



Bill Edition

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Sixth Week’s Bills Reviewed

By Howard M. O’Cull, Ed.D.

Listed below are the West Virginia Senate and House of Delegates bills introduced March 14-18, 2005, the sixth week of the 2005 Regular Session.

Today is the last day to introduce Senate bills. (Bills may originate in committee.)

Bills are listed topically, beginning with public education bills. A series of education-related bills follow. Lastly, some measures are cited briefly. Senate bills are listed first. (As noted last week, the House of Delegates has revised its rules so that up to 11 Delegates may sponsor House legislation.)

A total 70 bills are reviewed.

For a copy of any bill, please contact the West Virginia School Boards Association: 304.346.0571. You also may contact WWSBA Executive Director O’Cull: hocull@wvsba.org.

Bills also are posted on the West Virginia Legislature’s Web site: www.legis.state.wv.us.

NOTE: Listing is not exhaustive.

— O’Cull is WWSBA executive director.

PUBLIC EDUCATION

Community Education

Bill recognizes Appalachian Education Arts Initiative

House Bill 3019. Revised §18-2D-1 would recognize that the “Appalachian Education Initiative serves a meaningful function in promoting the role of art education in the public schools and that programs provided by this organization and others similar to it benefit the state.”

The bill section amended relates to community education generally.

The purpose of the law is to “facilitate the providing of educational, recreational, cultural, social, health and other community services, in accordance with the needs, interests and concerns of the community, through the establishment of community education programs, in cooperation with other governmental agencies and community service organizations.”

For more information on the AEI, refer to The March 4 and March 10 issues of *The Legislature*.

This bill was adopted by House Education last year, but it died in the Senate.

There are 10 sponsors, including lead sponsor Del. Robert Beach, D-Monongalia. Introduced March 14. Referred to the House Educa-

tion Committee, then the House Finance Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

County Boards of Education

No second would be needed for motions under legislation

Senate Bill 555. Proposed §6-9A-5 would affect governing bodies with seven members or less, including county boards of education. (The bill proposes to add a new section of law in a Chapter relating to county commissions.)

According to Jim Slaughter, Esq., who conducts the organization's parliamentary procedure workshop at new board member orientation, a motion may be considered without a second. (Virtually no county board in the state uses this type meeting management procedure, however.)

Based on discussions with the bill sponsor, passage of this legislation will encourage greater discussion of topics which otherwise couldn't be discussed because the motion wasn't seconded.

Sponsored by Sen. John Unger, D-Berkeley. Introduced March 15. Referred to the Senate Judiciary Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Attendance Required

A second measure, *as introduced, would affect municipalities only*, would compel members to attend meetings, including municipal committee meetings, or face a mandamus action that may compel

their attendance.

If this type action were instituted, the municipal official would have to pay court costs and reasonable attorney fees, as determined by the court.

The bill's provisions relate to members absent from two or more consecutive meetings, with the member being compelled to "attend the next official meeting of the governing body or committee."

No exemptions such as illness, employment or other such reasons for one's absence are enumerated.

If the law were to be violated, the member could be removed from office.

The bill is **SB554**. It is sponsored by Sens. Donald T. Caruth, R-Mercer, and Clark Barnes, R-Randolph. Introduced March 15. Referred to the Senate Government Organization Committee.

Governor's busing bill introduced - codifies travel time

SB557. This is the governor's proposed busing bill. It would establish §18-5-46 which would codify the West Virginia Board of Education's (WVBE) recommended travel time guidelines: 30 minutes for elementary students; 45 minutes for middle/junior high school students; and, 60 minutes for secondary students.

The timelines apply for new bus routes created in the "wake of a closure or consolidation of an existing school facility...(under) normal weather and operating conditions..."

A county board, however, could request a WVBE waiver to operate outside the guidelines.

In order to receive the waiver, a county board must – as part of its School Building Authority of West Virginia facility plans – make two votes: One vote relating to approval/modification(s) of SBA plans (as part of the required annual plan updates), and one vote to request a WVBE waiver.

A separate bill section prohibits the WVBE from approving a waiver except by a vote separate from approving changes or modifications in the county board's facilities plans.

(The bill doesn't specify what would happen if a county board waiver were denied.)

Sponsored by Senate President Earl Ray Tomblin, D-Logan, and Minority Leader Vic Sprouse, R-Kanawha. Introduced March 15. Referred to the Senate Education Committee, then Senate Finance Committee.

HB3040 is the House companion. It is introduced by Speaker Bob Kiss, D-Raleigh, and Minority Leader Charles S. Trump IV, R-Morgan. That bill has been referred to the House Education Committee, then House Finance Committee.

Although a fiscal note has been requested for both bills, West Virginia Department of Education officials haven't provided fiscal information.

For more information on the House bill, refer to the March 18 issue of *The Legislature*.

Boards could share central office administrators

SB589. Revised §18-2-26 (relates to Regional Education Service Agencies [RESAs]) and revised §18A-4-8d would authorize and

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W.Va. School Boards Association
PO Box 1008
Charleston, WV 25324
(304) 346-0571
(304) 346-0572 fax

WVSBA.ORG

Dr. Rodney C. Thompson (Wayne), President
thompsonchiropractic@msn.com

Howard M. O'Cull, Ed. D., Executive Director, Editor
hocull@wvsba.org

Shirley M. Davidson, Administrative Assistant
sdavidson@wvsba.org

Jason Keeling, Layout & Design
jason@keelingstrategic.com

encourage county boards to share central office administrative personnel and to obtain administrative services from the state's eight RESAs.

Sponsored by Senate Education chairman Bob Plymale, D-Wayne. Introduced March 18. Referred to the Senate Education Committee, then Senate Finance Committee.

For a House Education RESA-related measure, refer to the March 18 edition of *The Legislature*.

Editor's note: This measure is one of WVSBA's 2005 Legislative Priorities.

Lease properties exempted

HB3012. Revised §11-3-9 would exempt property acquired by lease-purchase agreements by a state, a county, district, city, village, town or "other political subdivision," state college or university from property tax.

The bill has a subsection "g," which reads: "Inasmuch as there is litigation pending regarding application of this section to property acquired by lease-purchase agreement by the state, one or more county, district, city, village, town or other subdivision, state college or university, the amendments to this section enacted in (2005) shall apply to all cases and controversies pending on the date of enactment."

There are other provisions.

There are five House sponsors, including lead sponsor Speaker Kiss. Introduced March 14. Referred to the House Judiciary Committee, then House Finance Committee.

Bill relates to wage rates

HB3091. Revised §21-5A-5 would require the state Labor Commissioner to base the determination of prevailing wages on statistics provided by the U.S. Department of Labor (Bureau of Labor Statistics).

County commissions would have authority to review the determination (in terms of objections to the wage rate), with county commissions then being able to rule on the objections. That ruling ultimately would be subject to circuit court appeal and circuit court decisionmaking.

There are four House sponsors, including lead sponsor Del. John Overington, R-Berkeley. Introduced March 17. Referred to the House Industry and Labor, Economic Development and Small Business Committee, then the House Judiciary Committee.

Also refer to **HB2972**. Proposed §21-5A-12 would exempt construction performed on behalf of any county or municipal government from prevailing wage laws.

That bill was reviewed in the March 14 issue of *The Legislature*. *Similar proposals have been introduced/considered in past legislative sessions.*

School Aid Formula

Bills would establish '1,400-student' SAF-funding floor

HB3054/HB3080. These measures are companions to **SB475**, which was reviewed in the March 14 issue of *The Legislature*.

Revised §18-9A-15 would allow county boards having less than 1,400 students (net enrollment) to be eligible for "consideration for supplemental appropriations for capacity-building."

The state superintendent of schools would receive "petitions for supplemental appropriations from eligible counties that establish verified lack of capacity of the county to provide direct services to students mandated by state law or (West Virginia Board of Education policy).

The state superintendent "shall make appropriations to eligible counties after verifying need and reasonable local effort to meet mandated requirements."

Editor's note: As stated last week, these measures would amend a section of law relating to SAF funding for increased enrollment. A current section of law is stricken which says, "Nothing in this section shall be construed to require any specific level of funding by the Legislature." By striking this section, bill proponents – members of the West Virginia Association of School Administrators – contend that both "growth counties" and the eight counties that would receive additional funding due to the establishment of the 1,400-student net enrollment "floor" would be guaranteed funding.

'Subject to Legislative Appropriation'

According to both House and Senate sources, the Legislature, if adopting these measures, plans to add language saying any such funding is "subject to legislative appropriation" or similar language. (Under these proposals, that language would be stricken, meaning "automatic" funding for enrollment growth and for the eight counties affected by the 1,400-pupil 'floor'.)

A similar bill, which would have established a 1,200 student (net enrollment floor) was considered by the HEC last year, but died in the House Finance Committee.

HB3054 is sponsored by House Finance Chairman Harold Michael, D-Hardy. **HB3080** has eight House sponsors, including lead sponsor Del. William F. Stemple, D-Calhoun.

Michael's bill was introduced March 16. The Stemple et. al. bill was introduced March 17. Both measures have been referred to the House Education and House Finance Committee. *Similar proposals have been introduced in previous legislative sessions.*

School Calendar

ISE days could be used for 'additional instruction'

HB3075. Revised §18-5-45 would allow "schools" to use the off-months (September, November, January, March and May) provided for Instructional Support and Enhancement days (ISE days) to be used for "additional continuing education time to meet the requirements of 'No Child Left Behind' for ongoing and sustained staff development."

In order to accomplish the above objective, the bill eliminates the statutory reference to "bank time." Instead it would establish "accrued instructional time," which would be defined as "instructional time that will accrue over the course of the instructional term from time added to the instructional day beyond the minimum time required by (WVBE rule) for the applicable programmatic level."

Thus, to use the ISE days for this purpose, a school must have "met the state minimum requirements provided by (WVBE rule) for accrued instructional time to off-set the per minutes per instruction

as per programmatic level requirements.”

There are six House sponsors, including lead sponsor Del. David Perry, D-Fayette. Introduced March 17. Referred to the House Education Committee, then House Finance Committee.

A related bill, **HB3041**, would “restore” 10 full faculty senate days, one each school month.

The measure amends §18-5A-5.

Current faculty senate days are held on ISE days (two-hour blocks of time) as a result of legislation enacted in 2003.

There are five House sponsors, including lead sponsor Del. Linda Sumner, R-Raleigh. Introduced March 15. Referred to the House Education Committee, the House Finance Committee.

Calendar ‘Flexibility’

Also refer to **HB2979**, which was reviewed in the March 14 edition of this publication.

Revised §18-5-45 would provide up to four days flexibility for the beginning and ending dates of the school term.

The pertinent bill language reads: “...In the event (August 26) falls on a Tuesday or a Wednesday of the week, the instructional term may commence no earlier than the Monday immediately prior to (August 26)...(In the event June 8) falls on a Wednesday or Thursday of the week, the instructional term may terminate on the Friday following (June 8).”

That measure is sponsored by Sponsored by Del. Mike Hall, R-Putnam. *Similar proposals have been introduced/considered in past legislative sessions.*

School Employees Generally **Licensed plumbers required**

SB540. Proposed §29-3D-1 et. seq. would require plumbers to be licensed, as well as persons who engage in fire protection work (such as installing sprinklers in buildings).

The state Fire Marshal would administer the licensing.

Current code lists two school service personnel classifications for plumbers—Plumber I and Plumber II.

Plumber Is are “apprentice plumbers.” Plumber IIs are journeyman plumbers.

The bill provides two definitions for plumbers—“plumber in training,” defined as a person with “interest in and an aptitude for performing plumbing work but who alone is not capable of performing plumbing work.”

A “journeyman plumber” must have at least 8,000 hours of plumbing experience. He or she, by virtue of that distinction, is deemed “competent to instruct and supervise the work of a plumber in training.”

Under a final bill provision, proposed §29-3D-8 would prohibit political subdivisions (includes county boards) from requiring any license or “other evidence of competence as a plumber or sprinkler fitter from any person who holds a valid and current license issued under provisions of this article, as a condition precedent to permission for the performing of plumbing or fire protection work in the political subdivision.”

Current school service personnel classifications don’t include reference to “fire protection workers.”

One bill provision would allow the Fire Marshal to “grant... licensure with written examination (for licensing of plumbers) upon satisfactory proof...that the qualifications of the appli-

cant are equal to the qualifications required by (the bill) and upon submission of a complete application and (payment of a \$75 registration fee).”

That proviso applies to “other jurisdictions (who provide) for the licensing of plumbers.”

The bill has several other sections, including extensive provisions relating to enforcement.

There are seven Senate sponsors, including lead sponsor Sen. Brooks McCabe, D-Kanawha. Introduced March 14. Referred to the Senate Government Organization Committee, then the Senate Finance Committee.

School Employee Salaries

School board ‘surplus funds’ would go toward salaries

SB569. Revised §18-5-13(u) would require county boards to “disburse any surplus funds to teachers and service personnel to supplement salaries paid.”

Funds would have to be disbursed in “equal amounts.”

Sponsored by Sen. Tracy Dempsey, D-Lincoln. Introduced March 17. Referred to the Senate Education Committee, then Senate Finance Committee.

WVEA pay proposal introduced

HB3103. Revised §18A-4-2 would provide teachers with a 15 percent salary increase over the next three fiscal years.

The first year increase would be 4 percent; the second year increase would be 5 percent; and, the third year increase would be six percent.

There are 11 House sponsors, including lead sponsor Speaker Kiss. Introduced March 18. Referred to the House Education Committee, then House Finance Committee.

Editor’s Note: According to one of the bill sponsors, this measure – and other pay measures – won’t be considered until an expected special legislative session.

Most observers think that session, to be called by Gov. Joe Manchin III, will be held in late Summer or early fall, although the governor’s office hasn’t established a date for the special session.

According to various sources, this is the West Virginia Education Association’s proposed pay increase bill. *Similar measures have been introduced/considered in past legislative sessions.*

Special Needs Students

Alternative learning classrooms proposed

HB3077. This measure would establish two newly proposed sections of law—§18-21-1 and §18-21-2.

In the bill’s statement of intent, there is a statement that the Legislature “concludes that children who are disruptive...should be placed in alternative learning classrooms, outside of the regular classroom, where the curriculum requirements are designed to continue the traditional learning process while rigorously addressing

the particular disruptive behaviors exhibited by the students who are being served, including anger management and training.”

The legislative findings then direct county boards to “develop and implement a program which includes an alternative learning classroom to meet the needs of children who exhibit disruptive behavior and failure to follow school rules...”

Program requirements

These are among program requirements:

- The program goal is to “reintegrate” children who are being served in alternative classrooms into the “regular classroom...”
- Students who are placed in alternative classrooms are to be “served by the highly qualified classroom teachers to whom they are assigned and shall be provided educational programming while being physically located in the alternative classroom.”
- County boards are required to “seek and secure liaisons with community law enforcement, health care professionals and mental health community resources in the preparation of programs and curriculum requirements (for these youth).”
- Anger management as well as the dangers of alcohol and substance abuse are to be included in programs and curriculum requirements.
- The program applies to all middle, junior high and high schools, with no class size being larger than 20 students.
- County boards “shall establish and maintain adequate behavior modification capacity, programs and personnel, designed to address behavior problems children may exhibit, while instilling adherence to school rules in alternative learning classrooms. (This requirement can’t replace special education classrooms.)
- The proposed statute can’t override provisions of law relating to safe schools and the federal No Child Left Behind act.
- The WVBE must promulgate rules to effectuate goals of the legislation.

There are five House sponsors, including lead sponsor Del. Sharon Spencer, D-Kanawha. Introduced March 17. Referred to the House Education Committee, then House Finance Committee.

Related Bill

HB3079 would require creation of appropriate alternative facilities at each developmental level for children having serious emotional and psychological disorders.

The programs must be “planned and prepared in a manner that offers a tangible prospect of success in addressing emotional and psychological disorders at each grade and developmental level that these children experience.”

The WVBE is required to develop rules to implement the bill.

There are other provisions.

Sponsored by Dels. Nancy Houston, D-Monongalia, and Beach. Introduced March 17. Referred to the House Education Committee, then House Judiciary Committee.

Out-of-state placements only in cases ‘of necessity’

HB3078. Revised §18-20-1 would state the Legislature’s “policy” that no child with a learning disability or psychological or behavioral disorder should have to, “of necessity,” be treated out-of-state to address the disorder or disability “due to the absence of sufficient treatment capacity and programs in the state.”

The revised statute would require county boards to “establish and maintain adequate treatment capacity and programs to address the learning disabilities and psychological and behavioral disorders of the children under their authority.”

If programs are insufficient to address children’s needs, a child could get treatment from an out-of state facility.

The WVBE is required to promulgate statutory rules.

Sponsored by Dels. Houston and Beach. Introduced March 17. Referred to the House Education Committee, then House Judiciary Committee.

West Virginia Board of Education

Bill relates to Mountaineer Challenge Academy

SB602. This is the Senate companion to the original **HB3018**, which is reviewed in the March 18 issue of *The Legislature*.

It would establish the Mountaineer Challenge Academy as a special alternative education program whose operations would be subject to WVBE rules.

Sponsored by Sen. Jon Blair Hunter, D-Monongalia. Introduced March 18. Referred to the Senate Education Committee, then Senate Finance Committee.

The House companion, referred to above, is **HB3018**. *Similar proposals have been introduced in past legislative sessions.*

WVSSAC

Proposal would establish two WVSSAC tourney classes

HB3055. Revised §18-2-25 would require the West Virginia Secondary Schools Activities Commission (WVSSAC) to establish two classes of competition in all end-of-year interscholastic athletic tournaments.

Editor’s Note: The House Education Committee, meeting March 17, voted to table this measure.



WVSSBA

EDUCATION-RELATED

Abortion

Parental notice change sought

SB533. The purpose of this legislation is to revise state law relating to parental notification for minors receiving abortions.

The bill would require abortion-providers to obtain proof of age prior to the performance of an abortion.

The measure also includes a judicial bypass provision. (Refer to the March 14 edition of *The Legislature* for several abortion-related bills dealing with this topic.)

Other provisions of the bill require abortion-providers to give “active and constructive notice” to the parents of minors. They would have to maintain records documenting these type communications. (Parents also would have a record showing proof of such notice.)

Matters relating to these communications are to be retained in the minor patient’s medical file.

One bill provision would increase the parental notification time from 24 to 48 hours, and would require the notification of a minor’s intent to have an abortion to be delivered to the parents’ “usual place of abode.”

There are several other sections.

There are 29 Senate sponsors, including lead sponsor Sen. Roman W. Prezioso Jr., D-Marion. Introduced March 14. Referred to the Senate Health and Human Resources Committee, then the Senate Judiciary Committee.

Prezioso is chair of Senate Health and Human Resources. *Similar proposals have been introduced/considered in past legislative sessions.*

Abortion facilities would have to be 1,500 feet from schools

HB3043. Proposed §16-2J-1, 2 would require abortion facilities to be located at least 1,500 feet from any church, school or “kindergarten.”

There are other bill provisions relating to abortions being performed after the first trimester of pregnancy.

Sponsored by Del. Greg Eldridge, D-Lincoln. Introduced March 15. Referred to the House Health and Human Resources Committee, then House Judiciary Committee.

Alcohol

Ban would be placed on open containers in automobiles

SB574. The purpose of this legislation is to prohibit open containers of beer/alcohol in passenger areas of motor vehicles.

There are various penalties.

According to the bill note, the measure is necessary for West Virginia to comply with a corresponding federal law.

Sponsored by Sen. Unger. Introduced March 17. Referred to the Senate Transportation and Infrastructure Committee, then Senate Judiciary Committee. *Similar proposals have been introduced/considered in previous legislative sessions.*

Bill eliminates administrative DUI proceedings

SB579. Under terms of this legislation, administrative proceedings for suspension and revocation of a driver’s license would be eliminated. (Also relates to controlled substances.)

Instead of an administrative procedure, the bill calls for a judicial procedure whereby magistrates (or other ‘judicial officers’) could require and impose license suspension or revocation.

Those whose licenses have been suspended or taken through revocation would have an appeal process to the courts for purposes of considering license restoration.

There are other provisions.

There are nine Senate sponsors, including Sen. Russ Weeks, R-Raleigh. Introduced March 17. Referred to the Senate Judiciary Committee, then Senate Finance Committee.

The House companion measure is **HB3037**. It is sponsored by Speaker Kiss (by request). Introduced March 15. Referred to the House Judiciary Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Fortified beer would be included under beer ‘definition’

HB3083. The purpose of his legislation is to include “fortified beer” under the statutory definition of “non-intoxicating beer.”

Fortified beer would be beer – cereal malt beverages, beer, lager beer, barley beer, ale, and malt coolers – having a six percent alcohol content by volume.

Sponsored by Dels. John Doyle, D-Jefferson, and Danny Wells, D-Kanawha. Referred to the House Judiciary Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Bill affects legal counsel in child abuse proceedings

SB587. Revised §49-6-2 would require that counsel for parties *other* than the child in child abuse and neglect proceedings are to be appointed only upon personal appearance and the individual(s’) request for appointment of counsel.

There are five Senate sponsors, including lead sponsor Sen. Edwin J. Bowman, D-Hancock. Introduced March 18. Referred to the Senate Judiciary Committee, then Senate Finance Committee.

Bill relates to abuse by persons in ‘position of trust’

HB3098. Revised §61-8D-1 would expand the prohibitions and criminal penalties for sexual exploitation or sexual abuse of a child to

include other persons having abused the child and who are in a “position of trust” in relation to the child.

The term “position of trust” is defined as one whereby a person is “...responsible for the general supervision of a child’s welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child, including foster care, child care, family care or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act, including, but not limited to a teacher, school administrator, member of the clergy, health care professional, babysitter, day care worker, or a worker or volunteer in an organization, agency or program that teaches or supervises minors.”

A related section of code, §61-8D-5 makes a proceeding reference to the term “person in a position of trust in relation to the child.”

There are five House sponsors, including lead sponsor Del. Jon Amores, D-Kanawha. Introduced March 18. Referred to the House Judiciary Committee.

Child Safety

Unsafe toys would be banned from sale in state; exceptions

HB3044. Proposed §16-42-1 et. seq. would prohibit the sale of children’s products that are deemed unsafe through various means of commerce, including remanufacturing or retrofitting products.

Among products specified are full-size baby cribs, toddler beds, car seats, high chairs, booster chairs, play yards, swings, walkers, or toys, etc.

In order for a toy or product to be unsafe, it doesn’t conform to federal rules/laws/regulations. It has been recalled; a warning has been issued regarding the toy or product.

The state Bureau of Health is required to maintain a list of such products.

There are exceptions for some retrofitted products, including products that require assembly by the consumer.

A significant bill section deals with the definition of a safe child’s crib, including dimensions and matters regarding mattress weight and composition.

County prosecuting attorneys would be responsible for enforcing the law.

There are seven House sponsors, including lead sponsor Del. Mark Hunt, D-Kanawha. Introduced March 15. Referred to the House Health and Human Resources Committee, then the House Judiciary Committee.

No Yo-Yo Waterball toys permitted; fines, penalties

HB3097. Proposed §61-3-59 would prohibit the sale of Yo-Yo Waterball toys.

The bill describes these toys as any “...fluid-filled toy that includes a ball filled with water attached to a rubber cords.”

There are various penalties for sale of such toys, including fines ranging from \$2,500 to \$10,000, imprisonment.

Editor’s note: These toys can be dangerous in that they may wrap around a child’s neck, causing possible strangulation.

There are three House sponsors, including lead sponsor Del. Rick Staton, D-Wyoming. Introduced March 18. Referred to the House Judiciary Committee.

Child Support

College attendance couldn’t be used to alter support

HB3064. Proposed §48-11-105 would establish a statutory provision stating that college attendance by a non-custodial parents can’t be used as a reason to modify a child support order.

There are three House sponsors, including lead sponsor Del. Doyle. Introduced March 16. Referred to the House Judiciary Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Support enforcement agencies face significant overhaul

HB3094. Under terms of this legislation, several significant organizational changes or revisions would be made in terms of child support agencies, including rule-making responsibilities; the ability of the (Child) Support Enforcement Commission’s ability to provide direct services to an individual; placement of attorneys who are responsible for enforcing child support orders, and several other matters.

There are five House sponsors, including lead sponsor Del. Staton. Introduced March 18. Referred to House Judiciary.

Medicine Administration

EMTs could administer Epinephrine injections

HB3057. This legislation would allow Emergency Medical Technicians (EMTs) to administer Epinephrine injections to persons suffering from an allergy attack.

(One example of where this statute might come into affect would be children who suffer from peanut allergies.)

This is the same as **SB126**.

Sponsored by Dels. Patrick Lane, R-Kanawha (by request) and Thomas Porter, R-Mercer. Introduced March 16. Referred to the House Health and Human Resources Committee, then House Judiciary.

Credit Unions

Credit Union membership would be able to expand

SB568. This is the same as **HB2793** and **HB2938** both of which are reviewed in the March 7 and March 14 issues of this publication,

respectively.

The measure would allow for expanded Credit Union memberships, based on guidelines of a national Credit Union organization.

Sponsored by Sen. Evan Jenkins, D-Cabell. Introduced March 17. Referred to the Senate Judiciary Committee.

Crimes

Bill relates to aiding detainees escape penal facilities

SB534. Revised §61-5-8 relates to correctional facilities, including those housing juveniles. It bars inmates from having certain items, including alcohol, beer, poison, escape implements, dangerous materials, weapons or controlled substances.

There are fines for having these items.

The bill also bans inmates from having other items such as medicine, telecommunications devices, money, etc., without written permission of his or her supervising officer.

Again, there are fines for violating this section of statute.

A final bill provision includes criminal penalties for transporting banned items, such as those listed above, onto the grounds of penal facilities for use by an inmate for escape.

There are four Senate sponsors, including lead sponsor Del. Shirley Love, D-Fayette. Introduced March 14. Referred to the Senate Judiciary Committee. This bill is the same as **HB2991**. Refer to Issue 11 of *The Legislature*.

Candy- or fruit-flavored smokes couldn't be sold in state

SB535. Companion to a House bill, this measure would prohibit the sale of candy- or fruit-flavored cigarettes in West Virginia.

Sponsored by Sens. Dan Foster, D-Kanawha, and Billy Wayne Bailey, D-Wyoming. Introduced March 14. Referred to Senate Judiciary Committee.

This legislation is the same as **HB2661**. Refer to the Feb. 28 issue of *The Legislature*. *Similar proposals have been introduced/considered in past legislative sessions.*

Measure concerns animal cruelty; juvenile intervention

SB588. Proposed §49-5-13f would allow a youth who has been alleged to have committed an act of "delinquency which involved causing harm to an animal" could be given the option of participating in the Animal Cruelty Early Intervention Program. This "participation" would be considered an "alternative" to the filing of a formal petition for the youth adjudication.

The circuit court would determine whether or not the youth could participate in the program, which also requires parental consent. If the youth doesn't complete the program, he or she is returned to the circuit court for "further disposition" revolving their crime.

The early intervention program would be run by the Department for Juvenile Services, and is designed to develop skills and

supports within families and to resolve problems "related to the juveniles who have been engaged in animal cruelty."

Services may include referral of juveniles and parents "and other family members" to receive psychiatric or other medical care, welfare, legal, educational or other social services "as appropriate to the needs of the juvenile or his or her family."

The Department for Juvenile Services is responsible for enforcing this statute.

The bill also, based on a revised §61-8-19, would expand the definition of animal cruelty in general, including proposed provisions relating to torturing of animals, killing a working or service animal, and leaving an animal "unattended and confined in a motor vehicle" when physical death is likely to result.

There are several other similar cited instances of acts that would constitute animal cruelty, including attendance at animal-fighting ventures. The fine has been increased to \$300-\$2,000.

Sponsored by Sen. Unger. Introduced March 18. Referred to the Senate Judiciary Committee, then the Senate Finance Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Prosecutor's time to hear cases would be reduced

SB600. Revised §62-3-21 would reduce the amount of time a prosecutor has to try a case after information is filed or an indictment is obtained.

The "time" would be reduced from three regular terms of court to one term. Prosecutors could request an extension of time, not to exceed one court term and for "good cause shown."

There are six Senate sponsors, including lead sponsor Sen. H. Truman Chafin, D-Mingo. Introduced March 18. Referred to the Senate Finance Committee.

Deceased would include 'unborn child' definition

HB3011. This measure is intended ostensibly on making it a crime to commit certain first degree murder. It includes a statutory provision that doesn't require the necessity to set forth the manner in which, or by which, the death of the deceased was caused.

Although the bill would define the "deceased" as an "unborn child," a second bill provision would make a first degree murder charge inapplicable in cases where "the death of an unborn child (was) alleged to be caused by the law dispensation or administration of lawfully prescribed medication or by a medical procedure performed by a physician or other licensed health care provider at the request of the pregnant woman or her legal guardian."

Sponsored by Del. Ruth Rowan, R-Hampshire. Introduced March 14. Referred to the House Judiciary Committee.

Comprehensive bill addresses methamphetamine offenses

HB3047. This is a comprehensive measure relating to the production of methamphetamine, including a criminal penalty for acquiring

products for making meth, and actually making the drug itself, including through a clandestine drug laboratory (capable of producing 10 pounds or more of the product in a 24-hour cycle).

There are various fines and penalties, including ineligibility for parole, and a felony charge for making the product in a dwelling or abode where children under age 18 are present, and another provision establishing a felony penalty if the clandestine drug laboratory is located within 500 feet of where children under age 18 would be present (defined as a “building, house, structure or facility”).

There are several other provisions.

There are 11 House sponsors, including lead sponsor Speaker Kiss. Introduced March 15. Referred to the House Judiciary Committee.

Bill would expand wanton endangerment definition

HB3049. Companion to **SB495**, this measure would create a new crime of wanton endangerment involving the use of fire.

For more information, refer to the March 14 issue of *The Legislature*. There are eight sponsors, including lead sponsor Speaker Kiss. Introduced March 15. Referred to House Judiciary Committee.

Identity theft would be felony

HB3070. Revised §61-3-54 would make identity theft a felony if a person committing the crime is doing so with the intent to commit any other crime.

(Current law limits the felony to persons who commit the crime with the intent to fraudulently represent themselves as another person for purposes of parking credit or financial transactions.)

The statutory provisions apply to taking the “name, birth date, Social Security numbers or other identifying information...”

Sponsored by Del. Larry W. Barker, D-Boone. Introduced March 16. Referred to the House Judiciary Committee.

Failure to appear in court for summons would be crime

HB3081. Proposed §61-1-10 would make it a misdemeanor for a person to fail to appear in court, based on a “citation, summons, warrant bond or court-ordered continuance.”

The fine would be in addition to any other remedies provided in code.

Each missed court appearance would be considered a separate offense.

Sponsored by Del. Tim Ennis, D-Brooke. Introduced March 17. Referred to the House Judiciary Committee.

Ticket-scalping would be illegal

HB3082. Proposed §61-3-58 would make it a criminal offense (misdemeanor) of scalping tickets to sporting and other public events. The measure also relates to scalping transactions for services or commodities.

There are three House sponsors, including lead sponsor Del. Bonnie Brown, D-Kanawha. Introduced March 17. Referred to the

House Judiciary Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Elections

Bill concerns political activity of deputies, police officers

SB530. Proposed §7-14-15 and §8-14-19 would allow deputy sheriffs and municipal police officers to engage in partisan or nonpartisan political activities, except for being a candidate for or holding office any other public office in the county in which he or she resides.

(The bill includes reference to certain federal exceptions that may apply.)

Other provisions would prohibit these individuals from soliciting political contributions or donations from members or employees of the county or municipality.

There are other sections.

There are three Senate sponsors, including lead sponsor Sen. Jenkins. Introduced March 14. Referred to the Senate Judiciary Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Measure would regulate campaign contributions

SB592. Most of the proposed statutory revisions in this 38-page bill relate to statewide elections, although there are expanded reporting requirements that would affect county board members if members were to receive contributions from independent groups. (The measure uses the term, ‘independent expenditure.’)

This provision would apply to independent expenditures of \$1,000 or more.

Its contributions provisions don’t apply to some organizations, including trade associations.

Independent expenditures must clearly identify the name of the person who paid for the expenditure and state that the communication isn’t authorized by the candidate or his or her committee.

There are numerous other provisions.

Other bills have been introduced relating to this topic.

Sponsored by Sen. Michael Oliverio, D-Monongalia. Introduced March 18. Referred to the Senate Judiciary Committee.

Campaign records would have to be kept for two years

HB3035. Proposed §3-8-5g would require candidates, financial agents or campaign treasurers to maintain all “campaign-related financial records and receipts until a period of two years following the filing of each related financial report...”

The records are to be available to the Secretary of State or county clerk for audit purposes.

Those failing to maintain the records would be guilty of a misdemeanor.

Sponsored by Dels. Trump and Ron Walters, R-Kanawha. In-

roduced March 15. Referred to the House Judiciary Committee.

Bill relates to election canvasses

HB3073. Revised §3-4A-28 would allow election recording devices, ballot labels, ballot cards, program decks and standard validation tags decks to remain sealed during election canvasses.

If the equipment is opened for the canvass, it must be resealed immediately.

The bill would allow candidates, during the seven-day period following a canvass, to examine the above-cited materials.

There are several restrictions, including notice about the time and place for examination.

Sponsored by Dels. Amores and Trump. Introduced March 16. Referred to the House Judiciary Committee.

Higher Education

Waivers sought for deceased Guard members' children

SB567. This is the same as **HB2866.** Refer to Issue 9 of *The Legislature*. Similar proposals have been introduced/considered in past legislative sessions.

Sponsored by Sen. Unger. Introduced March 17. Referred to the Senate Military Committee, then the Senate Finance Committee.

Marshall, West Virginia Universities 'flexibility' bill

SB603. This is the governor's proposed legislation to provide greater 'flexibility' to Marshall and West Virginia Universities.

This measure will be reviewed in the March 25 issue of *The Legislature*.

It is introduced on behalf of the governor by President Tomblin and Minority Leader Sprouse. Introduced March 18. Referred to the Senate Education Committee, then Senate Finance Committee.

Bill relates to police on private school campuses

HB3020. This is the same as **HB2662.** Refer to the Feb. 28 issue of *The Legislature*. It relates to the appointment of private college campus police officers.

There are six House sponsors, including lead sponsor Del. Doug Stalnaker, D-Lewis. Introduced March 14. Referred to the House Education Committee, then House Judiciary Committee.

Health care providers wouldn't have to provide abortions

HB3030. This bill doesn't ostensibly relate to higher education institutions, although it defines "health care institution" as a "university medical school and nursing school."

Under terms of the bill, no health care provider would be civilly,

criminally or administratively liable for declining to participate in a abortion procedure that "violates his or her conscience."

Additionally, medical facilities (such as university hospitals) couldn't discriminate against health care providers for declining to participate in an abortion procedure that violates the individual's conscience.

Health care institutions have the "right not to participate...in an abortion procedure that violates its conscience."

Public officials/agencies couldn't "deny any form of aid, assistance, grants or benefits, or in any manner...coerce, disqualify or discriminate against any...(entity)...that declines to participate in an abortion procedure contrary to the health care institution's conscience."

There are several other provisions.

Sponsored by Del. Houston. Introduced March 15. Referred to the House Health and Human Resources Committee, then House Judiciary Committee.

The Senate companion is **SB172.** Refer to the Feb. 21 issue of *The Legislature*. Similar proposals have been introduced/considered in past legislative sessions.

Compact language would be revised; relates to 2004 bill

HB3042. Revised §18B-1A-4 would clarify the Legislature's intent with respect to financing higher education.

The bill is similar to **HB2919.** Refer to the March 7 issue of *The Legislature*.

There are three House sponsors, including Del. Cindy Frich, R-Monongalia, lead sponsor. Introduced March 15. Referred to the House Education Committee, then House Finance Committee.

Bills relate New River, Shepherd Community Colleges

HB3069. This measure is the same as **SB401.** Refer to March 4 Issue of *The Legislature*. It relates to transfer or adoption of policies, obligations, and similar documents/activities to the New River Community and Technical College and the Community and Technical College of Shepherd.

Sponsored by Del. Tom Campbell, D-Greenbrier. Introduced March 16. Referred to the House Education Committee.

Campbell is House Education Chairperson.

PROMISE would become forgivable loan program

HB3076. This bill is the same as **SB233,** which is reviewed in the Feb. 21 issue of *The Legislature*.

Its intent is to make the PROMISE Scholarship program a forgivable loan program.

If a student receiving a PROMISE Scholarship would remain in West Virginia for four years after graduation, the loan would be forgiven. (There are certain other stipulations).

There are three House sponsors, including lead sponsor Del. Mitch Carmichael, R-Jackson. Introduced March 17. Referred to the

House Education Committee, then House Finance Committee. *Similar proposals have been introduced in past legislative sessions.*

Bill concerns WVU rifle team

HB3101. Revised §18-11-27 would establish the West Virginia University Rifle Team Fund.

The fund would be paid for by increasing the cost of a license to carry a concealed weapon from \$75 to \$85.

There are other provisions.

The program was eliminated in 2003 due to budget cuts in athletics programs ordered by WVU President David Hardesty.

Sponsored by Dels. Amores and Staton. Introduced March 18. Referred to the House Education Committee, then House Finance Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Taxation

Managed timberland taxation limitation proposed - 2 bills

SB525. Revised §11-1C-2 would redefine “managed timberland” for purposes of preferential tax reduction to no more than 1,000 acres per county, owned by one corporation, one person or if more than one person, than owned in division.

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

Also refer to **SB543.** It would provide various tax incentives to nonresidential owners of managed timberland to allow the public to use the land for recreational purposes.

There are other provisions, including one which states that “no parcels of property, other than parcels on which the owner resides, shall be classified as managed timberland” unless open to recreation purposes.

Sponsored by Sen. Hunter. Introduced March 15. Referred to the Senate Natural Resources Committee, then Senate Finance Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Sales tax holiday proposed

HB3017. This legislation would allow a sales tax holiday in early August for certain school-related items and supplies.

There are five House sponsors, including lead sponsor Del. Richard Thompson, D-Wayne. Introduced March 14. Referred to the House Finance Committee. *Similar proposals have been introduced/considered in past legislative sessions.*

Fresh produce would be exempt from sales food tax

HB3062. This bill would exempt fresh grocery produce from state sales tax.

There are 11 House sponsors, including lead sponsor Del. Frich. Introduced March 16. Referred to the House Finance Committee. *Similar proposals have been introduced in past sessions.*

DCS

Participation in Defined Contribution System required

HB3093. Revised §18-7B-7, among other things, would require all new employees to participate in the Defined Contribution System “as a condition of employment.”

The bill also would allow River Valley Child Development Services Inc. to withdraw from the TDC.

Sponsored by Del. Kevin J. Craig, D-Cabell. Introduced March 18. Referred to the House Pensions and Retirement Committee, then House Finance Committee.

Teachers Retirement System

One-time retiree supplement proposed; tax-exemption

SB586. Proposed §18-7A-26t would give Teachers Retirement System annuitants who have been in “retirement status” for 10 or more years a \$400 supplement. For TRS retirees who have been retired for 5-10 years, the supplement is \$200.

Sponsored by Sen. Bowman. Introduced March 18. Referred to the Senate Pensions Committee, then Senate Finance Committee.

Editor’s Note: This measure also applies to Public Employees Retirement System members.

Bill makes technical changes in TRS laws; other sections

SB591. This measure is similar to **SB642**, which relates to the PERS. Refer to the March 14 issue of *The Legislature*.

It would make several technical changes, including definitional changes, in statutes governing TRS, essentially re-writing and recodifying several existing definitions and code sections.

It also would limit use of “military service credit (to no more than) one retirement system administered by the Consolidated Public Retirement Board.

There are several other provisions some of which relate to loan repayment, replacing earnable compensation with gross salary enumeration; and, interest calculation for the estate of deceased TRS members.

Sponsored by Sen. Foster. Referred to the Senate Pensions Committee, then Senate Finance Committee.

The House companion measure is **HB3099.** Sponsored by Del. Stalnaker. Introduced March 18. Referred to the House Pensions and Retirement Committee, then House Finance Committee.

New employees could join TRS

HB3085. Proposed §18-7A-35d would allow new school employees, defined as public school employees having less than three years’ consecutive service, to transfer deposits from the Defined Contribution Retirement System and to opt into the TRS by paying

additional sums in the amounts to be determined by the state Retirement Board to ensure the actuarial soundness of the TRS.

Sponsored by Dels. Houston and Charlene Marshall, D-Monongalia. Introduced March 17. Referred to the House Pensions and Retirement Committee, then House Finance Committee.

PERS

State employees would be able to ‘buy-back’ used leave

SB532. Under terms of this bill, state employees (Public Employees Retirement System) members who were unable to convert accumulated sick leave into credited service for retirement, due to having to use the leave during time of illness, to have the option to repurchase it by having withholdings taken from future pay.

Sponsored by Sen. Love. Introduced March 14. Referred to the Senate Pensions Committee, then Senate Finance Committee.

Out-of-state retirement credit would count toward PERS

HB3029. Revised §5-10-15b would allow West Virginians who have worked out-of-state in public employment positions to accrue credited service toward eligibility or vesting in PERS.

Sponsored by Del. R.M. Thompson, D-Raleigh. Introduced March 15. Referred to the House Pensions and Retirement Committee, then House Finance Committee.

PEIA

Acupuncture treatment would be covered by PEIA

SB528. Under terms of this legislation, acupuncture treatments as performed by a licensed acupuncturist would be covered by health insurance policies.

Sponsored by Sen. Love. Introduced March 14. Referred to the Senate Banking and Insurance Committee, then Senate Finance Committee.

Workers Compensation

Bill relates to WC law about ‘deliberate intent’ actions

SB564. This bill has several purposes, one of which is to change the Workers Compensation statute to require ‘actual personal knowledge’ of an unsafe working condition.

It also would require that either a federal or state agency citation be issued or that it be shown (through expert testimony) that such a citation would have been issued.

The bill has other sections relating to employee negligence, partial disability as a result of an unsafe working condition, and

degree of disability allowed due to the unsafe working condition.

There are several other sections.

Sponsored by Sens. Caruth and Sprouse. Introduced March 17. Referred to the Senate Government Organization Committee, then Senate Finance Committee.

Resolutions

Legislature could expand gaming in four counties

Senate Joint Resolution 12. Under terms of this resolution, which would become a proposed constitutional amendment if adopted by the Legislature, lawmakers couldn’t expand legal gaming, except in the four counties where horse and dog race tracks are located.

Sponsored by Sens. John Yoder, R-Jefferson, and Sprouse. Introduced March 17. Referred to Senate Government Organization Committee, then Senate Finance Committee.

BRIEFLY

Senate Bill 526 would provide a personal income and corporate income tax credit for persons who make contributions to community foundations...**SB542** would provide an exception to the requirement that actions in which the state is a party be brought in Kanawha County Circuit Court for suits involving automobile vehicle accidents...**SB544**, among other things, would create the position of ombudsman to facilitate dissemination of information regarding state permits and the state permitting process...**SB558** (and **House Bill 3052**) would make a number of changes, as proposed by the governor, in terms of investment accounts as well as the state Treasurer’s duties in terms of investing state moneys. There are numerous other provisions...**SB566** would require cost-of-living studies to be conducted in the 55 counties for comparative purposes (Board of Employment Programs)...**SB573** would require a public hearing prior to the issuance of an initial license for a private club (or upon the transfer of a license to a private club at a new location)...**SB596/HB3036** relate to judicial standards and procedures for personal injury and wrongful death claims arising out of asbestos or silica exposure. There are numerous provisions...**SB578** would provide a preference for filling vacancies in state government to West Virginia veterans who sustained injury while serving on active duty with the National Guard (‘Operation Iraqi Freedom’)...**SB594** would authorize county commissions to adopt ordinances to reduce false fire alarms...**House Bill 3033** would extend the temporary special reclamation tax for an additional 24 months...**HB3050** would allow counties having a population of 175,000 or more to charge a hotel user fee...**HB3068** would authorize private inspectors to conduct annual inspections of elevators in state-owned buildings...**HB3090** would require all All-Terrain vehicles used off private property to be registered with the Division of Motor Vehicles...**HB3092** would add Mercer and Raleigh Counties to the Hatfield-McCoy Regional Recreational Authority...**Senate Joint Resolution 11** would amend the state Constitution to allow excess levies proposed by county commissions and municipalities to be approved by a majority vote for or against the levies.

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The Legislature

West Virginia School Boards Association
PO Box 1008
Charleston, WV 25324