



## Capital Eye

Volume 13, No. 7 ~ March 2, 2012

### **The End is Near!**

by Gary Zuckett, [garyz@wvcag.org](mailto:garyz@wvcag.org)

Just the end of the session, not the planet! Global Climate Change will take a lot longer to do us all in, but the 2012 regular session ends on midnight Saturday, March 10th. It isn't just our opinion that this has been a rather sedate session. Consider this quote from Ry Rivard's Monday Daily Mail article, "Lobbyists and lawmakers say frequently in private that the session has been slow, something that gets attributed to 2012 being an election year and there being little or no extra money for the Legislature to spend."

It's been slow for us since Wednesday, named "crossover day," since most all the legislation we were promoting did not make the "crossover" – that is passing out of its house of origin and over to the other side. Now our task is to monitor the 146 bills passed by the House and the 175 that made it out of the Senate to see which ones we'll support, what needs amended to be acceptable, and which ones we should try to kill – not a pleasant task but that's why we're up there.

### **Dietitians Takeover Expired**

One of those bills which we were glad didn't make the cut was HB 4045, the attempted takeover of nutritional counseling by the folks who develop menus for hospital food. As Joe wrote last week - there is a difference, and those of us who think eating organic and natural foods is better than counting calories want to be able to engage the services of nutritional counselors who have this awareness. This is not the first time this bill has surfaced in our state legislature, and I'm sure won't be the last. The price of even nutritional liberty is eternal vigilance.

### **Insurance Disclosure Crosses Over**

One common sense bill promoted by the WV Association for Justice did make the jump. HB 4486 would require insurance companies to disclose the amount of insurance coverage available to an injured person prior to commencement of a trial. Since we wrote about it last week it has passed the House and moved to Senate Judiciary where it should get approved. This is a minor tweak in the civil justice system that will make a lot of headway in eliminating unnecessary court actions to disclose this information.

### **Musical Ballots**

This was a both a disappointing and hopeful week at the courts for some high profile candidates. Frank Deem was kicked off the ballot in his bid to unseat incumbent Senator Donna Boley (R – Pleasants) who has held that 3rd District seat since forever. Deem, a long time 3rd District Senator from Wood who lost in his party's primary in 2010, had challenged the WV Constitutional provision that says multi-county districts cannot have two senators from the same county. Since a win for Deem in 2012 would give Wood two senators, the state Supreme Court sided with Boley. However, the extreme of this situation is in Wayne Co. where Sen. Plymal has a virtual fiefdom in the few precincts of the 5th district located in Wayne when the rest of the district encompasses all of Cabell. Since Cabell can have no more than one senator, the other must always be elected from those handful of precincts where Plymal resides. He has not had a significant challenger in recorded history.

Another court action has allowed Senator Helmick (D- Randolph) to remain on the ballot for Agricultural Commissioner, nullifying a century-old law mandating that only "practical farmers" with 10 years of experience can run for the post. The judge in that case deemed the legislation restricting who can run as unconstitutional. Helmick lost his leadership position as Chair of Senate Finance when Senator Kessler took over as Senate President so is looking for greener pastures.

## Highway Money Mess

Don't expect WV roads and bridges to get much better anytime soon. At a hearing this week at the capitol, Transportation Secretary Paul Maddox told legislators that WV will be about a billion dollars short per year for the next 25 years to meet the demand for road and bridge repairs and needed new construction. Wow, that's a lot of dough in a state with only an \$11 billion combined state and federal annual income. The news from Washington on highways is not good either. As we previously reported, the US House's bill (HB7) cut nearly \$50 million in funding for WV highways. Thankfully, House leadership did not even have the votes in its own Teaparty to pass that bad boy. Now the Senate is working up a two-year proposal to maintain current funding. But even this will have to go to conference committee with the House so who knows what will happen. In the meantime, all federal surface transportation funding will expire at the end of the month. This will likely mean another temporary extension of current funding until such time as Congress can agree on a long-term reauthorization. I was in Washington DC again this week talking with our Representatives about the need to maintain federal funding to repair our crumbling infrastructure and keep some set aside for safer streets and people-centered improvements too. See our national ally Transportation 4 America ([www.t4america.org](http://www.t4america.org)) for all the details.

## No Newsletter Next Week

Since the session ends on Saturday night, we will wait until the following week to send out the next newsletter to wrap up the session. However, watch your inbox for critical action items as the last week of session unfolds. We never know what they will try to slip through at the last minute so be ready to make a call or send a note if we need some help from you, our grassroots. Thanks again to all who have made the calls and come out to hearings and such. It makes such a difference when lawmakers see or hear from their folks back home!

## Cross Over Wins and Losses

by Julie Archer, [julie@wvcag.org](mailto:julie@wvcag.org)

Wednesday was crossover day – the last day for bills to be considered and voted on by their originating body (House or Senate). This means that many of the election related bills we've been watching and working are dead because they were not taken up in committee in time to meet this important deadline.

Perhaps the most disappointing is that our bill (HB 4016) to extend the WV Supreme Court Public Campaign Financing Pilot Project through 2017 did not make it. In addition, to extending the pilot project for another election cycle, the bill also took out the trigger matching fund provision that was ruled unconstitutional by the U.S. Supreme Court. Although the bill, as amended by the House Judiciary Committee, had no fiscal impact on next year's budget it still needed to clear the House Finance Committee before it could be voted on by the full House. Unfortunately, it didn't make it onto the Finance Committee agenda in time. The good news is that the pilot project does not actually sunset until mid-2013, so we have another shot at fixing and extending it next session.

Alternatively, one bill that we were happy to see meet its demise, was HB 4387, which would have required voters to provide photo identification (ID) when voting. We would have preferred that the bill die a quiet death, however, , we learned Monday afternoon that the House Judiciary Committee had scheduled a public hearing on the proposal. The hearing had apparently been requested by members of the Tea Party, about a half of dozen of who turned out to support the bill saying it would prevent people voting under phony names, double voting and voting from the grave. However, opponents of the bill, which included WV-CAG, the AARP and the National Association of Social Workers-WV pointed out that we already have a good system in place to keep people from voting if they're not eligible, that the legislation would only serve as a barrier to law abiding citizens exercising their right to vote and would disproportionately depress the votes of the elderly, the poor, racial and

ethnic minorities and students. Secretary of State Natalie Tennant also spoke against the bill, citing a U.S. Department of Justice investigation that debunked the notion that voter fraud is widespread. Tennant also noted that, like the recent voter fraud scandals that occurred in West Virginia, the few instances of voter fraud uncovered by the investigation would not have been prevented by a voter ID requirement. She also cited a recent Brennan Center for Justice report that concluded that in this year's upcoming elections more than five million Americans could be affected by new voting restrictions implemented since 2008.

Some of the election bills that met the crossover day deadline include:

SB 510 – Amending Election canvass and recount procedures. As originally proposed, this bill would have narrowed the scope of our post-election from a hand-count of the votes cast in five percent of randomly selected precincts in each county to a single race or issue chosen in each of the chosen precincts. Before being passed by the full Senate, the Senate Judiciary Committee amended SB 510 to limit the canvass to 2% of randomly selected precincts, but continue to require a hand-count of all the races on the ballot in each of the selected precincts. Earlier in the session, a subcommittee of the House Judiciary Committee killed that body's version of the bill so it remains to be seen if they will want to revisit the issue.

SB 518 would disqualify anyone convicted of treason, a felony, bribery or perjury from running for or being appointed to any elected office. We'd think the bill too broad and prefer to see it amended to limit it to those who were convicted of crimes related to election rigging.

HB 4257 would bring West Virginia in line with 36 other states by allowing late voter registration (up to but not including the day of the election) for members of the military, Merchant Marines, and others who reside temporarily outside of the United States.

HB 4238 would establish procedures for the inclusion of Address Confidentially Program (ACP) participants to be included on the special absentee voting list and specify the method of application and ballot provision for the program participants. The ACP is a program, established by the legislature in 2007, is designed to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual assault or stalking by using an address designated by the Secretary of State as a substitute mailing address. This program prevents abusers or potential abusers from using public records as a resource to find their victims. The purpose of HB 4238 is to further protect a program participant's location information.

Because resolutions are not subject to the same rules as bill, we are still hoping that the House and Senate will act on their respective resolutions (HR 8 and SR 7) opposing Citizens United regarding the constitutional rights of corporations. The resolutions support an amendment to the U.S. Constitution to provide that corporations are not entitled to the same protections or rights of natural persons, specifically so that the expenditure of corporate money would no longer be a form of constitutionally protected speech.

We will update on you the fate of these bills and resolutions after the 2012 legislative session comes to a close.

### **REALLY?!?!: A Reaction to a Corporate Tax Study.**

*by Joe Dickerson, [joe@wvsoro.org](mailto:joe@wvsoro.org)*

It never ceases to amaze me how much we value corporations over the citizenry in this country. When found out that 30 of the most profitable corporations in the United States paid less than zero in taxes for the past three years, I certainly wasn't happy, but I wasn't surprised. The discovery is part of a recently released study from Citizens for Tax Justice and the Institute on Taxation and Economic Policy, "Corporate Taxpayers and Corporate Tax Dodgers, 2008-2010," The publication is a

comprehensive analysis of 280 of the Fortune 500 companies, and the tax loopholes and breaks they exploit.

“These 280 corporations received a total of nearly \$224 billion in tax subsidies,” said Robert McIntyre, Director at Citizens for Tax Justice and the report’s lead author. “This is wasted money that could have gone to protect Medicare, create jobs and cut the deficit.” According to Citizens for Tax Justice

- 30 Companies average less than zero tax bill in the last three Years, 78 had at least one no-tax year.
- Financial services received the largest share of all federal tax subsidies over the last three years. More than half the tax subsidies for companies in the study went to four industries: financial services, utilities, telecommunications, and oil, gas & pipelines.
- U.S. corporations with significant foreign profits paid tax rates to foreign countries that were almost a third higher than they paid to the IRS on their domestic profits.

This detailed study not only explains who receives these tax breaks, how they get them, and the math behind the process; it also discusses the numerous impacts these tax breaks have. These loopholes lower revenue streams to the State during critical budget shortages, increase the tax burden on citizens (as well as making them subject to more stringent tax regulations), as well as damaging weaker companies ability to compete in the open market.

The industry tables found on page 25 of the report clearly shows that discrepancies within industries are prevalent.

For example:

- DuPont and Monsanto both produce chemicals. But over the 2008-10 period, Monsanto paid 22 percent of its profits in U.S. corporate income taxes, while DuPont actually paid a negative tax rate of -3.4 percent.

- Department store chain Macy’s paid a three-year rate of 12.1 percent, while competing chain Nordstrom’s paid 37.1 percent.
- In computer technology, Hewlett-Packard paid 3.7 of its three-year U.S. profits in federal income taxes, while Texas Instruments paid 33.5 percent.
- FedEx paid 0.9 percent over three years, while its competitor United Parcel Service paid 24.1 percent.

All of which run contrary to the laissez faire claims from Conservatives, who are also the largest supporters of corporate tax breaks. Maybe they were too busy spouting support for Ayn Rand’s books to actually read them. We’re still climbing out of a financial hole dug by overspending, corporate greed, and fiscal irresponsibility on a criminal level. Some may claim that these breaks are necessary for the ever elusive animal “job growth”, but from where I sit they are nothing more than an outdated, unnecessary, and unfair practice.

While the [report](#) is loaded with technical information it is a must read for this interested in the ongoing debate on corporate taxation. Corporate tax loopholes have run so far off the rail that most Americans can rightfully complain, “I pay more federal income taxes than General Electric, Boeing, DuPont, Wells Fargo, Verizon, etc., etc., all put together.” That’s an unacceptable situation. End corporate favoritism and personhood!

## **Least Cost Planning Update**

*by Cathy Kunkel, cathykunkel@gmail.com*

Wednesday was the deadline for bills to make it out of their house of origin and move from the House to the Senate or vice versa. Unfortunately our bills to promote energy efficiency did not make it out of committee, mainly due to power company and coal industry opposition. The "least-cost planning" legislation (SB 162 / HB 4646) failed to make it onto any committee's agenda; this bill would have required power companies to submit long-term plans to the Public Service Commission showing how they could meet future electricity demand at

the lowest cost to their customers. This bill was opposed by the power companies and also the coal industry who wanted all mention of "least cost" removed from the bill; the coal lobby argued that the bill would kill jobs by forcing some coal power plants to be shut down - essentially admitting that their persistent claim that they are the cheapest source of power for West Virginia is bogus.

We were hoping to have our least-cost planning language amended into the bond bill that Appalachian Power was promoting. This bill, which gives the Public Service Commission the authority to let Appalachian Power float a bond to spread their projected rate increase over ten years, was passed out of the House and is now coming to the Senate floor for a vote. We were hoping that legislators would recognize the need for better long-term planning to avoid the sort of crisis that led to Appalachian Power proposing this bonding mechanism to deal with their \$350 million coal debt, but unfortunately there was not enough support for amending least-cost planning into the bond bill.

Our efforts at the legislature did result in a successful amendment to limit the scope of Appalachian Power's bond bill, however. As originally written, the bill would have allowed any utility to come to the PSC and ask to float a bond to cover their current or projected fuel costs - which we feared would make a habit of pushing expensive fuel costs onto future ratepayers instead of dealing with the underlying problems of poor utility planning. We amended the bill so that it specifically only deals with Appalachian Power's current fuel debt. Our efforts have also led to ongoing conversations with the Public Service Commission and some sympathetic legislators about how to improve long-term utility planning

### **Oppose Discrimination and the “Religious Freedom Restoration Act”**

A radical bill promoted by the religious right has made its way through the House of Delegates and is now before the the Senate Judiciary Committee. This bill is a wolf in sheep's clothing. While it

claims to be a religious freedom bill, it is really, among other things, a disguised attack on efforts to protect LGBT West Virginians and all students.

Please help stop this terrible bill from advancing any further by contacting members of the Senate Judiciary Committee and urging them to oppose the bill. A list of committee members and there contact information is available at <http://www.legis.state.wv.us/committees/senate/SenateCommittee.cfm?Chart=jud>.

### **Religious Freedom Restoration Act (RFRA) Talking Points:**

- HB 2657 could allow individuals to argue that their religious beliefs exempt them from complying with laws that prohibit discrimination on the basis of religion, gender, marital status, national origin and sexual orientation. For example, based on religious objections: An employer who believes that pregnancy outside of marriage is a sin could cite the RFRA as a defense for firing an unmarried pregnant female employee, even though such an action is prohibited by state law. Similar examples are a counselor could refuse to counsel LGBT students, or a bus driver could refuse to let Latinos or African Americans ride the bus.
- HB 2657 could endanger existing protections that prevent the government from sponsoring or financing religious indoctrination and discrimination. Provisions in the bill could potentially give religious groups the right to use government grants to proselytize or discriminate. In turn, the government would not be allowed to deny funding to religious groups that indoctrinate or discriminate.
- There is a better way to protect Freedom of Religion: It's called the First Amendment.

## **Big Changes to Boilermakers**

*By Maggie Fry, maggie@wvcag.org*

A report released for public comment by the EPA this week sets a three year time limit for major operational changes to 1,750 power plants across the nation. The new standards are expected to protect lives and dramatically cut health care expenses.

Though progressive response to the new regulations is mixed, Earthjustice lawyer Anthony Pew says, "EPA's new standards are not perfect, but they will save thousands of lives every year and they will prevent tens of thousands of heart attacks and asthma attacks by finally bringing the pollution from these extraordinarily dirty industrial power plants under control"

The EPA says its recommended changes to existing boilers are "achievable, protective and cost effective." With 37 plant in the state, the report indicates that West Virginia in one of the nation's worst states for boiler emissions of mercury, lead, chromium, hydrochloric acid and soot.

According to Earth Justice's February Report, The Toxic Air Burden from Industrial Power Plants, regulating industrial waste, specifically Mercury waste would mean significant improvements to health and the environment.

The study notes that more than 300,000 newborns each year could be protected from learning disabilities caused by exposure to the toxin in utero.

Pew told the WV News Service today that just cutting the emissions of this toxin will have enormous impact in WV. "It damages the way of life in states like West Virginia where there are fish warnings telling you that you can't eat the fish or at least you can't eat it very often and you can't serve it to your children."

Though the exact implementation in West Virginia is still indefinite, changes are expected to have far reaching benefits to health and life in the state.

## **Support Public Safety and Offender Accountability Act: SB 342**

Our friends at the ACLU of WV are pushing for passage of SB 342, the Public Safety and Offender Accountability Act. The bill, which is aimed at addressing prison overcrowding and reducing West Virginia's burgeoning prison population, would reform our civil justice system in a number of important ways.

Reform #1 – Shrink our bloated prison population by eliminating incarceration as a penalty for certain classes of low-level, non-violent offenses – especially when these offenses are the result of mental illness, drug addiction or are first-time offenses.

- It is possible to shrink our bloated prisons while protecting public safety.
- Public safety is actually undermined when we waste space and money on imprisoning low-level offenders. We should reserve prisons for those who truly pose significant threats.

Reform #2 – Strengthen cost-effective alternatives to incarceration and ensure that those who need drug treatment get it, so that they can avoid re-offending and productively re-enter society.

Reform #3 – Reduce costs, recidivism, and increase public safety by distinguishing between people who pose threats to safety and those who are ready to re-enter society, better preparing people in prison for productive lives "on the outside."

Reform #4 – Require regular, systemic evaluations of our criminal justice system.

The bill has passed the Senate, but must clear the House Judiciary and Finance Committees before it can be voted on by the full House. Please contact your delegates and urge them to support these needed reforms.

WV Citizen Action  
1500 Dixie Street  
Charleston, WV 25311

*Capital Eye is published by WV-Citizen Action, a nonprofit membership organization founded in 1974 and dedicated to increasing citizen participation in economic and political decision-making. Our members work for progressive changes in federal, state, and local policies by educating people about key public interest issues ranging from environmental protection and consumer rights to good government. Learn more about us at [www.wvcag.org](http://www.wvcag.org)*



We Need Your Support  
We can't do it without you!

**Please renew your membership or send a donation.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

Here's my Membership Renewal

Student/Senior \_\_\$15 Individual \_\_\$25 Family \_\_\$50

Sustaining \_\_\$100 Sustainer \_\_\$150 \_\_\$500 Public Citizen

Clip and mail with your check to West Virginia Citizen Action Group, 1500 Dixie Street, Charleston, WV 25311 Donations to WV-CAG are not tax deductible. If you would like to make a tax deductible donation to our education fund, endorse checks to West Virginia Citizen Action Education Fund.