



2014 LEGISLATIVE WRAP UP

Looking ahead to a *brighter*
tomorrow 
 West Virginia Association of Counties

WV County Clerks Association
 Annual In-Service Training
 June 11, 2014 Glade Springs
 RALEIGH COUNTY

"ONE DAY YOU'LL FIND THAT I HAVE GONE
 BUT TOMORROW MAY RAIN SO
 I'LL FOLLOW THE SUN."
 THE BEATLES, I'LL FOLLOW THE SUN
 50 YEARS AGO - 1964

GENERAL COUNTY GOVERNMENT

HB 4283 (Delegates Barrett, Barill, Barker, Diserio, Lawrence, Manypenny, Marcum, D.Poling, Reynolds, Sponaugle & Young)

Passed March 8, 2014; effective 90 days from passage; June 6, 2014

Purpose: Raising the minimum wage

Code Affected: Amends §21-5C-1, 2 & 4

Summary: After January 1, 2015, every employer shall pay to each of his or her employees wages at a rate not less than \$8.00 per hour. After January 1, 2016, every employer shall pay to each of his or her employees wages at a rate not less than \$8.75 per hour.

Association Comments: There is a technical flaw in the bill that particularly affects overtime and has an impact on local government. There is a plan to fix this in a special session to be called in May.

SB 3 (Senators Kirkendoll, Cookman, Blair, Fitzsimmons, D.Hall, Nohe, Wells, Miller, McCabe, Tucker and M.Hall)

Passed March 7, 2014; effective 90 days from passage; June 5, 2014

Purpose: Create the Uniform Real Property Transfer on Death Act

Code Affected: Creates new article §36-12-1 through 17

Summary: This legislation enables an owner of real property to pass the property simply and directly to a beneficiary upon the owner's death, without probate. The bill permits real property to be transferred by means of a recorded transfer on death deed. It allows, upon an owner's death, the property to pass to the beneficiary similar to the survivorship feature of a joint tenancy. The bill also provides that the owner retains full power to transfer or encumber the property or to revoke the transfer on death deed. This bill was recommended by the Commission on Interstate Cooperation and similar legislation has been passed by 19 states.

SB 414 (Senators Prezioso, Edgell & Plymale)

Passed March 8, 2014; effective July 1, 2014

Purpose: Relating to filing of estate appraisalment & nonprobate inventory forms

Code Affected: Amends §11-11-7 & 44-1-14

Summary: The nonprobate inventory form shall be maintained and preserved by the County Clerk or the fiduciary supervisor, but shall not be recorded in the records of the County Clerk. The nonprobate inventory form is confidential tax return information and may not be disclosed by the County Clerk or his or her officers and employees or former officers and employees.

Association Comments: These nonprobate inventory forms have always been sent to the State Tax Department. This was their bill because they don't need these forms since there are no state estate taxes. The question was asked, if the County Clerks don't need the form and the state tax department doesn't need the form, why have it? The response from the Chairman of the State Bar Probate Committee was that keeping the form allows beneficiaries to see whatever assets are out there and for tax purposes, it is the only form for joint accounts, etc. There is concern about how County Clerks are to keep these confidential from the public and yet allow and determine the appropriate parties such as the beneficiaries to see the forms.

SB 461 (Senators Kessler, Williams, Tucker, Plymale, Stollings, Snyder, Cookman, Palumbo, Fitzsimmons, Beach, Yost, Miller, D.Hall, Jenkins, McCabe, Wells, Edgell, Barnes, Blair, Boley, Cann, Chafin, Kirkendoll, Laird, Nohe, Prezioso, Sypolt, Unger, Walters, Green, & M.Hall)

Passed March 8, 2014; effective 90 days from passage; June 6, 2014

Purpose: Create Future Fund

Code Affected: Creates new section §11-13A-5b

Summary: A special fund to be designated the West Virginia Future Fund is created with this legislation. The fund is a means of conserving a portion of the state's revenue derived from the increased revenue proceeds as a result of mineral production as well as other funding sources as the Legislature may designate. The principal of the fund is to be kept inviolate and only the investment income may be expended. Funds cannot be used until fiscal year 2020 and only for the purposes of enhancing education and workforce development, economic development and diversification, infrastructure improvements, and tax relief measures for benefit of citizens and businesses. Those purposes are defined.

Association Comments: This legislation was supported by the WV Association of Counties.

1ST SPECIAL SESSION

SB 1005 (Governor's Bill; 1st Special Session)

Passed March 14, 2014; effective 90 days from passage; June 12, 2014

Purpose: Authorize Increase in Salaries of County Commissioners & County Officials

Code Affected: Amends §7-7-1 & 4

Summary: "The Legislature finds that it has, since January 1, 2007, consistently and annually imposed upon the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys in each county, new and additional duties by enactment of new provisions and amendments to this code." This legislative finding is the basis for a 12% salary increase provided by this bill for all county officials, which amounts to 1 ½% per year since the last salary increase was effective on July 1, 2006. Before the increased salaries can be provided, the following requirements must be met:

(1) "The Auditor has certified that the fiscal condition of the county, considering costs, revenues, liabilities and significant trends of the same; maintenance standards; and the commitment to the provision of county services has sufficiently improved over the previous fiscal years so that there exists an amount sufficient for the payment of the increase in the salaries..."

The certification criteria language is new; previously the affordability test was based solely on sufficient new revenue. Also new is language stating the Auditor is not liable for relying upon information and data provided by a county commission in assessing the county's fiscal condition or proposed county budget.

(2) Each county commissioner or other elected official in office on the effective date of the increased salaries must sign a written request and file it in the County Clerk's office prior to that date. The agreement shall state:

I (name of office holder), the duly elected (name of office) in and for the County of (name of county), West Virginia, do hereby request a salary increase pursuant to W.Va. Code §7-7-4, as amended. This salary increase is effective July 1, 2014.

(Signature of office holder)

(Date)

If a county official fails to file the written request, the salary for that office shall remain at the current level until the person vacates the office or his or her term of office expires and a new term begins, whichever comes first.

ELECTIONS

HB 4302 (Delegates Skaff, Guthrie, Poore, Wells, Perry, Pasdon & Walters)

Passed March 6, 2014; effective 90 days from passage; June 4, 2014

Purpose: Relating to elections for public school purposes

Code Affected: Amends §11-8-17; 13-1-13; 18-9-2

Summary: This bill provides that the County Commission is the board of canvassers for returns of levy elections called by the board of education, for returns of bond elections called by the board of education, and for all elections authorized in WV Code Chapter 18 (Education) for school purposes.

HB 4473 (Delegates Fleischauer, Manypenny, Poore, Marshall, Iaquinta, Skinner & Hamilton)

Passed March 8, 2014; effective 90 days from passage; June 6, 2014

Purpose: Establishing voting precincts and changing composition of standard receiving boards

Code Affected: Amends §3-1-5 & 29

Summary: The maximum number of registered voters may be increased to 3,000 in urban areas and 1,500 in rural areas at the discretion of the county clerk and county commission in order to consolidate precincts that are within a one mile radius of each other on or after July 1, 2014. No precincts may be consolidated if a geographical or other barrier exists between voters and their proposed new polling place that would create an undue hardship on voters. Each precinct shall have at least one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner. At the discretion of the county clerk and county commission, any county may add additional teams of poll clerks and commissioners to any precinct, as necessary for fair and efficient conduct of an election. For municipal elections, fewer poll workers are allowed where there is no simultaneous state or county election. Secretary of State approval is no longer required for a county commission to permit the establishment or retention of a precinct with less than the minimum numbers of registered voters.

Association Comments: This was a legislative priority for County Clerks. For example, it will allow consolidation of precincts when multiple precincts are in one facility or when precincts are in close proximity but one is in much better condition or accessible than the other.

SB 359 (Senators Beach, Palumbo, Cann, Cookman, Fitzsimmons, Jenkins, Kirkendoll, Carmichael, Nohe, Walters, Plymale, Stollings & Snyder)

Passed March 8, 2014; effective from passage

Purpose: Relating to post-election canvassing of votes involving electronic voting systems

Code Affected: Amends §3-4A-28

Summary: During the canvass and any requested recount, at least three percent (3%) of the precincts are to be chosen at random and the voter-verified paper ballots are to be counted manually.

Association Comments: Elimination of the hand count at canvass was a legislative priority for County Clerks but instead, the number of precincts to be counted was reduced from 5% to 3%. The reason for pursuing elimination of the hand count is that most of the vote count discrepancy is due to human error during hand count rather than the electronic count.

SB 553 (Senators Edgell, Fitzsimmons, Cookman, Yost & Beach)

Passed March 8, 2014; effective 90 days from passage; June 6, 2014

Purpose: Relating to certificates of nomination for elected office

Code Affected: Amends 3-5-24

Purpose: All certificates nominating candidates for office shall be filed no later than August 1st preceding the November general election. For municipal or other elections not held in conjunction with state and county general elections, certificates shall be filed not later than 90 days before the date of the election. In the case of candidates for election in a municipality, they shall be filed with the recorded. This section is not applicable to nonpartisan elections.

HJR 108 - The "Boy Scout" Amendment; will be on the ballot in the 2014 General Election

RETIREMENT & PENSIONS / PEIA & INSURANCE

SB 444 (Senators Kirkendoll, Cann, Edgell, Carmichael & Plymale)

Passed February 20, 2014; effective from passage

Purpose: Relating to Public Employees Retirement System

Code Affected: Amends §5-10-2, 31 & 48

Summary: The bill adds to the definition of compensation, providing that PERS members hired in positions for the first time on or after July 1, 2014 who receive nonmonetary remuneration cannot have that included in compensation for retirement purposes or in calculating the final average salary. In other words, just because it's taxable doesn't mean it's pensionable. Also, the employer contribution rate will be autonomously set by the Consolidated Public Retirement Board and will no longer go through legislative rule-making and review.

There is an added section to address those retirants who return to work for less than a 1 year period. The employee may request in writing to PERS that the employee and employer contributions be credited to the employer for the period of reemployment and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the Board's receipt of written notice.

SB 499 (Senators Kirkendoll, McCabe, Edgell, Cann, M.Hall, Carmichael, Plymale, Palumbo & Nohe)

Passed March 3, 2014; effective 90 days from passage; June 1, 2014

Purpose: Relating to investments of funds by WV Investment Management Board (pension funds)

Code Affected: Repeals §12-6-12; Amends §12-6-2 & 11

Summary: With this bill, the WV Uniform Prudent Investor Act becomes the primary standard of care for the trustees of the WV Investment Management Board. Restrictions on certain types of investments are repealed. Restrictions on investments in private real estate fund, private equity fund, or hedge fund are added with certain investment conditions are set forth.

WHATEVER HAPPENED TO.....?

Free death certificates for veterans - vetoed

Uniform Real Property Electronic Recording Act

*A little history
from 1995!*

0A

Mar. 17, 1995

Official says state will lose millions

Association of Counties blamed for investment bill's defeat

THE ASSOCIATED PRESS

A lobbyist's opposition to a bill to allow the state to invest pension funds in the stock market cost retirees millions of dollars, the state's top investor said Thursday.

But the lobbyist, the executive director of the West Virginia Association of Counties, said the bill was flawed.

Craig Slaughter, director of the state Board of Investments, blamed a campaign by the association for the bill's defeat in the Legislature on Saturday night.

"By the death of that bill, the state is going to lose a significant amount of money each year from here on out," Slaughter said.

The board manages more than \$3 billion in public employee retirement, workers' compensation and black lung funds.

Currently it can only invest in fixed-income securities, such as government bonds. The bill would have allowed the board to invest up to 40 percent of its holdings in stocks, which often have a better rate of return.

Last year, the rate of return on the Consolidated Pension Fund's bond investments dropped 3.23 percent, compared with a 1.3 percent gain in the Standard and Poor's 500 stock index, which is representative of the overall market, Slaughter said.

The Senate approved a version of the bill earlier in the session.

Concerned that granting the board too much freedom could lead to large losses, the House of Delegates added a number of safeguards to the bill before passing it.

The Board of Investments lost an estimated \$279 million in speculative trading in 1987, before Slaughter worked for the board.

The House changes forced the Senate to vote on the bill again.

When the Senate debated the bill a second time, several senators reversed themselves and said the more stringent House version in fact was too lenient. The bill was rejected 18-16.

"A lot of county officials were concerned about the broadness of how the bill was drafted," said Sen. Joe Manchin, D-Marion.

Senate Pensions Committee Chairman Robert Plymale, D-Wayne, blamed bad memories of the 1987 debacle, and opposition by county and several state officials for the defeat.

Plymale, who defended the bill before the vote, said the concerns were unfounded. He also said several leading opponents, including the leader of the West Virginia Association of Counties, never contacted him about the bill.

John Hoff, executive director of the association, said he supported the House version at first but didn't fully understand its consequences.

"It came up very quickly at the end of

the session," Hoff said. "We tried to work out some amendments. Then we discovered more grievous flaws. We thought the only thing to do was defeat it."

Hoff said his group, which represents about 10,000 public employees, was concerned the state could have invested excessive amounts of employee funds in the stock market. He also said the bill would have allowed the state to buy controlling interests in companies.

"The authority sought was absolutely wide open," Hoff said. "It could have been most of our money in any stock or any bond in the world."

Slaughter called Hoff's concerns "half truths" and said he felt betrayed by Hoff.

"I have a lot of problems with John Hoff's conduct this legislative session. Frankly, he's not trustworthy," Slaughter said.

"He agreed to the changes, then turned around and lobbied against the bill anyway," Slaughter said. "There were things about the bill I didn't like, but I went along with them because the bill was a good bill."

The Board of Investments estimated it would earn about \$33 million more for the pension funds each year if the investment restrictions were lifted.

Slaughter said the bill's death would hurt West Virginia taxpayers, who must pay a guaranteed level of benefits even if the investments do poorly.



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
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EARL RAY TOMBLIN
GOVERNOR

March 25, 2014

The Honorable Natalie Tennant
Secretary of State
State Capitol
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305-0770

Re: Enrolled Committee Substitute for House Bill 2165

Dear Secretary of State Tennant:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for House Bill 2165. This bill, if signed into law, would require the State Registrar and the clerks of the county commissions to issue, without charging a fee, no more than two certified copies of a veteran's death certificate to certain individuals. Although the bill's title references its impact on clerks of the county commissions, it fails to address the new obligations the bill would impose on the State Registrar. In these circumstances, the title is defective and I must therefore disapprove and return the Enrolled Committee Substitute for House Bill 2165.

Sincerely,

A handwritten signature in cursive script that reads "Earl Ray Tomblin".

Earl Ray Tomblin
Governor

cc: The Hon. Jeffrey Kessler
President of the Senate

The Hon. Timothy R. Miley
Speaker of the House of Delegates

Enrolled Version - Final Version

OTHER VERSIONS - [Introduced Version](#) | [Engrossed Version](#) |

Senate	House	Joint	Bill Status	WV Code	Audits/ Reports	Educational	Contact
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ENGROLLED**HOUSE JOINT RESOLUTION NO. 108**

(By Mr. Speaker (Mr. Miley) Delegates

Armstead, Manchin, Boggs, Young, White,

Barker, Sponaugle, Diserio, Ashley and O'Neal)

[Adopted March 8, 2014]

Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof, by adding thereto a new section, designated section twelve, relating to exempting certain nonprofit youth organizations which have facilities within this state which cost in excess of \$100,000,000 from ad valorem property taxation on property owned by the organization whether or not said property is leased or used to support the organization; conditioning tax exemption on enactment of legislation to which shall include protecting interests of entities in the region where the facility is located; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2014, which proposed amendment is that article X thereof be amended by adding thereto a new section, designated section twelve, to read as follows:

ARTICLE X. TAXATION AND FINANCE.**§12. Nonprofit youth organization revenue exemption.**

Notwithstanding any provision of this Constitution to the contrary, real property in this state which is owned by a non-profit organization that has as its primary purpose the development of youth through adventure, educational or recreational activities for young people and others, which property contains facilities built at a cost of not less than \$100,000,000 and which property is capable of supporting additional activities within the region and the State of West Virginia is exempt from ad valorem property taxation whether or not such property is used for the nonprofit organization's nonprofit purpose to generate revenue for the benefit of the nonprofit organization subject to any requirements, limitations and conditions as may be prescribed by general law: *Provided*, That the tax exemption authorized by the provisions of this section shall not become effective until the Legislature adopts enabling legislation authorizing the exemption's implementation and concurrently prescribing requirements, limitations and conditions for the use of the tax exempt facility that protect local and regionally located businesses from use of the tax exempt facility in a manner that causes unfair competition and unreasonable loss of revenue to those businesses.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Nonprofit Youth Organization Tax Exemption Support Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to exempt from property tax certain properties in this state owned by nonprofit youth organizations and built at cost of at least \$100 million whether or not the property is used for the nonprofit youth organization's charitable or nonprofit purpose to help raise funds for the benefit of the nonprofit youth organization. If approved, the Legislature would be required businesses from unfair competition and unreasonable loss of revenue caused by the nonprofit organization use of the tax exemption."

Introduced Version

Senate	House	Joint	Bill Status	WV Code	Audits/ Reports	Educational	Contact
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SENATE CONCURRENT RESOLUTION NO. 67

(By Senators McCabe, Barnes, Beach, Blair, Cann,
Carmichael, Cole, Cookman, Edgell, Facemire, Fitzsimmons,
M. Hall, Laird, Palumbo, Plymale, Prezioso, Stollings,
Tucker, Walters, Wells, Williams, Yost and D. Hall)

Requesting the Joint Committee on Government and Finance perform an interim study to look at a variety of issues involved in the probate process.

Whereas, West Virginia's county clerks want to improve, streamline, update and simplify the current probate process for the benefit of citizens who are administering estates; and

Whereas, County clerks recognize that probate laws and procedures need to be reexamined in light of new technologies and recent changes in estate laws, both state and federal; and

Whereas, County clerks particularly want to ease the process for those who leave behind little or no estate and simplify the process when the deceased is a joint owner of assets and had no assets solely in his or her name; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance perform an interim study to look at a variety of issues involved in the probate process; and, be it

Further Resolved, That the study include, but not be limited to: (1) Bonding amounts for estates and uniformity around the state; (2) clarification of legal residency requirements, recognizing that many of our citizens pass away in nursing homes or other care facilities located outside their home counties; (3) reduction of the number of estates referred to a fiduciary commissioner by raising the estate value to \$200,000, or another value; (4) revisions to what is to be included in the estate value; (5) review, revision and study of the effectiveness of the required publications; (6) review of the necessity and complexity of certain forms, such as the nonprobate appraisal filing; (7) study of the deadlines in order to expedite the process; (8) study of general and specific methods of simplifying the overall process; (9) study of the feasibility of incorporating the latest in technology, such as posting notices on web sites; and (10) eliminating practices and procedures that are no longer necessary; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2015, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft any necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

WEST VIRGINIA SUPREME COURT RULES THAT A PUBLIC BODY MAY
CHARGE A SEARCH OR RETRIEVAL FEE PERTAINING TO FOIA REQUESTS FOR
PUBLIC RECORDS

The West Virginia Supreme Court of Appeals filed its opinion in the case styled *RON KING, "Fire Marshal/Code Official" for the City of Nitro, et al v. RICHARD J. NEASE and LORINDA J. NEASE, husband and wife* on April 10, 2014.

This case was an appeal by the city of Nitro from an order of the Kanawha County Circuit Court which granted summary judgment in favor of the "Neases, on the issue of whether this state's Freedom of Information Act or FOIA authorizes the collection of a search fee in connection with a document request. The issue centered around W. Va. Code § 29B-1-3(5) which provides that "The Public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records." The circuit court held that the Legislature intended that "making reproductions" refers to "making copies" and that a search or retrieval fee could not be imposed under the FOIA statute. The Supreme Court reversed the decision of the Circuit Court and held that "Pursuant to West Virginia Code § 29B-1-3(5) 2012, a public body is vested with the authority and discretion to impose a search or retrieval fee in connection with a Freedom of Information Act request to provide public records provided that such fee is reasonable."