools. Training will include, but isn't limited to, interpreting school and student achievement data, effective utilization of student assistance teams, and other critical issues such as the development of support programs in schools, churches and other community groups. A community-based model will be developed to train leaders in organizations and churches to assist students and parents in negotiating the educational process.

The council also recommended establishing Professional Development Schools staffed by teachers who are selected for their proven academic effectiveness in working with low-income or African American youth.

As the council stated in the report, teachers should have incentives to participate in the program and to remain in challenging schools. One such incentive would be the use of innovative hiring practices to secure the teachers who are most successful in working with academically-challenged children. This approach would incorporate all of the essentials of an effective school and include teachers who are committed to educating academically challenged students.

Q. Of those recommendations – and other council report findings – what would you like to accomplish in the short-term and long-term?

R. In the short-term, establish the council itself as viable resource for education in West Virginia and as a political reality in the minds of African Americans in this state as well as in the mind of the state's teachers' union, educational organizations and the Legislator.

In the long term, I would like to see the professional development schools operational and successful and being replicated – not just statewide – nationally.

Q. The pilot schools project is a major accomplishment for this legislative session. How will you ensure that the project receives the attention and support necessary both this year – and in the next five years – to make it work?

R. The success of the schools depends upon the active investment of community capital the African American community in West Virginia is willing to invest. Judging by their activity during this Legislative session, I believe we are on to something wonderful. This legislation (**House Bill 4669**) struck a chord in the African American community. They want this – indeed, they have been waiting for this for years. This legislation is an empowerment tool that brings African Americans to the decisionmaking table that impacts the lives of their children. The intensity in the black community to get this legislation passed is a guarantee of sorts, that they have no intention of backing down or cooling off.

Q. Some school boards will want to know "why" their schools effectively can be run by the state superintendent of schools. Explain this.

R. Because it is the law and because, if they are participating in the program, their superintendent has no doubt called Dr. (David) Stewart (state superintendent of schools) and asked to be a participant. Look, we want those schools that want to be a part of the pilot program. We are tired of fighting the system…we want to show it is doable, if we all work together. Remember, the law allows superintendents to invite themselves into the program. In fact, in my opinion, that guarantees success. Why was it put under the authority of that state superintendent? Centralization of effort. Remember, this is a pilot program – not a statewide policy. We must centralize our efforts: State superintendent; Governor's Minority Students Strategies Council; NAACP; local parents; churches, etc. We believe we will best be able to mobilize our efforts in this manner.

Q. If no money is attached to this legislation (either at the state or local levels), how can it work?

R. Consensus of concern! The acknowledgement of the fact that there is a problem and that uniform effort in required to fix it, is half the battle. We believe clear direction from the top, a rigorous curriculum, a school culture where all initiatives guide to high standards and active parental/community participation will get us to our goal.

Look, let me make this clear. All children know when their parents and adults in general are very serious about a matter. Establishing that atmosphere within the school and within the community will mechanize our efforts. Also, we intend to look at additional funding from the [Claude Worthington] Benedum Foundation and other support organizations.

Q. As you saw with this legislation, public education is best

appreciated as "inside baseball" or seemingly as a "closed shop." Has public education's insularity over the years through rules, regulations, procedures and effective educator group lobbying contributed to there being an achievement gap involving disadvantaged, minority or under-achieving students?

R. What was is no more. I believe that there are some very well meaning individuals at the Capitol each year lobbying for issues they believe vital to education: school service personnel; teachers; school-aid formula; class- room size; school buildings; school calendars; principals and even the school boards association. We were different because we were, in my opinion, a voice for the students. Remember now, the students have no union.

Therefore, disaggregating data, as time consuming as it is, is the only way at getting to the truth of the matter. That said, and I must be frank here, we did not point out anything to education professionals in this state they didn't already know. What has contributed to the expansion of the achievement gap is the fact no one has actively acted upon the situation. Why? That is a question for students of history.

Q. What responsibility for the achievement gap lies with loss of family structure, poverty, neighborhood decline, etc.? How can we ensure that communities are enlisted to help bridge the student achievement gap?

R. A tremendous amount I am sure. The loss of the family structure, poverty, neighborhood decline, etc., all point to one end: community. Schools are supported, at the end of the day, by communities. Unfortunately, our report did not dig too deep into the issue of poverty or the issues that contribute to poverty (we ran out of time for 2003). Poverty is a crucial issue regarding the education of a child. However, it is not the only issue. Let us be clear here, poor children can and deserve to be educated at the same rigorous standards applied to other children.

Q. If I'm in a rural, homogenous West Virginia county, how does the professional development schools bill relate to me?

R. We have found that issues pertaining to educating minority students to high standards work equally as well with Low Socioeconomic Students of any race and in any setting.

Q. Does House Bill 4669 have anything in common with a charter school concept? It sounds an awfully lot like the Bill Gates urban model which, I might add, has been very effective in New York City. Secondly, do we need this type concept to reach disadvantaged or minority kids? Thirdly, won't the current structure work if tweaked?

R. I can assure you, that the concept of a charter school was never on our minds. Remember, we got our data from the W.Va. Department of Education and from the Higher Education Policy Commission. We were charged with identifying the problems and then making recommendations to fix them. We were not trying to create a new system. Upon looking at the data, the conclusions we came to were quite simple: Teacher expectations are too low – raise them. Parental / community participation is too low – raise it.

Q. Teacher associations were concerned about loss of rights. What's the tradeoff: Is there a time when teacher perks, rules or laws take a backseat to kids' needs?

R. We think so. Look, we cannot do this without teachers. **House Bill 4669** does not allow for students to teach themselves. However, it does allow for teachers who want to be a part of this program. It does allow for teachers who admit this is a serious issue and requires not doing business as usual.

The teacher associations were doing their jobs – we were doing ours. In the end, we all came to an agreement – the council and the unions – and created this bill.

Q. Some persons see this legislation as a "slippery slope," not only because of the purported charter schools flavor but also because the legislation seems to center on kids only. In your years of watching public education, has most legislation focused on students?

R. Regardless if you like No Child Left Behind or not…it is student focused. Our report and consequently, **House Bill 4669** are both student focused. The 2004 Legislative Session will be remembered as the year of the student – and it is about time.

Q. As you say, this legislation may serve as a rallying point for African Americans and other minorities to become more involved in state government and the legislative process. If so, what are the lessons you've learned this year?

R. Most definitely. The legislation wouldn't have passed without the tremendous support of the African American community. The community must now stay engaged. It has been said, and rightly so, that power is what you take…it is never given.

Q. The way the bill reads currently, it implies that up to 30 schools could be involved in the program. Please elaborate on this notion. Just how many schools can be involved? Is thirty too many?

R. Up to three schools in each of the 10 targeted counties. I seriously doubt if it will be anything near that. Remember, it is going to take a while to get these schools active. Senate Education Chairman Robert Plymale (D-Wayne) set that number so that the council or the WVDE wouldn't have to come back to the Legislature in a couple of years looking for an exemption once we were really ready to get this pilot program going.

Q. Is it true the pilot schools would be exempt from No Child Left Behind provisions regarding adequate yearly progress?

R. No. Also, that is not desirable in the view of the Council. We don't want that – indeed, exempting us from AYP would mock our efforts.

Q. Troy: Any other thoughts and ideas?

R. The council and the black community fully expect to be at the table in the planning and implementing process of **House Bill 4669** with the W.Va. Department of Education. We want to be a part of the solution. African Americans in West Virginia are saying "we are no longer going to turn our kids over to the school systems…we are going to go through the process with them."

Also, this effort would have never been a reality without House Education Chairman Jerry Mezzatesta (D-Hampshire). We truly appreciate the leadership role he took with **House Bill 4669.** The council would like to thank Senator Plymale for holding his ground. We would also like to thank the Maximizing the Achievement if African American Children in Kanawha Co. (MAACK) committee, Black Ministerial Alliance, West Virginia chapter of the NAACP, Office of the Secretary of Education and the Arts and all those wonderful people who helped make this a reality.

Thank you, Troy.

Thanks Howard.

WVSBA

Expecting too much from Charleston

Was Session 'Wierd' or Not?

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

Weird. That's one word a few veteran lobbyists used to describe the 2004 regular session. Other lobbyists and session hangers-on described it as "partisan," "lethargic," "lackluster" and the like.

This writer would settle for "weird," and for various reasons:

Partisan

First, it is no doubt that the session had its partisan moments—something we can expect more of with an energized Republican Party. Whether the "energy" displayed under the dome will translate into votes remains to be seen, although retiring Del. Jody Smirl (R-Cabell) was content to remind her Democrat colleagues on the last night of the session that there once were 43 Republicans in the House of Delegates and that they ousted an unpopular Finance Committee Chairman. (Both he and his wife, however, were subsequently reelected to the Legislature.)

Of course, what Smirl, a veteran legislator, failed to tell her less veteran colleagues is that the actions to which she alluded transpired prior to Watergate, an historical event that literally decimated Republican legislative numbers for years. (At one time, Pleasants County Sen. Donna J. Boley was the only Republican state senator.)

Yet, it is true Republicans made gains during the last General Election. Thus, Democrats – each of whom face a Republican challenger – may take the Minority Party a little more seriously. The trouble is the minority party seemingly relies on "running against" the majority party as the sum and substance of its platform. Down by overwhelming odds, Republican legislation didn't fare too well – even a bill to place a 60 percent income tax on Bob Graham, the Wyoming County seniors' director who seems to have no friends due to his alleged budgetary and spending excesses, including a $302,000 salary. Nor, did Republican party legislation differ that greatly from Democrat legislation. As any liberal will tell you, that's because West Virginia Democrats would be known as conservatives – if not conservative Republicans – in most any other state.

Which brings us to our next point: With a wider GOP berth, Republicans might expect some wins – new seats – in the fall, but there's the 2004 Presidential Election, a substantive portion of which will be fought to claim or reclaim West Virginia, and the 2004 gubernatorial race which may energize the state's Democrat base. Finally, Republicans score big with certain voters on social issues (matters like fetal protection) but have failed to differentiate themselves on other policy issues from Democrats. For instance, the "original" House prescription-drug plan, touted by Speaker Bob Kiss (D-Raleigh), didn't garner a single no vote. More importantly, Republicans offered no alternative plan. A question this writer ponders: If Republicans were to win a majority in the Legislature, how would there approaches differ from Democrats? Would it be like the proverbial pooch who finally "catches" a car he's been chasing? With the state facing a $100 million-plus deficit, fetal protection, while not without policy merit, won't balance a budget. (As an aside, governing from the majority is somewhat more complicated than relocating capitol offices.)

'Lethargy'

Now we move to lethargy: There was no lethargy in the House Education Committee which managed to hammer out about 50 or so proposals (not counting time spent on hearing various presentations).

While the Senate side was more sedate in terms of education, look at the work that went into higher education measures—and look at the House bills the Senate didn't consider. They're listed on page 10. Although there was some early talk about a Senate omnibus bill – a favorite tactic of former SEC Chairman Lloyd G. Jackson II (D-Lincoln) to deal with the usual spate of House bills – that didn't materialize. The difference may be that the Senate sees the SEC in terms of a minor committee (as compared to Finance and Judiciary), while the House sees the Education Committee as a major committee.

The difference is striking. Given the new 50th day deadline for bills to be reported from the committee in their house of origin, the HEC took that charge very seriously while the Senate primarily reacted to the House bills. (In fairness the Senate moved some, but certainly not all, the major higher education legislation.)

'Lackluster'

For other folks, however, things might have been lackluster. That's probably the case because the education committees deal with matters that affect 37,335 employees, 55 school boards/administrations and half the state's budget.

Lobbyists for other causes will say that things just didn't gel this year; or that the session was hard to get a handle on; or, that priorities weren't known or the like. The only trouble is they weren't involved in public education. In fact, this writer ventures to say that more public education bills were considered this session than in many years past.

Now, for the purely weird: Can anything top the proposed $53,900 pay increase for the position of state superintendent of schools, which included a corollary series of events that included the House Education Committee's reduction of the chancellor of the Higher Education Policy Commission's pay from $252,500 to $200,000. Neither proposal made it. (By the way, according to various W. Va. Association of School Administrators' reports, WVASA members made a motion to ask state superintendent David Stewart to remain in his post after Stewart had announced his resignation. Before a letter to that effect could be delivered to Stewart, the state superintendent appeared before the House of Delegates to publicly rescind a resignation made about 48 hours earlier. The WVBE, meeting March 11, voted to approve Stewart's recommendation that he remain in his job for another two years.)

'Target of Rage'

If all that isn't strange enough, we have the "Kenna Seal target of rage" episode, as reported in the *Charleston Gazette*. By now, you know the details of this interchange which apparently involved Seal's commitment or non-commitment to alter a House-passed bill that dramatically changed the focus of his agency, the Office of Educational Performance Audits. The long and short of this is that

House Education Committee Chairman Jerry Mezzatesta (D-Hampshire) and several House members contend Seal reneged on the House Bill, with Seal saying that he made no such promises. The W. Va. Board of Education, in the end, appeared to back House legislators who met with the WVBE on Friday, March 12. (This was done with WVBE members participating via telephone or teleconference.) At any rate, Mezzatesta felt such injustice was done to the legislation that he interrupted a WVBE meeting, threatening to pull a major bill because of Seal's action. This entire series of events has attracted considerable Charleston news media attention, especially from the *Charleston Gazette.*

Then we have the legislation creating the professional development schools for minority or disadvantaged students. Two decades or so ago, teacher unions were the vanguards of progressive educational (and public) policy in West Virginia. When a group of individuals who were appointed by the governor to study the proverbial "achievement gap" proposed development of what some persons say amounts to three "charter schools," teacher unions faced a tough decision in that these schools, as originally proposed, could operate without regard to…seniority. Much like former Gov. Arch A. Moore's mid-1980s "lighthouse" schools proposal, these schools were aimed at addressing the needs of minority and disadvantaged students, based on provision of the most qualified, interested and capable teachers which, in some cases, might not be the most senior teachers.

What observers have learned from this is that teacher associations are progressive within contextual spheres—the same as any other lobbying group—meaning they can't be categorized as defensive, stonewalling or out-of-touch. Rather, they're representing their members as enwrapped with ideological nuances—frankly not unlike school boards, or principals or administrators. Those who attempt to make too much into the teacher association stance on issues that are perceived as affecting their members first and foremost are guilty of over-reading the situation, or are unaware of context and the tug-and-pull of legislation.

Déjà Vu

Finally, we move to déjà vu: The debate on the school calendar – now entering year five, with antecedents dating to 1994 – was renewed, but died in committee. Then we have a proposal to review the state school employees grievance procedure. Last year, legislators discussed this issue, but issued no report. The real issue, in a nutshell, revolves around whether the procedure should be tweaked to better accommodate employee grievances, with employers "winning" about 75 percent of grievances, based on current procedures. The main issue here: If the process were less lawyerly, would things be done differently, meaning fewer grievances reaching Level IV and more Kumbyya? Then, there are calls to create a personnel division within the W. Va. Department of Education. We've never heard from the WVDE as to whether or not this is feasible, although it would keep their two in-house counsels very busy since one goal is to…replace lawyers at the local level. And, according to various WVASA missives, that may be a new WVDE stance as well, basically a new administrative or superintendent empowerment theme.

As you can see, no matter how you describe it, this was a rather typical legislative session. Each session has its lethargy, weirdness and surreal events. The problem with analysts, particularly well- or poorly-paid newspaper columnists, is that they expect too much from a citizen legislature. Legislatures, by nature, are incremental policymaking bodies. Unless energized by a very motivated governor such as Gaston Caperton, they are content to making incremental laws and preserving, to the extent possible, the status quo of life as we know it in our cities, towns, hamlets and communities. The only trouble is that external factors, including the world trade situation, are calling on West Virginia, meaning that incrementalism may no longer suffice. But with a lame duck governor – this writer never even got into these effects (or even the Speaker Kiss 'reluctance' to seek another House term which might lead to some difficulty in governing the House during the next two years)– the Legislature does what it does best, e.g., make slight-step policy changes. Thus, light shows, cherry-picking policy, and social norms rule. Whether they will continue to rule depends on a number of factors, including the presidential and gubernatorial elections, legislative elections and the state and nation's economies…even the war in Iraq.

But, call it weird, lethargic, or lackluster, devoid of direction and focus, the 2004 legislative session represents the views and notions of 134 fellow legislators who, in theory and in practice, represent West Virginia's 1.8 million citizens. Thus, curse or disparage legislators, they are the faces, voices and aspirations of a West Virginia that is seeking to find its niche in a very turbulent, troubling, already trying 21st Century as globalism knocks at our doors, as our economy – despite the best face on things – continues to shrink (for the most part) and as our population continues to age 11. As these events continue apace, the state, wrongly in the opinion of this writer, is struggling to manage, at least in educational terms, 55 separate units of administration for what is a (still) declining educational enterprise. Of course, we hold onto the comfortable as long as possible. This writer asks, as do many board members, superintendents and others, can the old solutions work in a 21st Century world? In the 2004 legislative session, our legislators came face to face with some certain realities and, as incremental bodies do, placed the hard decisionmaking off until at least next year when we have a new governor. That, my friends, is not the politics of survival or even cowardice as our newspaper friends would lament, it is the politics of a state that is on the cusp of determining its future role…a West Virginia moving itself along into a 21st Century, the realities of which are crisp-edged, unknown, uncharted but demanding of leadership and vision. This certainly is a tall order for state best known for its conservative values and political inconsistencies—a state this writer believes is desirous of leadership and vision above all else.

It may be best described by this anecdote: This writer's maternal grandmother was prone, around election time, to discuss an early 1900s Quick's Run, Ky., voting procedure where illiterate voters were told to vote the "log cabin" (GOP) vote even if they were Democrats because the "rooster," symbol of the Democrat Party, was "in the log cabin." Given an over-developed conscience, this writer protested the injustice and wrong of that situation to which Daisy Cadwallader May replied, "They're both the same." As policymakers, isn't our job to see that they're not "the same?"

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

The Administrator's Perspective

Session commentary will be included
in Issue 19 of *The Legislature*

Opinion

No Child Left Behind

Law is Challenging, but Concept is Right

By William J. Raglin (Kanawha)

I attended public schools in Huntington and nearby Proctorville, Ohio. The time was the 1940s-mid-1950s and I graduated from Douglass High School in 1956. It was a time when Jackie Robinson had broken the color barrier in baseball, and while athletes such as Willie Mays, Jim Brown and Wilt Chamberlain were achieving stardom, blacks in professional sports were an exception rather than the rule. In was in this context that the heroes in my community were teachers, doctors, lawyers, and other professionals who achieved their positions through education.

Within the African American community, then referred to as Negro or colored, there were people of many interest. Regardless of these differences, there was one universal truth: Education was touted as the tool to get ahead, a means to move out our environment and to enjoy the benefits of society heretofore reserved for others. We heard this message from our family, extended family, our neighbors, the ministers, and, most importantly from teachers. The school was a place where you went to learn and that was what you were expected to do. In other words, you were held accountable to get an education. When report cards came out, all "family" members held you accountable for your grades! In short we knew the expectations and, generally, to the limit of our ability, we responded.

Today, with the advent of No Child Left Behind (NCLB), the term accountability has taken on new significance in our education community. Within our state and across the country, NCLB is the subject of continuing debate, weighing the value of the results expected versus the cost and effort required for implementation. NCLB requires accountability of all those involved in education: Parents, teachers, administrators, board members, and the student themselves. NCLB requires that we identify individuals and groups of students who are not performing at acceptable levels; and, that we develop and implement strategies to correct the problems. While it would be, perhaps, unthinkable that anyone would disagree with the objective of educating all children to the highest levels possible, there are those who find many reasons to object to the program of NCLB itself.

Meeting the standards set by this historic piece of legislation is challenging our teachers, administrators, and parents. In West Virginia we are meeting that challenge. Education Week's annual Quality Counts report, released January 2004, graded all 50 states on teacher quality, standards and accountability, school climate, state spending for education and equity in spending. West Virginia was among only eight states to receive A's in standards and accountability and adequate resources. This is a good report card, yet there are problems. We still have students in some demographic groupings that are performing far below acceptable standards. Knowing this requires that we define strategies to insure that students from these groups are, indeed, not left behind.

We can find any number of reasons to criticize NCLB, but few will disagree with the concept. No doubt there are areas of concern that must be addressed. Like any new legislation, it must be "tweaked" or fined tuned after it is field tested. At the end of the day, I believe, it always goes back to " mother is always right." My mother used to tell me "take what you have and make what you want of it." Let us apply that concept to No Child Left Behind and educate all students to be productive citizens in the 21st Century.

— *Raglin is W. Va. School Boards Association president*.

Looking Back...

The March 11, 1994 issue of *The Legislature* was the last members received specifically concerning that year's regular session. As the session was coming to a close, W. Va. School Boards Association staff writers did a "Top 10 Issues List" of session items likely to make to the legislative finish line. Bills relating to most of the "Top 10" list were approved, including an inclusion measure, School Building Authority of West Virginia "pay-as-you-go" funding and some school aid formula changes – along with pay increases for school employees. Then House Education Committee Chairman Percy Ashcraft II (D-Harrison) described the formula bill as "bold. It's controversial," he was quoted as saying. The bill's main funding mechanism was based on an increase in the state tobacco tax. (That feat wasn't realized until 2003.) One bill provision, supported by an group comprised of the W. Va. Association of School Administrators, WVSBA, the W. Va. Education Association and W. Va. Department of Education representatives, related to the "recapturing of (school aid formula) local share." The cigarette tax moneys were to have been appropriated to pay for inclusion, according to the publication. A typically omnibus bill, the House legislation dealt with several curricular matters, including instruction in gun safety. The bill included statutory deletion of language relating to "equalizing educational opportunities" primarily in regarding excess levies.

In other legislative deliberations, the House Education Committee also approved a measure that "prohibits corporal punishment in public schools, effectively ending what many conclude has been an exhaustive debate, which surfaced over a decade ago." That bill was Senate Bill 222. Del. John Overington (R-Berkeley), voted against the bill in the HEC.– *The Legislature* (March 11, 1994).

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Sound Bites

"Your credibility is based upon your word. If you don't have credibility, you don't have anything." – *W. Va. Board of Education member Lowell Johnson in a special WVBE meeting last week called to gather details about Dr. Kenna Seal's purported actions in regard to a House version of a bill amended by the Senate. There is some question as to whether or not Seal formally agreed to the House bill. WVBE members endorsed the House Education Committee's proposal*.

"Mice can roar." – *House Health and Human Resources Chairman Don Perdue (D-Wayne) discussing the state's new prescription-drug plan. He helped spearhead the conference committee work*.

"I need the FBI forensics team to see if that's truly the same bill I sent them. It's not a bill I recognize." – *Gov. Bob Wise discussing a bill he introduced which the Legislature adopted with significant changes.*

"If we don't put additional money in the Teachers Retirement System this year, planning for next year, then I think it is going to be impossible to put together next year's budget."– *House Speaker Robert Kiss (D-Raleigh)*.

Meanwhile in Texas...

Writing from Austin, nationally-syndicated columnist Molly Ivins reports that Texas Gov. Rick Perry has "shown an unexpected nautical flair of late. Combining his hitherto unknown passion for the briny deep with the exigencies of the school funding crisis, Cap'n Rick decided that the thorny problem could best be resolved at sea. He decided to hold a seminar on school finance at Abaco, in the Bahamas, aboard a 54-foot yacht" She said "this 'working retreat' over the Presidents Day weekend was paid for by the governor's campaign and 'private donations.'" Abaco is noted for bonefishing. According to Ivans, Perry took two major donors and their wives on the "retreat" along with Grover Norquist, an anti-tax specialist from Washington, D.C. Ivins says "Norquist himself is a noted contributor to the sweet science of state governance, saying last year: 'We are trying to change the tones in the state capitals and turn them toward bitter nastiness and partisanship. … Bipartisanship is just another name for date rape.'" Lastly, Ivins says, "(Texas) House Speaker Tom Craddick, who was unable to go because of recent neck surgery, didn't get the word about the 'working' part, and his spokesman said: 'He didn't feel like doing scuba diving with a neck brace. There isn't anything he could have done with that neck collar.' Such as, for instance, discuss school financing."

The Legislature

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