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AGENCY REVIEW

DEPARTMENT OF COMMERCE
DIVISION OF ENERGY

AUDIT OVERVIEW

Energy Policy and Energy-Use Database Have Solid Foundations but Improvements Are Needed

The Office of Coalfield Community Development Has Not Responded Adequately to Previous Report Recommendations



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WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred
Legislative Auditor

John Sylvia
Director

Brian Armentrout
Research Manager

Alysia Miller
Research Analyst

Jill Mooney
Referencer

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EXECUTIVE SUMMARY

Issue 1: Energy Policy and Energy-Use Database Have Solid Foundations but Improvements Are Needed

In 2007, the Energy Policy and Development Act created the Division of Energy (DOE) and set forth six agency objectives for the purpose of providing leadership in developing energy policies and providing direction for the private sector. The DOE has been successful in meeting most of its goals and objectives with limited resources. The DOE has complied with its statutory mandates to produce certain documents and promote energy research and development. However, more work is needed on three of the agency's six mandated tasks: 1) developing a five-year energy plan, 2) preparing an annual energy development plan, and 3) creating an energy-use database. The DOE's five-year energy plan covers most of the required energy topics but lacks in environmental awareness as it relates to energy use, energy infrastructure, and the specificity of its recommendations. The annual energy development plan omits a required discussion on the Public Energy Authority, its powers, and how it could assist in the State's overall energy plan. Finally, the energy-use database information needs to be centralized and accessible to the public.

Although the DOE has a foundation for each of the items identified, the final products lack certain statutorily required elements. The content of the required documents is incomplete and must be revised to carry out the legislative instructions. Because the state's energy plan and annual energy development plans are ever changing documents by design, the recommended changes should be easily implemented. On the other hand, the energy-use database will require some creative planning because the statute is not as thorough on directing the medium or appearance of the database. The DOE has the resources to correct the deficiencies identified and given some time is capable of producing results that comply with the West Virginia Code.

Issue 2: The Office of Coalfield Community Development Has Not Responded Adequately to Previous Report Recommendations

The second issue of this report is a Compliance Update of the 2003 Preliminary Performance Review of the Office of Coalfield Community Development (OCCD). The purpose of this update is to determine if and to what degree the OCCD has complied with the recommendations made in that report. Of the four recommendations, the OCCD is in partial compliance with two, and is in non compliance with two. The partial and non compliance statuses were assigned to three recommendations concerning the OCCD's Land Owner Assistance Program that is not publicized or utilized. The remaining recommendation addresses the

The DOE has complied with its statutory mandates to produce certain documents and promote energy research and development. However, more work is needed on three of the agency's six mandated tasks.

The partial and non compliance statuses were assigned to three recommendations concerning the OCCD's Land Owner Assistance Program that is not publicized or utilized.

statutory requirement to produce “action reports” which the OCCD asserts is met by other reports produced by the agency. This update uses the following designations for levels of compliance with previous Legislative Auditor recommendations.

Levels of Compliance	
In Compliance	The Office of Coalfield Community Development has corrected the problem identified in the Legislative Auditor’s 2003 report.
Partial Compliance	The Office of Coalfield Community Development has partially corrected the problem identified in the Legislative Auditor’s 2003 report.
Planned Compliance	The Office of Coalfield Community Development has not corrected the problem but has provided sufficient documentary evidence to find that the agency will do so in the future.
In Dispute	The Office of Coalfield Community Development does not agree with either the problem identified or the proposed solution.
Non-Compliance	The Office of Coalfield Community Development has not corrected the problem identified in the Legislative Auditor’s 2003 report.
Requires Legislative Action	The recommendation was intended to call the attention of the Legislature to one or more issues that may or may not require statutory changes.
Legislation Enacted	The Legislature responded to issues raised in the Legislative Auditor’s 2003 report.

Recommendations

1. *The Division of Energy should define and narrow the scope of the energy plan and its recommendations to a five-year term in order to allow for initiatives that could be monitored and measured for success.*
2. *When updating the State’s energy plan, the Division of Energy should address energy infrastructure as it relates to emergency situations as identified in West Virginia Code §5B-2F-2(i).*
3. *To increase awareness, as directed by the Code, the Division of Energy should include the environmental circumstances for each energy resource in its energy plan.*
4. *The Division of Energy should expand and enhance the information provided in the energy plan concerning energy infrastructure.*
5. *The Division of Energy should adhere to the statute by holding a public meeting prior to finalizing future annual energy development plans.*

6. *The Division of Energy should recognize the Public Energy Authority's capabilities and incorporate the entity into the energy policy as well as the annual energy development plans.*
7. *The Legislative Auditor recommends that all reports commissioned by the Division of Energy be posted on the Division of Energy's website for increased accessibility.*
8. *The Division of Energy should continue to conduct studies on energy issues but also regularly evaluate whether the five-year energy plan and annual development plan are useful in advancing the State's energy policy and if the recommendations within the plans are being implemented.*
9. *The Legislative Auditor recommends that the Division of Energy update its energy-use database to include data concerning infrastructure needs for different classes of energy users.*
10. *The Division of Energy should gather all the information required for the energy-use database and assemble it in an electronic format that is accessible via the internet.*

OBJECTIVE, SCOPE & METHODOLOGY

Objective

This Agency Review was conducted as part of the Department Review of the Department of Commerce required by West Virginia Code §4-10-8(b)(3) and in compliance with the legislative mandate established in West Virginia Code §5B-2F-2(n). The purpose of this report was to: 1) assess the Division of Energy's fulfillment of its statutory mandates, and 2) determine the Office of Coalfield Community Development's compliance with recommendations made in a 2003 Legislative Audit.

Scope

This report focuses on the activities of the Division of Energy since its inception in 2007 and the Office of Coalfield Community Development's activities since the release of the Legislative Auditor's 2003 report.

Methodology

The evaluation of the Division of Energy's fulfillment of its statutory mandates was conducted by interviewing and corresponding with agency personnel, examining State Code, and reviewing Division of Energy documents, records, and publications. To determine the Office of Coalfield and Community Development's compliance with the 2003 legislative audit recommendations, we corresponded with the agency personnel, reviewed State Code, and legislative rules.

ISSUE 1

Energy Policy and Energy-Use Database Have Solid Foundations but Improvements Needed

Issue Summary

The Division of Energy's enabling statute sets forth six objectives for the purpose of providing leadership for developing energy policies and providing direction for the private sector. The Legislative Auditor reviewed the agency's activities for compliance with its statutory mandates. The Division of Energy has made efforts to address each of its original statutory mandates and is progressing towards fulfilling the requirements of each. However, more work is needed for three of the six agency mandates: 1) developing an energy plan, 2) preparing an annual energy development plan, and 3) creating an energy-use database. Although the Division of Energy has a foundation for each of these items, the final products lack certain statutorily determined elements. The five-year energy plan covers most of the required energy topics but lacks in: environmental awareness as it relates to energy use, energy infrastructure, and the specificity of its recommendations. The annual energy development plan omits a required discussion on the Public Energy Authority, its powers, and how it could assist in the state's overall energy plan. Finally, the energy-use database information needs to be centralized and accessible to the public.

The Division of Energy has made efforts to address each of its original statutory mandates and is progressing towards fulfilling the requirements of each. However, more work is needed for three of the six agency mandates: 1) developing an energy plan, 2) preparing an annual energy development plan, and 3) creating an energy-use database.

Background

In 2007, the passage of the Energy Policy and Development Act created the Division of Energy (DOE) and placed it under the purview of the Department of Commerce. The establishment of the Division was intended to provide leadership for developing energy policies that emphasize energy efficiency, awareness of environmental effects of energy use, and increased development of new and existing energy sources while maintaining an economical and self-sufficient energy supply for the state. The Legislature also envisioned the Division of Energy providing direction to the private sector. To achieve these objectives the Division of Energy's enabling legislation (§5B-2F-1 et seq.) sets forth the following six mandates.

The establishment of the Division was intended to provide leadership for developing energy policies that emphasize energy efficiency, awareness of environmental effects of energy use, and increased development of new and existing energy sources while maintaining an economical and self-sufficient energy supply for the state. The Legislature also envisioned the Division of Energy providing direction to the private sector.

1. Develop and maintain a five-year plan for energy policy.
2. Prepare of an annual energy development plan.
3. Create an energy-use database.
4. Promote collaboration between the state's universities and colleges, private industry, and nonprofit organizations to

encourage energy research and leverage available federal energy research and development resources.

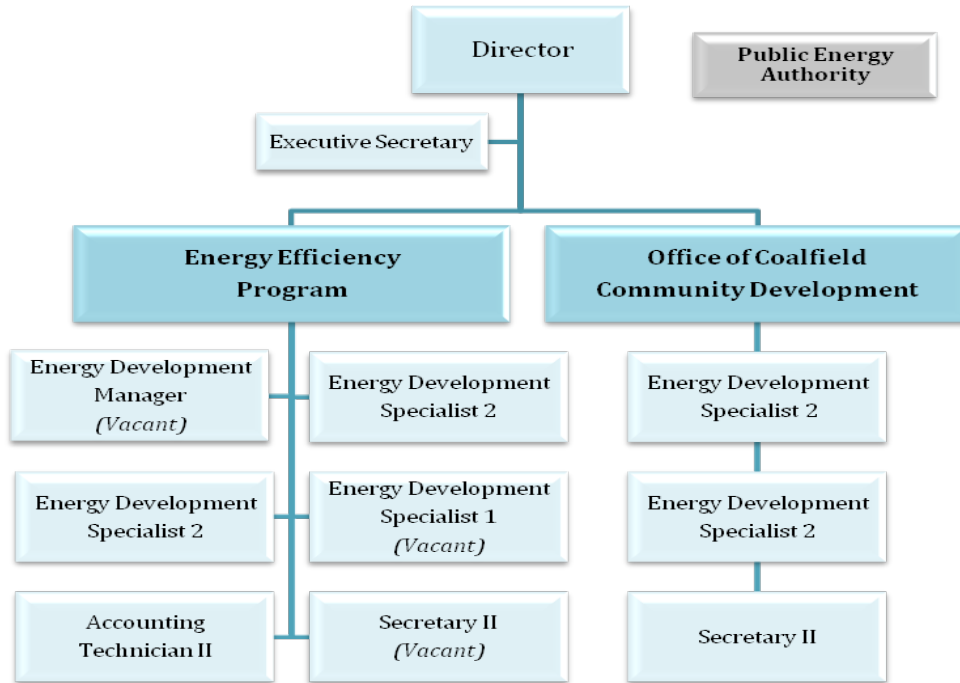
5. Promote initiatives to enhance the nation's energy security through research and development.
6. Encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness, or disaster.

In addition to establishing these mandates, the Energy Policy and Development Act dictated the structure of the Division of Energy. The existent Energy Efficiency Program and the Office of Coalfield Community Development were transferred from the Development Office to the Division of Energy. The 2007 legislation also intertwines the Division of Energy with the Public Energy Authority by designating the Director of the Division of Energy as Chairman of the Public Energy Authority and charging him with administering the Public Energy Authority's daily operations. The DOE operates with a staff of eight while three positions remain vacant. Figure 1 below shows the organizational structure of the Division of Energy.

The existent Energy Efficiency Program and the Office of Coalfield Community Development were transferred from the Development Office to the Division of Energy.

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**Figure 1:
Division of Energy Organizational Chart**



The U.S. Department of Energy allocated four awards totaling \$43,205,982 to the West Virginia Division of Energy.

Division of Energy Receives Millions in Stimulus Funds

In February 2009, the U.S. Congress passed the American Recovery and Reinvestment Act, which aimed to create and save jobs and spur economic activity and long term investments while fostering accountability and transparency in government spending. As part of that initiative, funds were distributed to several state agencies, including the West Virginia Division of Energy. Specifically, the U.S. Department of Energy allocated four awards totaling \$43,205,982 to the West Virginia Division of Energy. Table 1 below shows the total amount awarded, the total amount expended, and the start and end dates for each project. Although less than 15% of the total funds have been expended, the DOE anticipates that all funds will be expended by the conclusion of the grant periods.

Table 1
West Virginia Division of Energy
American Recovery and Reinvestment Act Funding

Grant Name	Start Date	End Date	Obligated	Expended*	Percent Expended
Energy Efficiency and Conservation Block Grant	10/26/2009	10/25/2012	\$9,593,500	\$151,545	1.6%
Save Energy Now	9/30/2009	9/30/2011	\$500,000	\$139,656	27.9%
State Energy Assurance	8/14/2009	8/14/2012	\$366,482	\$55,860	15.2%
State Energy Program	4/20/2009	4/30/2012	\$32,746,000	\$6,215,728	19.0%
TOTAL			\$43,205,982	\$6,562,859	15.2%

*Current as of Nov. 30, 2010.

Source: West Virginia Division of Energy

2010 Legislation Establishes New Mandates for Division of Energy

In March 2010, the West Virginia Legislature passed Senate Bill 518. The legislation amends West Virginia Code §5B-2F-2 by appending five subsections of code that each establish a new requirement for the DOE. The five new mandates range from the development of informational pamphlets to working with the United State's President and his/her administration to develop a plan to allow West Virginia to become the leader in the United States' transition to a new energy future. Although some of the tasks are vast, the Code's language offers little direction on how and when the goal should be accomplished.

The legislation took effect on July 1, 2010. In response to the new mandates, the DOE is recommending a funding improvement package to address the additional staff time needed to accommodate the requirements of SB 518. In addition, the DOE indicated that it has had discussions with West Virginia University and Marshall University on how they could assist in accomplishing the new directives. The effect of the amendment has yet to be seen due to the minimal elapse of time since its passage.

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State's Five-Year Energy Plan Has a Solid Foundation but Improvements Are Needed

One of the Division of Energy's primary responsibilities is the development and maintenance of a five-year plan that establishes West Virginia's energy policies and provides direction for the private sector. The Code provides a timeline for submission and revision as well as a list of subjects that the plan must address. To fulfill this legislative mandate, the DOE developed a document called "West Virginia Energy Opportunities: A Blueprint for the Future." This document is commonly referred to as the Energy Opportunities Document (EOD). The EOD is an energy policy and plan for the state that seeks to achieve energy independence by 2030.

When reviewing the EOD for compliance with the Code's guidelines, some deficiencies were identified. In regard to formatting, the Code requires the energy plan to cover a five-year period and prior to its expiration the plan must be reviewed and revised. The current energy plan does not define its scope. The energy plan's short, medium, and long term goals rarely indicate time frames or expected completion dates for tasks. Multiple references to predictions for energy production and usage by 2030 hint at a plan designed for a period much longer than five years. Although an awareness of the bigger picture is necessary when establishing objectives, an energy plan that targets immediate actions that contribute to the ultimate aspiration is a more effective approach. Defining and possibly narrowing the scope of the energy plan and its recommendations to a five-year term would allow for initiatives that could be monitored and measured for success.

In addition to formatting guidelines, the West Virginia Code identifies 10 subjects that the DOE's energy plan must address. The current energy plan covers all of the required subjects except for one, energy infrastructure as it relates to emergency situations. Of the nine subjects that are covered in the plan, two areas need improvement. The plan does not sufficiently address: 1) increased awareness of energy use on the environment and the economy and 2) energy infrastructure. Although the Code does not instruct on the degree to which each subject should be explored, some of discussions are lacking necessary elements.

The topic that was omitted from the EOD is energy infrastructure as it relates to emergency situations. West Virginia Code §5B-2F-2(i) requires that the energy policy identify and report on "the energy infrastructure in this state and include without limitation energy infrastructure related to protecting the state's essential data, information systems, and critical government services in times of emergency, inoperativeness, or disaster." While the energy policy identifies some forms of energy infrastructure

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in West Virginia, it does not discuss its relation to or the opportunities available from these resources that could assist in the continuance of crucial governmental operations during crisis situations. Therefore, when updating the state's energy plan at the next five-year interval, the DOE should address the items identified in West Virginia Code §5B-2F-2(i).

The first subject area identified as needing improvement is "increased awareness of energy use on the environment and the economy." The requirement has two parts, the environment and the economy. The EOD frequently mentions the economy and the effects that specific energy sources will have on it but the plan is not as thorough with its analysis of energy use and the environment. Although the EOD states that "the opportunities identified in this document are consistent with an appreciation that preserving the quality of our environment is fundamental to our health and well-being," specific discussions are minimal.

The EOD mentions some environmental impacts of energy use but not for each energy source. There is no description of the effects of energy use on individual organisms within the state's ecosystem or the environment as a whole. For example, in the discussion on wind energy, the plan does not note the possible effects on the wildlife in the area or recommend reviews of relevant literature despite uncertain risks to birds and bats. Overall, the plan's notation of environmental effects is sparse and vague. To increase awareness, as directed by the Code, the plan should report in detail the environmental circumstances for each energy resource, if known.

Finally, the second subject area of the EOD identified as needing improvement is "energy infrastructure." The EOD discusses various types of natural resource extraction operations, experimental energy sources, renewable energy supplies, energy producing facilities, and the existence of an electric transmission system. However, the information is incomplete because it does not address the age, condition, or location of the structures and facilities. There is no discussion of opportunities for improving efficiency, future repairs, upgrades, or possible complications associated with the existing infrastructure.

From the information provided in the plan, one is unable to determine how long the current infrastructure will endure and if it is operating efficiently. As previously noted the Code does not provide guidance as to the depth of the discussion on energy infrastructure; however, more thorough information could be helpful to stakeholders and provide direction for the private sector in future endeavors. The Legislative Auditor recommends that the DOE expand and enhance the information provided in the EOD concerning energy infrastructure.

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Annual Energy Development Plans Disregard Public Energy Authority’s Potential Contributions

In addition to the five-year energy plan, the Code requires the Division of Energy to prepare and submit an annual energy development plan. The annual development plan must set forth plans for implementing the state’s energy policy, report on the Division of Energy’s implementation of the energy plan and its activities during the previous year, and include any recommended legislation. The Code guides the content of the annual development plan by providing a list of subjects that the annual development plan must address, most of which are subjects also required in the five-year energy plan.

When reviewing the annual energy development plans for compliance with the Code’s guidelines, some deficiencies were identified. First, the statute requires the DOE to hold public meetings with notice to allow for public input regarding proposed energy policies and development plans. The Division of Energy did not hold any public meetings for that purpose prior to finalizing the 2007, 2008, or 2009 annual energy development plans. Therefore the Legislative Auditor recommends that the Division of Energy adhere to the statute by providing the public with an opportunity to voice opinions and concerns regarding all future annual energy development plans.

Another issue with the annual energy development plan is that it does not address one of the required subjects. According to West Virginia Code §5B-2F-2(f), “the energy development plan shall recognize the powers of the Public Energy Authority as to development and financing of projects under its jurisdiction and shall make such recommendations as are reasonable and practicable for the exercise of such powers.” None of the annual energy development plans address the Public Energy Authority or its ability to contribute to the goals of the energy plan. Additionally, the annual energy development plans do not make recommendations involving the Public Energy Authority or otherwise. Therefore the DOE should recognize the Public Energy Authority’s capabilities and incorporate the entity into the annual energy development plans as directed by Code.

According to West Virginia Code §5B-2F-2(f), “the energy development plan shall recognize the powers of the Public Energy Authority as to development and financing of projects under its jurisdiction and shall make such recommendations as are reasonable and practicable for the exercise of such powers.” None of the annual energy development plans address the Public Energy Authority or its ability to contribute to the goals of the energy plan. Additionally, the annual energy development plans do not make recommendations involving the Public Energy Authority or otherwise.

Energy-Use Database Information Is Collected But Lacks Form and Accessibility

The third area identified as needing improvement is the DOE’s energy-use database, particularly its format. WV Code §5B-2F-2(k) requires that the Division of Energy prepare an energy-use database that includes but is not limited to the following four characteristics.

- end-use applications and infrastructure needs for different classes of energy users including residential, commercial, and industrial users;
- data regarding the interdependencies and sources of electricity, oil, coal, water and gas infrastructure;
- data regarding energy use of schools and state-owned facilities; and
- data on the impact of the energy policy and development plan on the decisions and strategies of energy users of the state.

When asked to provide access to the energy-use database, the Division of Energy provided a website link to “Key Energy Statistics for West Virginia” created by Marshall University’s Center for Business and Economic Research (CBER). The energy statistics consisted of production and consumption data for coal, coal markets, natural gas, crude oil, petroleum, renewable electricity, and electricity. Also included was an energy flow chart for West Virginia describing energy production by resource, exports by resource, and consumption by sector. Because the key energy statistics only partially fulfill the content requirements of the energy-use database, a second request for energy-use database information was made.

In response to the second request, the DOE indicated that databases for energy use in public schools have been developed but they have not been posted on the internet. A copy of the public school energy-use data was provided. The school data showed energy use per student for each energy source, cost per square foot, and Btu usage per square foot. Additionally, the DOE indicated that it had recently obtained from the Department of Administration a database of energy use in state facilities located within the capitol complex; however, these data were not provided.

In reference to the requirement to collect data on the impact of the energy policy, the DOE indicated that it employs the CBER to conduct policy analysis. A list of reports conducted on behalf of the DOE was provided, but the reports were only accessible from the CBER’s website. In one instance, the DOE provided a hard copy of a report because a live link is not available on the CBER’s website. The Legislative Auditor contends that any research or data collection initiated by the DOE should be made available on the DOE’s website to allow for increased accessibility. Therefore the Legislative Auditor recommends that all reports commissioned by the DOE be posted on the DOE’s website.

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Additionally, two of the reports on the list were conducted for the Energy Efficiency Program in 2006 prior to the DOE's formation. While the reports assessed the impact of energy issues, it could not assess the impact of energy documents more recently mandated by the DOE's enabling statute. The Legislative Auditor interprets the code to mean that the DOE should not only assess the impact of the State's energy policies (new and existing) but also evaluate whether the development of the five-year energy plan and the annual energy development plan has influenced the actions of energy users in this state. The findings should indicate if the current approach to establishing an energy policy is successful in effecting results. Therefore, the DOE should continue to conduct studies on energy issues but also regularly evaluate whether the five-year energy plan and annual development plan are useful in advancing the State's energy policy and if the recommendations within the plans are being implemented.

Lastly, the remaining energy-use database characteristic required by Code is "end-use applications and infrastructure needs for different classes of energy users including residential, commercial and industrial users." The information provided by the DOE partially fulfills this requirement. The data touch on energy consumption by different classes of energy users but it does not discuss infrastructure needs. Elaboration is needed in this area. Therefore the Legislative Auditor recommends that the DOE comply fully with this mandate by updating its energy-use database to include data concerning infrastructure needs for different classes of energy users.

Overall, the energy-use database meets most of the Code's content requirements; however, the information is scattered in various places and inaccessible. The statute does not provide guidance as to how the database should be organized but the current situation needs improvements. The Legislative Auditor's understanding of the statutory requirement to create an energy-use database is that the data collected should be maintained and presented in a centralized location. This could be achieved either through a published report or an internet webpage. The Legislative Auditor contends that the energy-use database would be more useful if it were in an electronic format that is accessible on the DOE's website. Maintaining the database in this manner would be low cost and allow for easy updating. Therefore the Legislative Auditor recommends that the DOE compile all of the energy-use database information into one centralized location that is accessible to the public.

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Overall, the energy-use database meets most of the Code's content requirements; however, the information is scattered in various places and inaccessible.

The Legislative Auditor's understanding of the statutory requirement to create an energy-use database is that the data collected should be maintained and presented in a centralized location. This could be achieved either through a published report or an internet webpage.

Conclusion

In its three years of existence, the Division of Energy has complied with its statutory mandates to produce certain documents and promote energy research and development with limited resources. However the content of the required documents is incomplete and must be revised to fully carry out the legislative instructions. Because the state's energy plan and annual energy development plans are ever changing documents by design, the recommended changes should be easily implemented. On the other hand, the energy-use database will require some creative planning because the statute is not as thorough on directing the medium or appearance of the database. The Division of Energy has the resources to correct the problems identified and given some time is capable of producing results that comply with the Code.

Recommendations

1. *The Division of Energy should define and narrow the scope of the energy plan and its recommendations to a five-year term in order to allow for initiatives that could be monitored and measured for success.*
2. *When updating the state's energy plan, the Division of Energy should address energy infrastructure as it relates to emergency situations as identified in West Virginia Code §5B-2F-2(i).*
3. *To increase awareness, as directed by the Code, the Division of Energy should include the environmental circumstances for each energy resource in its energy plan.*
4. *The Division of Energy should expand and enhance the information provided in the energy plan concerning energy infrastructure.*
5. *The Division of Energy should adhere to the statute by holding a public meeting prior to finalizing future annual energy development plans.*
6. *The Division of Energy should recognize the Public Energy Authority's capabilities and incorporate the entity into the energy policy as well as the annual energy development plans.*
7. *The Legislative Auditor recommends that all reports commissioned by the Division of Energy be posted on the Division of Energy's website for increased accessibility.*

In its three years of existence, the Division of Energy has complied with its statutory mandates to produce certain documents and promote energy research and development. However the content of the required documents is incomplete and must be revised to fully carry out the legislative instructions.

8. *The Division of Energy should continue to conduct studies on energy issues but also regularly evaluate whether the five-year energy plan and annual development plan are useful in advancing the state's energy policy and if the recommendations within the plans are being implemented.*

9. *The Legislative Auditor recommends that the Division of Energy update its energy-use database to include data concerning infrastructure needs for different classes of energy users.*

10. *The Division of Energy should gather all the information required for the energy-use database and assemble it in an electronic format that is accessible via the internet*

Issue 2

The Office of Coalfield Community Development Has Not Responded Adequately to Previous Report Recommendations

Issue Summary

In 2003, the Legislative Auditor's Office conducted a preliminary performance review of the Office of Coalfield Community Development (OCCD) and made four recommendations to the agency. The report indicated that the OCCD was in compliance with most of its statutory mandates and that the OCCD's Land Valuation Assistance Program was not utilized. Three of the four report recommendations addressed the administration and marketing of the Land Valuation Assistance Program (now called the Land Owner Assistance Program). The remaining recommendation addressed the lack of a written procedure for the development and implementation of statutorily mandated action reports. Of the four report recommendations, the OCCD is in partial compliance with two recommendations and is in non-compliance with two.

The following is a Compliance Update of the OCCD regarding the 2003 Legislative Audit report recommendations. For each recommendation the OCCD's compliance level is listed and followed by a discussion of the Legislative Auditor's findings and conclusions.

In 2003, the Legislative Auditor's Office conducted a preliminary performance review of the Office of Coalfield Community Development (OCCD) and made four recommendations to the agency. ... The following is a Compliance Update of the OCCD regarding the 2003 Legislative Audit report recommendations.

Recommendation 1

The OCCD should immediately develop procedures for the development and implementation of Action Reports, as required by statute.

Status: Non-Compliance

In the Legislative Auditor's 2003 report, the OCCD indicated that it did not have a written policy concerning action reports and annual status updates but claimed that the requirement (§5B-2A-10(a)) to produce the report and update was satisfied by the OCCD's annual reports and periodic reports provided to the Governor's Office. Consequently, the Legislative Auditor found that the cited materials did not contain the required information and recommended that the OCCD create a procedure for the development and implementation of action reports.

WV Code §5B-2A-10 mandates the following actions.

- The Office **shall** prepare an action report which **shall** make recommendations for achieving economic development initiatives, including identifying sources of potential funding.
- The Office **shall** prepare an annual status update of the action report which **shall** describe accomplishments and prospects for continued economic development.

During the course of this review, the OCCD was asked if it had developed a formal procedure for the development and implementation of an action report. The OCCD stated that it does not have a written policy concerning the development of action reports but that it does produce various reports that address economic development initiatives. Those reports include the DOE and OCCD annual reports, legislative committee updates, and status reports to the Secretary of Commerce. Despite the OCCD's explanation, the Legislative Auditor rated the status of this recommendation as "non-compliance" due to a lack of a written policy concerning the statutorily required action report and annual status update.

A status report and annual reports for both agencies were reviewed but were not found to contain all of the information that is statutorily required for an action report. Instead, the reports mostly contain lists of the DOE's and OCCD's activities for the previous year with a few descriptions of funding awards and planned uses for those funds. Although the notations of expected funding could qualify as information that should be included in an action report, these instances were reported after being awarded and therefore do not adequately address the statute's mandate.

The Code's requirement to "make recommendations for achieving economic development initiatives, including identifying sources of potential funding" denotes a desire for a futuristic planning approach rather than solely a retroactive one. Furthermore, the requirement to provide an annual status update of the action report suggests the legislative intent is to provide a tracking or progress report for projects. The current approach to satisfying the statutory requirements does not afford that opportunity.

Furthermore, the information is placed in the text amongst a long list of agency activities making it difficult to locate and ineffective in communicating the information. The format of the agency's annual

A status report and annual reports for both agencies were reviewed but were not found to contain all of the information that is statutorily required for an action report.

The Code's requirement to "make recommendations for achieving economic development initiatives, including identifying sources of potential funding" denotes a desire for a futuristic planning approach rather than solely a retroactive one. ... The current approach to satisfying the statutory requirements does not afford that opportunity.

report does not provide a dedicated space for action report information or updates of previous or ongoing initiatives. In order to review the information that is available, one must sift through several portions of text. The action report and update information should be produced regularly and presented in a standardized format that can be easily accessed and reviewed from year to year.

In addition to the annual report, the Legislative Auditor reviewed an OCCD’s Jobs Survey report. The “Opportunities & Resources” section of the report discussed both previous and potential economic development projects for mine sites. One proposal suggested that in lieu of a state subsidy for renewable energy projects, reclamation funds could partially finance the construction of renewable energy projects on post-mine land. This is an example of a recommendation for achieving economic development initiative, including identifying sources of potential funding, as required by statute. However, it is the only recommendation in the section that provided both a proposal and a potential funding source. Since the OCCD does not historically produce an annual Jobs Survey, it is not certain that this information will be updated.

The Legislative Auditor maintains its previous recommendation that the OCCD should develop a procedure for the development and implementation of an Action Report. By doing so, the OCCD provides greater assurance that an Action Report and Annual Status Update are produced and contain the information established in WV Code §5B-2A-10. The Legislative Auditor finds that to be effective, the action report should be clearly identified as such, consistently produced, updated annually, and contain recommendations that address both an idea and potential funding. Furthermore it is important to note that a separate report is not required for this mandate. Simply adding an “Action Report” section that includes the required information to the agency’s annual report would satisfy the statutory mandate.

The format of the agency’s annual report does not provide a dedicated space for action report information or updates of previous or ongoing initiatives.

The Legislative Auditor maintains its previous recommendation that the OCCD should develop a procedure for the development and implementation of an Action Report. By doing so, the OCCD provides greater assurance that an Action Report and Annual Status Update are produced and contain the information established in WV Code §5B-2A-10.

Recommendation 2

The OCCD should inform communities in which permit applications are pending that an independent appraisal service is available to them by immediately issuing press releases to all outlets serving the communities in which permits are pending. The OCCD should make it a policy to issue press releases in communities every time it receives a community impact statement.

Status: **Non-Compliance**

The OCCD does not proactively inform coalfield communities' residents of its Land Owner Assistance Program nor does it have a policy that requires it to do so. The OCCD indicated that it does inform local economic developers of services it provides, including the Land Owner Assistance Program. However, by informing only local economic developers, the OCCD neglects all other private land owners in the communities. The OCCD indicated that it has not received a landowner appraisal service request since the OCCD merged with the DOE in 2007 and was unable to indicate if the program had been utilized previously. According to the Legislative Auditor's previous report, from the program's inception in 1999 through 2003, the OCCD received only three verbal inquiries about the land appraisal program but was unable to provide the service. A lack of advertising may curtail potential usage of the Land Owner Assistance Program. The OCCD's efforts are deficient in providing adequate notice of the services available to land owners in coalfield communities. Consequently, the OCCD has not complied with the recommendation to create and implement a policy that requires the advertisement of its appraisal service to potentially affected parties.

Furthermore, it is the opinion of the Legislative Auditor that the OCCD exhibits a reluctance to implement the program. The OCCD does not make genuine efforts to comply with the report recommendation because it appears to have no intention of providing the service. The OCCD indicated that it and the DOE contend that appraisal services should be removed from the Code and intend to submit legislation to do so. However, if the OCCD has never promoted the Land Owners Assistance Program, then it cannot gage the program's usefulness. Only after providing sufficient notification of the service, can the OCCD effectively evaluate the usage of the Land Owner Assistance Program and subsequently make an informed recommendation regarding the continuance or success of the program. In 2009 the Legislature amended the OCCD's governing statutes and chose not to remove the requirement to provide the service. Therefore until such time that the Legislature finds it appropriate to remove the requirement, the Legislative Auditor recommends that the OCCD actively advertise its services to the coalfield communities.

Recommendation 3

The OCCD should investigate whether requesting that the Legislature expand the statute to assist additional landowners would be in the coalfield communities' best interest.

Status: **Partial Compliance**

The OCCD does not proactively inform coalfield communities' residents of its Land Owner Assistance Program nor does it have a policy that requires it to do so.

It is the opinion of the Legislative Auditor that the OCCD exhibits a reluctance to implement the program.

The OCCD indicated that it and the DOE contend that appraisal services should be removed from the Code and intend to submit legislation to do so. However, if the OCCD has never promoted the Land Owners Assistance Program, then it cannot gage the program's usefulness.

The OCCD stated that it considered a statute modification but it did not indicate the type of statute modification that was considered or how the conclusion was determined. Due to the absence of supporting documentation, the compliance status is rated as “partial.” The agency further commented that it has not received a request for appraisal service since merging with the Division of Energy in 2007 and has concluded that appraisal services have not been relevant. As stated in the 2003 report, the Legislative Auditor asserted that the Land Owner Assistance Program is not used because the qualification requirements may be too restrictive and/or a lack of program advertisement. Until the OCCD examines both factors, it cannot make an informed determination as to whether or not the program can be improved or if it should be continued.

As stated in the 2003 report, the Legislative Auditor asserted that the Land Owner Assistance Program is not used because the qualification requirements may be too restrictive and/or a lack of program advertisement.

Recommendation 4

The OCCD should develop rules specifying how appraisal services shall be acquired.

Status: Partial Compliance

The OCCD complied with the previous report recommendation by developing an internal procedure for administering the Land Owner Assistance Program; however, the Legislative Auditor finds the internal policy to be inadequate in fulfilling the legislative intent of providing appraisal services to affected land owners. The purpose of the statute requiring a Land Owner Assistance Program is to ensure that property owners within a certain proximity to ongoing or intended mining operations receive from mine operators a fair and equitable consideration in exchange for their real estate despite any diminution of value caused by said mining operations. Since the OCCD became part of the DOE in 2007, it has not received a request for an appraisal. The OCCD was unable to indicate if any appraisal services were provided prior to that date.

The purpose of the statute requiring a Land Owner Assistance Program is to ensure that property owners within a certain proximity to ongoing or intended mining operations receive from mine operators a fair and equitable consideration in exchange for their real estate despite any diminution of value caused by said mining operations.

The policy’s instructions imply that the goal of the Land Owner Assistance Program is to persuade landowners to resolve the situation by other means rather than determining whether the landowner qualifies for an appraisal. If a landowner requests to sell property, the policy instructs the OCCD to contact the Real Estate Division, the coal operator, the adjacent land owners, and the local economic development agency. The reason stated for this procedure is “... to allow private entities the opportunity to negotiate without state interference.” If the landowner still requests an appraisal after these actions, the policy directs the OCCD to provide assistance by acquiring an appraiser in the same manner as does

the Department of Administration's Real Estate Division. By requiring dialogue between several parties before providing the appraisal service, the internal policy may deter land owners from seeking an appraisal. Since the internal procedure developed by the OCCD may be discouraging to land owners and is not aligned with the legislative intent, the compliance status for this recommendation is rated as "partial."

Conclusion

It is the opinion of the Legislative Auditor that the OCCD has not fully implemented the 2003 report recommendations. The DOE has made clear its opposition to the Land Owner Assistance Program. However until the Legislature finds it appropriate to remove the mandate from statute, the DOE is required to operate the program. The Legislative Auditor finds that there has not been adequate research to determine if the program is needed or could be successful. Investing time to promote and track the progress of this program is necessary to determine if this program is able to help coalfield community residents during times of change and uncertainty.

The Legislative Auditor finds that there has not been adequate research to determine if the program is needed or could be successful. Investing time to promote and track the progress of this program is necessary to determine if this program is able to help coalfield community residents during times of change and uncertainty.

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

November 29, 2010

John F. Herholdt, Director
Division of Energy
1900 Kanawha Blvd., East
Building 6, Room 645
Charleston, WV 25305-0311

Dear Mr. Herholdt:

This is to transmit a draft copy of the Performance Review of the Division of Energy. The report is scheduled to be presented to the Joint Committee on Government Operations and Joint Committee on Government Organization on Wednesday, December 15, 2010. The meeting will take place from 12:00pm to 1:00pm in the House Chamber. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by end of business tomorrow, November 30, 2010. We need your written response by noon on December 3, 2010, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, December 9, 2010 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. In advance, thank you for your cooperation. If you have any questions concerning the report or the process, please do not hesitate to contact me at (304) 347-4890.

Sincerely,

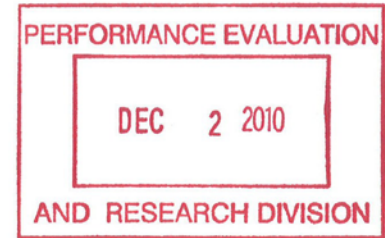
A handwritten signature in blue ink that reads "Brian Armentrout".

Brian Armentrout,
Research Manager

Joint Committee on Government and Finance

Appendix B: Agency Response

**W.Va. Division of Energy
Response to Performance Review
Dec. 2, 2010**



The W.Va. Division of Energy has reviewed the work of the Legislative Auditor documented in its Performance Review of the agency. As noted in the review, State Code often provides leeway on how the agency may interpret methods of compliance with stated goals. The agency appreciates the clarity of the Performance Review, particularly in regards to refinements needed in the ongoing development of an energy database as well as direction on publicizing the extensive reports commissioned by the agency.

The recommendations relating to Issue 1 and Issue 2 are restated below, differentiated by the terms “Energy” and “Coalfield.” The remainder of this response will address specific recommendations.

Energy Recommendations

1. The Division of Energy should define and narrow the scope of the energy plan and its recommendations to a five-year term in order to allow for initiatives that could be monitored and measured for success.

As WVDOE develops the next Energy Opportunities Document during 2012 (with public hearings slated for the fall of 2012), the existing document will be modified to reflect recommendations outlined in the auditor’s report as resources permit:

- The scope will address a five-year time period of 2013-2017
- Stated goals will be quantifiable with measurements enumerated. For example, as 495 MW of wind projects have been granted permits from the W.Va. Public Service Commission, the next EOD will include that figure as a goal for additional operational projects.
- Goals will include timelines for completion within the five-year life of the EOD.

2. When updating the state’s energy plan, the Division of Energy should address energy infrastructure as it relates to emergency situations as identified in West Virginia Code §5B-2F-2(i).

As WVDOE develops the Energy Opportunities Document during 2012 (with public hearings slated for the fall of 2012), the existing document will be modified to reflect recommendations outlined in the auditor’s report as resources permit:

- Current work with the West Virginia Department of Military Affairs and Public Safety (DMAPS) and WVU relating to West Virginia's Emergency Operations Plan (EOP) energy emergency section (Annex V) will be documented and included.

3. To increase awareness, as directed by the Code, the Division of Energy should include the environmental circumstances for each energy resource in its energy plan.

As WVDOE develops the Energy Opportunities Document during 2012 (with public hearings slated for the fall of 2012), the existing document will be modified to reflect recommendations outlined in the auditor's report as resources permit:

- Each energy source will include a discussion on environmental impacts and documentation of established environmental review. As an example, West Virginia wind projects must be reviewed by the W.Va. Public Service Commission, including input from the U.S. Fish and Wildlife Service as well as public comment.

4. The Division of Energy should expand and enhance the information provided in the energy plan concerning energy infrastructure.

As WVDOE develops the Energy Opportunities Document during 2012 (with public hearings slated for the fall of 2012), the existing document will be modified to reflect recommendations outlined in the auditor's report as resources permit:

- Each energy source will include discussion of current or needed infrastructure and issues associated with existing infrastructure.

5. The Division of Energy should adhere to the statute by holding a public meeting prior to finalizing future annual energy development plans.

As WVDOE develops the Energy Opportunities Document during 2012 (with public hearings slated for the fall of 2012), the existing document will be modified to reflect recommendations outlined in the auditor's report as resources permit:

- The EOD will include a section on the meetings of the Public Energy Authority, which will include at minimum an annual fall meeting to review the annual energy development plan.

6. The Division of Energy should recognize the Public Energy Authority's capabilities and incorporate the entity into the energy policy as well as the annual energy development plans.

As WVDOE develops the Energy Opportunities Document during 2012 (with public hearings slated for the fall of 2012), the existing document will be modified to reflect recommendations outlined in the auditor's report as resources permit:

- The EOD will include a section on the meetings of the Public Energy Authority, which will include at minimum an annual fall meeting to review the annual energy development plan.

7. The Legislative Auditor recommends that all reports commissioned by the Division of Energy be posted on the Division of Energy's website for increased accessibility.

The W.Va. Division of Energy takes seriously its responsibility to inform W.Va. residents of energy-related issues. The development of a more user-friendly Website within the W.Va. Department of Commerce's Web portal is continual. Working with Commerce Communications, the agency has recently included a wide range of W.Va. success stories, including projects relating to the American Recovery and Reinvestment Act, geothermal energy development, renewable energy policy development and alternative fuels. Including a new section relating to the energy-related reports commissioned by the agency on its website will be implemented.

8. The Division of Energy should continue to conduct studies on energy issues but also regularly evaluate whether the five-year energy plan and annual development plan are useful in advancing the state's energy policy and if the recommendations within the plans are being implemented.

As WVDOE develops the Energy Opportunities Document during 2012 (with public hearings slated for the fall of 2012), the existing document will be modified to reflect recommendations outlined in the auditor's report as resources permit. Additionally, during the annual fall meeting of the Public Energy Authority, authority members will review the five-year energy plan and annual development plan.

9. The Legislative Auditor recommends that the Division of Energy update its energy-use database to include data concerning infrastructure needs for different classes of energy users.

The W.Va. Division of Energy appreciates additional clarity provided by the Legislative Auditor relating to the code-mandated energy use database. Currently, Marshall University's Center for Business and Economic Research, which was commissioned to prepare the current database, is reviewing the recommendations outlined in the Performance Review relating to the database. Additional funding is a critical factor in determining the scope and content of a West Virginia energy database.

10. The Division of Energy should gather all the information required for the energy-use database and assemble it in an electronic format that is accessible via the internet.

The W.Va. Division of Energy appreciates additional clarity provided by the Legislative Auditor relating to the code-mandated energy use database. Currently, Marshall University's Center for Business and Economic Research, which was commissioned to prepare the current database, is reviewing the recommendations outlined in the Performance Review relating to the database.

Finally, as the WVDOE's spending rate on its four American Recovery and Reinvestment Act funds continues to increase, the agency respectfully requests inclusion of the current utilization rate be

reflected in Table 1 of the Performance Review. Specifically, expenditures by Nov. 30, 2010, total:

Energy Efficiency and Conservation Block Grant: \$151,574.62 or 1.5%

Save Energy Now: \$139,695.83 or 28%

State Energy Assurance: \$55,860.42 or 15%

State Energy Program: \$6,215,727.74 or 19%

Total: \$6,562,858.61 or 15 percent

Coalfield Recommendations

1. The OCCD should immediately develop procedures for the development and implementation of Action Reports, as required by statute.

As referenced in the Legislative Auditor's report, the Office of Coalfield Community Development does prepare reports identifying activities, accomplishments and issues. The time frame of these reports is consistent with those required of all Commerce agencies. Admittedly they were not titled, "Action Reports." Future reports will be so named. The final status report, to be included in the W.Va. Division of Energy annual development plan, will include an action report section related to OCCD accomplishments and prospects for continued economic development. A written policy will be prepared regarding the content of action reports.

2. The OCCD should inform communities in which permit applications are pending that an independent appraisal service is available to them by immediately issuing press releases to all outlets serving the communities in which permits are pending. The OCCD should make it a policy to issue press releases in communities every time it receives a community impact statement.

The OCCD has relied on local economic development authorities to assist in accomplishing its mission. The Performance Review states that, with the exception of local economic development authorities, the OCCD neglects all other land owners in the community. The report further states that OCCD "exhibits a reluctance to implement the (Landowner Assistance) program." Providing real estate appraisals is a professional service that OCCD is not qualified to perform. OCCD will investigate a third party, perhaps the Real Estate Division of the W.Va. Department of Administration, to contractually administer this service via local appraisers.

3. The OCCD should investigate whether requesting that the Legislature expand the statute to assist additional landowners would be in the coalfield communities' best interest.

The Performance Review recommends that the Landowner Assistance Program be expanded to assist additional landowners. No definition of how the additional landowners are determined is provided. The current criteria of impacted dwellings include buildings within 1,000 feet of property to be mined and that the owner of the property must have refused the offering price of the

operator. The Performance Review contends that a lack of publicity has resulted in no appraisal requests since at least 2007. As referenced above, a third party could assist in determining whether additional landowners should be included.

4. The OCCD should develop rules specifying how appraisal services shall be acquired.

Legislative Rule 207 Section 7.1 adopted by the Legislature and approved by the Secretary of State in 2010 establishes procedures for land acquisitions. Section 7.1 states that “the office shall provide no other assistance (other than acknowledging that the property has been identified for purchase) unless requested by the potential property seller.” The Performance Review references OCCD’s internal policies as “discouraging” to land owners. OCCD policies were developed in consultation with the Real Estate Division of the W.Va. Department of Administration. Should a third-party appraisal administrator be contracted, OCCD will gain their input on enhanced procedures and recommend policy and rule changes as necessary.



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939