

STATE OF WEST VIRGINIA

FULL PERFORMANCE EVALUATION OF THE

DIVISION OF LABOR

**State's Occupational Safety and Health Act for the
Public Sector Has Not Been Fully Established**

**Division of Labor is Not Proactive In Inspecting Private
Sector Businesses as Required By Law**

Division Provides Timely Inspections of Amusement Rides

**State's Elevators are Timely Inspected in Most Cases,
With Late Inspections Averaging 20 Days Late**

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January 2002

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John Sylvia
Director

January 6, 2002

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the *Division of Labor*, which will be presented to the Joint Committee on Government Operations on Sunday, January 6, 2002. The issues covered herein are "The State's Occupational Safety and Health Act for the Public Sector Has Not Been Fully Established;" "The Division of Labor is Not Proactive In Inspecting Private Sector Businesses as Required By Law;" "Division Provides Timely Inspections of Amusement Rides;" and "State's Elevators are Timely Inspected in Most Cases, With Late Inspections Averaging 20 Days Late."

We transmitted a draft copy of the report to the Division of Labor on December 26, 2001. We conducted an Exit Conference with the Division on December 28, 2001. We received the agency response on January 3, 2002.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

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Executive Summary

Issue 1: The State's Occupational Safety and Health Act for the Public Sector Has Not Been Fully Established.

West Virginia Code, Article 3A of Chapter 21, requires the Division of Labor to administer the West Virginia Occupational Safety and Health Act (OSHA). For instance, there are supposed to be routine and unannounced inspections of public workplaces as required by law, but the Division of Labor only inspects workplaces on a complaint basis. In addition, a compilation of public employer statistics on occupational injuries and illnesses are not being collected. **The State's OSHA for the public sector is intended to be proactive; however, the Division is reactionary in that it only responds to complaints.** The Division of Labor has indicated to the Legislative Auditor that it does not have adequate funding to make a more proactive approach.

There are federal standards which have been adopted by the state which have been used to provide safe work sites for public employees. A written correspondence is given to most complaints if the charges turn out not to be serious. The only on-site inspections that occur are when there is a fatality or if the situation at hand cannot be determined.

Over the last five years, an awareness program on OSHA regulations has been offered through the Division of Personnel's training sessions with all of the state government managers and supervisors required to take the course. However, this awareness program is the only education program the Division offers, and the Division of Labor is relying on state managers to relay the information back to their staff.

Furthermore, Division of Labor staff indicated to the Legislative Auditor that their staff does not have sufficient time to conduct more than the inspections requested by state agencies. Furthermore, West Virginia State Code implies that unannounced inspections should be conducted so that the Division of Labor is pro-active and not reactionary as is currently the practice.

There are two review panels that have not been established as required by law. These two panels are the *Occupational Safety and Health Review Commission* and the *Occupational Safety and Health Advisory Board*. Division of Labor staff indicated to the Legislative Auditor that the panels have never been appointed since there is no accompanying funding to pay reimbursement or other expenses.

Recommendation 1:

The Division of Labor should continue to present to the Legislature funding requests to fully fund the Occupational Safety and Health Act, and should explore ways in which more of the state OSHA can be implemented within its budget.

Recommendation 2:

The Legislature should decide whether members to the Occupational Safety and Health Review Commission and Occupational Safety and Health Advisory Board should be appointed or whether the Boards should be removed from the Code.

Issue 2: The Division of Labor is Not Proactive In Inspecting Private Sector Businesses as Required By Law.

The Division of Labor is required to annually inspect private sector businesses “*for the proper enforcement of all labor laws*” (§21-1-3). The Division of Labor should be commended for making nearly 20,000 inspections of private businesses during fiscal year 2001, even though all of the inspections were in response to complaints. The Legislative Auditor has determined that although these complaints have value, the disadvantage is that labor law violations can go undetected because of the employees concern of the possible loss of their jobs and they are reluctant to report any violations. The statutory intent clearly requires a proactive approach with a secondary priority to responding to complaints.

Furthermore, a legal opinion from the Legislative Services Division indicates that an annual inspection of “all principal factories and workshops” does not likely mean every private establishment in the state. Also, despite the Division of Labor’s claim of limited funding, the Legislative Auditor concludes that since nearly 20,000 inspections were conducted, the Division can make annual inspections on certain businesses by placing priority on some complaints.

Recommendation 3:

The Division of Labor should consider placing less priority on responding to some complaints in order to begin annual inspections of certain businesses that are susceptible to violating labor laws.

Issue 3: The Division Provides Timely Inspections of Amusement Rides

The Division of Labor annually inspects all amusement park rides that are registered with the Division of Labor. As of now, the Division inspects fixed amusement rides at the beginning of the operating season, while mobile or traveling rides are inspected only one time upon the first setup in the state. Mobile rides are not inspected again, no matter how many times they are taken down and setup after the initial inspection. However, even Division of Labor Staff indicated that it would be ideal to be able to inspect each ride before each setup.

For instance, inspectors for the Division of Labor only attend the events where the vendor was scheduled to have reported bringing in a ride for the first time into the state within a year’s period. Furthermore, the Division must rely upon the honesty of the vendor to report the ride and subsequent inspection. In fact, there have been incidents when an inspector for the Division has

found unregistered amusement rides operating within the state.

The Legislative Auditor has determined that the Division of Labor does provide timely inspections of amusement park rides. While the Division has statutory authority to inspect mobile amusement rides at every setup, the Division inspects them once upon entry into the state because of a lack of resources.

Issue 4: The State's Elevators are Timely Inspected in Most Cases, With Late Inspections Averaging 20 Days Late.

The West Virginia Code requires elevator owners or operators within the state to register each elevator with the Division of Labor. Then the Division provides a list of registered elevators to the county or municipality in which the elevator is located. The Objective of the Division of Labor is to provide for the safety, examination, and inspection of all passenger elevators in West Virginia. **A review by the Legislative Auditor of data for calendar year 2001, found that the Division inspected 55% of the elevators within the required time frame. The remaining 45% were inspected late by an average of 20 days.**

There are 3,762 registered elevators according to Division of Labor staff. The Division employs 5 inspectors who have to inspect all of the registered elevators. In addition, these inspectors are also responsible for inspecting amusement rides throughout West Virginia. **The Division should be commended for inspecting the majority of the elevators within the required time frame and late inspections average a relatively short period of time.**

Recommendation 4:

The Division of Labor should continue its effort to reduce the number of late inspections of elevators.

Review Objective, Scope, and Methodology

This is a Full Performance Review of the West Virginia Division of Labor as required by WVC §4-10-4. The Division of Labor was created to “protect the lives and health, and to promote the prosperity of workers in West Virginia.”

Objective

The objective of this review is to examine the following issues:

- (1) Has the State’s Occupational Safety and Health Act for the public sector been fully established?
- (2) Has the Division of Labor been proactive in inspecting private sector businesses as required by law?
- (3) Does the Division of Labor inspect Amusement Rides in a timely manner?
- (4) Does the Division of Labor inspect elevators in a timely manner?

Scope

The scope of this review is from 1993-2001 covering the responsibilities of the Division of Labor which include; the West Virginia Occupational Safety and Health Act, the inspection of private sector businesses for compliance with various labor laws, safety standards for amusement rides, and annual inspections of elevators.

Methodology

The Legislative Auditor’s Office obtained information about the West Virginia Occupational Safety and Health Act from the Division of Labor. The Division of Labor also provided information of the inspection of private sector businesses, elevators, and amusement rides. The Legislative Auditor also obtained information on amusement ride related injuries from the U.S. Consumer Product Safety Commission. In addition, the Legislative Auditor obtained information on state-by-state ride inspection regulations from safeparks.org.

Issue 1: The State’s Occupational Safety and Health Act For the Public Sector Has Not Been Fully Established.

West Virginia Code, Article 3A of Chapter 21, requires the Division of Labor to administer the West Virginia Occupational Safety and Health Act (OSHA). The purpose of the statute is to ensure that the public workforce of the State of West Virginia be provided workplaces “*free from recognized and avoidable hazards.*” Educational programs on occupational safety and health issues are required to be provided to public employers and employees. The Division provides an awareness program to public employees who are in managerial positions. Routine, unannounced inspections of public workplaces are not conducted as required. Instead, the Division inspects workplaces only on a complaint basis. Also, a compilation of public employer statistics on occupational injuries and illnesses are not being collected. **The State’s OSHA for the public sector is intended to be proactive; however, the Division is reactionary in that it only responds to complaints.** Although investigating complaints has value, the disadvantage of this approach is that unsafe or unhealthy work environments may go undetected because employees concern for possible loss of their jobs are reluctant to report violations. The Division has indicated that it does not have adequate funding to take a more proactive approach.

Federal standards necessary to provide safe work sites for public employees have been adopted by the State. This includes providing for investigations into complaints about working conditions and providing consultation or help to public employers to implement healthy work sites. Most complaints are responded to administratively with written correspondence if the charge or request is not serious. On-site inspections occur if the situation is a fatality, of an otherwise serious nature or if the situation can not be determined. Table 1 illustrates how complaints and agency requests are handled: administratively or with on-site inspections. Of the 29 complaints and the 10 agency requests for help, 15 on-site inspections or training occurred.

Table 1 Inspections and Complaint Resolutions		
	Administrative	On-site inspection or training
Complaint	20	9
Agency Request	4	6
Totals	24	15

For about the last five years the Division has offered an awareness session through the Division of Personnel’s training sessions. All state government managers and supervisors are required by the West Virginia Division of Personnel to take this course. This has been an attempt by the Division to inform public employers of OSHA regulations. From the awareness program, the Division of Environmental Protection developed a safety program of its own which achieves the statutory intent of the state’s OSHA program to *stimulate employers and employees to institute new programs (WVC §21-3A-6)*. The awareness program is the only education programming the

Division offers. With this program offered only to individuals in managerial positions, the Division is relying on state managers to relay the information to their staff. If this does not occur, public employees may not be aware of occupational safety and health issues.

The State's OSHA Program Requires a Proactive Approach

The State's OSHA program states that the Division shall:

*Provide for the frequency, method and manner of making inspections of workplaces **without advance notice**: Provided, That in the event of an emergency or unusual situation, the commissioner may give advance notice;... [Emphasis added]*

The legislative rules, while providing for manner and method of requested inspections, **do not detail the frequency of inspections without advance notice**. Division staff indicated to the Legislative Auditor that staff does not have sufficient time to conduct more than the inspections requested by state agencies. The code implies that unannounced inspections should be conducted so that the Division is pro-active not reactionary as is currently the practice.

The Division's legislative rule, §42-15-8.1, also requires:

The Commissioner shall annually collect data from employer records of occupational injuries and illnesses. The Commissioner shall use this data to analyze the performance of employers and employees and to evaluate the effectiveness of existing safety and health programs.

The agency responded to a request for this information by stating:

We do not have specific data that relates to complaints and/or violations on occupational illness against specific agencies or areas. In order for our office to maintain this information, we would need additional personnel and funding.

Without the data that would be obtained from this collection, the Division is unable to focus its resources in areas where there may be a need to reduce injuries or even planning the focus or scope of educational or training programs that it should offer.

Two Review Panels Have not Been Established as Required by Law

Furthermore, unfilled requirements necessary to actualize the article include two panels mandated by code that have not been appointed by any Governor since being created in 1987. These two panels are the *Occupational Safety and Health Review Commission*, and the *Occupational Safety and Health Advisory Board*. Staff indicated to the Legislative Auditor that the panels have never been appointed because there is no accompanying funding to pay reimbursement or other expenses.

The Occupational Safety and Health Review Commission was created, as cited in §21-3A-

10(d), to “...hear and rule on appeals from citations, variances and notifications issued...”. According to the Division nine (9) citations were issued in 1999, fourteen (14) in 2000 and four (4) in 2001 as of December 20, 2001. Without this commission agencies cited by the Division are without **due process** for cited violations of State OSHA. The Legislative Auditor is not aware if any of these citations were appealed, or the agency cited and the Division were able to resolve the violation.

The other panel, the Occupational Safety and Health Advisory Board (§21-3A-18), was intended to assist the commissioner in setting standards for the occupational safety and health of public employees. The state has adopted federal standards, no individual state standards have been adopted.

Conclusion

Division staff informed the Legislative Auditor that the state OSHA program for the public sector is not fully funded and that it has been unsuccessful in obtaining additional funding from the Legislature. The Division receives \$431,000 from the federal government to implement a cooperative agreement to provide free on-site safety and health consultation assistance to private employers who desire to voluntarily comply with federal OSHA. The state puts in a 10% match or \$45,735. This agreement requires current staff, who also respond to complaints and agency requests with respect to state OSHA, to spend a set and minimum time on work specific to the agreement. The Division apparently considers this cooperative agreement worthy of investing state resources and has done so since 1975. The fact is that the federal monies employ staff that are used to a limited extent to implement the state’s OSHA program for the public sector. Fulfilling the agreement with the federal government precludes for the most part the current staff from performing the unannounced on-site inspections needed for state OSHA. Although, the Legislative Auditor could not identify any incidents that have occurred which could be blamed on the incomplete implementation of state OSHA, the risk of safety and health incidences occurring in the future are higher than if the state’s OSHA plan were fully implemented.

Recommendation 1:

The Division of Labor should continue to present to the Legislature funding requests to fully fund the Occupational Safety and Health Act, and should explore ways in which more of the state OSHA can be implemented within its budget.

Recommendation 2:

The Legislature should decide whether members to the Occupational Safety and Health Review Commission and Occupational Safety and Health Advisory Board should be appointed or whether the Boards should be removed from Code.

Issue 2: The Division of Labor is Not Proactive In Inspecting Private Sector Businesses as Required By Law.

The Division of Labor is required to annually inspect private sector businesses “for the proper enforcement of all labor laws” (§21-1-3). The law specifically states that:

The commissioner or his authorized representative, shall, at least once each year, visit and inspect the principal factories and workshops of the State, and shall, upon complaint and request of any three or more reputable citizens, visit and inspect any place where labor is employed and make true report of the result of his inspection.

As stated in Issue 1, the statute intends for the Division of Labor to have a proactive approach to enforcing the state’s labor laws. Although the Division should be commended for making nearly 20,000 inspections of private businesses during fiscal year 2001, all of the inspections were in response to complaints. Table 2 shows the number of inspections per division and the number of violations for various labor laws.

Table 2 Private Sector Field Inspections by the Division of Labor		
State Labor Statutes	Number of Inspections	Number of Violations
Prevailing Wage	885	170
Minimum Wage & Maximum Hour	200	32
Wage Payment Collection	5,325	1,687
Wage Bond	4,577	246
Contractor License	8,412	500
Child Labor	548	24
<i>Source: Wage & Hour Section Fiscal Year 2000-2001 Report</i>		
<i>*All Enforced by Same Wage & Hour Compliance Officers</i>		

A legal opinion from the Legislative Services Division indicates that an annual inspection of “all principal factories and workshops” does not likely mean every private establishment in the state. Instead, the language intends for annual inspections on “larger concentrations of workers in the industrial sector, while other places of employment, having less impact on the socio-economic

health of the economy and the laboring classes are to be inspected on complaint of three citizens.” The legal opinion further states that since the Division has authority to inspect any business even without complaint, that the language likely requires the Division to respond if three citizen complaints are filed against the same company. When asked by the Legislative Auditor what were the reasons that the Division is unable to annually check certain businesses within the state for adherence to various labor laws, the Director of the Division stated:

We inspect companies on complaint basis only, because of the lack of funds and field staff. Between July 1, 2000, and June 30, 2001, we conducted a total of 19,947 investigations, which included Minimum Wage, Wage Payment, Contractor Licensing, Prevailing Wage, Child Labor and Wage Bonding. The number of annual inspections we make varies on complaints received.

Conclusion

By responding to complaints, the Division issued over 2,600 violations. Although inspections that are in response to complaints have value, the disadvantage is that labor law violations go undetected because employees concern for possible loss of their jobs are reluctant to report violations. The statutory intent clearly requires a proactive approach with a secondary priority of responding to complaints. Despite the Division’s claim of limited funding, the Legislative Auditor concludes that since nearly 20,000 inspections were conducted, the Division can make annual inspections on certain businesses by placing less priority on some complaints.

Recommendation 3:

The Division of Labor should consider placing less priority on responding to some complaints in order to begin annual inspections of certain businesses that are susceptible to violating labor laws.

Issue 3: The Division Provides Timely Inspections of Amusement Rides.

According to the West Virginia Division of Labor Annual Report of Fiscal Year 2000, the Amusement Ride Unit is in charge of adopting rules that relate to the installation, maintenance, repair, use, operation, and inspection of amusement attractions and amusement rides. **The Division annually inspects all amusement park rides that are registered with the Division.** Currently, the Division inspects fixed amusement rides at the beginning of the operating season. Mobile or traveling rides are inspected only one time upon the first setup in the state, within a given year. Mobile rides are not inspected again, no matter how many times they are taken down and setup after the initial inspection. However, West Virginia Code §21-10-6 gives the Division authority to inspect mobile rides at every setup:

The division may inspect all mobile amusement rides and attraction each time they are disassembled and reassembled for use in the state. The division may conduct inspection at any reasonable time without prior notice. (Emphasis Added)

Mobile Amusement Ride Inspections

The Division of Labor staff stated that it would be ideal to be able to inspect each ride before each setup. In fiscal Year 2000, the Division of Labor inspected 732 rides and attractions with 731 of the rides and attractions passing the inspection. The one ride which did not pass the inspection was ordered to cease and desist for safety violations following initial inspections. In addition, Division of Labor staff stated that inspectors do not necessarily attend every event where amusement rides are set up. Furthermore, inspectors only attended the events where the vendor was scheduled to have reported bringing a ride for the first time into the state within a year's period. It was also noted that the problem with not going to every event relies on the honesty of the vendor to report the ride and subsequent inspection. For instance, there have been incidents when an inspector for the Division of Labor has found unregistered amusement rides operating within the state. In fact, Division staff supplied the Legislative Auditor with a list of at least 21 amusement rides which were operating without registration. According to Division staff, many of the rides which operate without registration are mostly located around the borders of the state.

Amusement Ride Safety in the United States

Mobile amusement rides within the state would be safer if the rides were inspected upon each setup. According to data compiled from USA Today in 2000, thirteen states and the District of Columbia inspect their mobile rides at every set up. The surrounding states of Virginia, Pennsylvania, and Maryland all inspect their mobile rides at each setup. Maryland inspects its permanent rides twice a year and Pennsylvania inspects its permanent rides monthly by third party inspectors and other inspections are done randomly by the state. Ohio does not inspect mobile rides at each setup, but does inspect mobile rides 2 to 3 times per year according to the survey. Kentucky inspects mobile rides annually. The following table gives a state by state summary of ride inspection regulations.

**Table 3
State-by-State Summary of Ride Inspection Regulations**

State	Are mobile rides inspected?	Are permanent rides inspected?
Alabama	No	No
Alaska	Yes, annually	Yes, annually, sometimes more
Arizona	No	No
Arkansas	Yes, every setup	Yes, twice a year
California	Yes, annually	Yes, annually
Colorado	Yes, annually	Yes, annually
Connecticut	Yes, every setup	Yes, annually
Delaware	Yes, electric at every setup	Yes, annually
District of Columbia	Yes, every setup	No
Florida	Yes, every setup	Yes, twice a year
Georgia	Yes, annually	Yes, annually
Hawaii	Yes, every six months	No
Idaho	Yes, every setup	Yes annually
Illinois	Yes, annually	Yes, annually
Indiana	Yes, annually	Yes, annually
Iowa	Yes, start of season plus spot checks	Yes, start of season plus spot checks
Kansas	No	No
Kentucky	Yes, annually	Yes, annually
Louisiana	Yes, every setup	Yes, annually
Maine	Yes, annually, though typically 4 to 5 times a year	Yes annually
Maryland	Yes, every setup	Yes twice a year
Massachusetts	Yes, annually by insurance company; at each setup by state inspector	No
Michigan	Yes, annually(daily inspection by operator required; state may inspect more frequently)	Yes, annually (daily inspection by operator required; state may inspect more frequently)
Minnesota	Yes, annually	Yes, annually

Mississippi	No	No
Missouri	No	No
Montana	No	No
Nebraska	Yes, annually	Yes, annually
Nevada	Yes, but varies by cities	Yes, but varies by city
New Hampshire	Yes, initial setup, again in 90 to 120 days	Yes, annually but usually at least twice a year
New Jersey	Yes, initial annual inspection plus spot checks	Yes, initial inspection plus 2 to 4 more times during season
New Mexico	Yes, annually	Yes, annually
New York	Yes, every setup	Yes, start of season plus follow-up
North Carolina	Yes, every setup	Yes, annually plus spot checks
North Dakota	Yes, law does not specify	Yes, law does not specify
Ohio	Yes, 2 to 3 times a year	Yes, 2 to 3 times a year
Oklahoma	Yes, every setup	Yes, annually
Oregon	Yes, annually	Yes annually
Pennsylvania	Yes, every setup by third party	Yes monthly by third party inspectors; randomly by state
Rhode Island	Yes annually plus every setup	Yes, annually
South Carolina	Yes, annually plus spot checks	Yes, annually plus spot checks
South Dakota	No	No
Tennessee	No	No
Texas	Yes, annually	Yes, annually
Utah	No	No
Vermont	No	No
Virginia	Yes, every setup	Yes, annually
Washington	Yes, annual mechanical plus electrical at every setup	Yes, annual mechanical plus electrical at setup
West Virginia	Yes, annually plus spot checks	Yes, annually plus spot checks
Wisconsin	Yes, annually	Yes, annually
Wyoming	No	No
<i>Source: www.safeparks.org courtesy of data compiled by USA Today</i>		

With data from the U.S. Consumer Product Safety Commission, the Legislative Auditor was able to determine the number of injuries reported by year that occurred on both fixed and mobile amusement rides. Mobile amusement ride injuries rose rather significantly (43%) from 2,788 in 1999 to 3,985 in 2000 as shown in Table 4.

Year	Fixed	Mobile	Total
1993	4,195	2,990	7,185
1994	3,766	2,949	6,715
1995	3,969	3,251	7,220
1996	3,419	2,963	6,383
1997	5,353	2,562	7,915
1998	6,523	2,751	9,274
1999	7,629	2,788	10,417
2000	6,594	3,985	10,580

Source: Amusement Ride-Related Injuries and Deaths in the United States: 1987-2000

Conclusions

The Division of Labor provides timely inspections of amusement park rides. While the Division has statutory authority to inspect mobile amusement rides at every setup, the Division inspects them once upon entry into the state because of a lack of resources.

Issue 4: The State's Elevators are Timely Inspected in Most Cases, With Late Inspections Averaging 20 Days Late.

According to the FY 2000 Annual Report for the West Virginia Division of Labor, the objective of the Division of Labor is to provide for the safety, examination, and inspection of all passenger elevators in West Virginia. Moreover, after determining that an elevator has been inspected and deemed safe for operation, the Division of Labor will issue a "Certificate of Operation" for that elevator. West Virginia Code §21-3C-5 requires that elevators within the state of West Virginia are to be inspected on an annual basis, with the exception of elevators that have been in operation for less than 5 years. **A review by the Legislative Auditor of data for calendar year 2001, found that the Division inspected 55% of the elevators within the required time frame. The remaining 45% were inspected late by an average of 20 days.**

The West Virginia Code requires elevator owners or operators within the state to register each elevator with the Division of Labor. The Division then provides a list of registered elevators to the county or municipality in which the elevator is located. The criteria for elevator safety inspection is stated in § 21-3C-5 of the West Virginia State Code:

The County or municipality shall ensure that every elevator which has been in use for five years or more is inspected annually.

In addition, the Code of State Rules §42-21-5 states in part that:

No elevator may be operated in this state,... without a valid certificate of operation. No certificate of operation shall be issued by the Division until the elevator has been inspected and certified safe for operation by an inspector who holds a certificate of competency issued by the Division. ...A certificate of operation is valid for twelve (12) months from the date of issue.

In essence, counties are responsible for ensuring that elevators and lifting devices are inspected, but the Division provides the inspectors and is responsible for issuing the certificate of operation.

According to Division of Labor staff, there are 3,762 registered elevators within the state. Of these, 481 are considered to be **05** elevators, which are elevators that have been in use under five years and do not have to be inspected until the five year period has elapsed. The Division employs 5 inspectors who have to inspect all of the registered elevators in West Virginia. These same inspectors are also responsible for inspecting amusement rides throughout West Virginia.

Elevator Inspection Analysis

The Legislative Auditor requested from the Division a list of all elevators that were required to be inspected by the Division in calendar year 2001. The data was received on November 18, 2001 and showed 3,646 elevators or lifting devices. From this sample, the Legislative Auditor removed

elevators that were not required to be inspected between January 1, 2001 and November 18, 2001. This left 2,933 elevators for our analysis. Of these 2,933 elevators, 1,316 were not inspected within the twelve month time frame. That means that 45% of elevators within the state were operating without a valid “certificate of operation” at one time or another during 2001. Although the analysis concluded that inspections were late an average of only 20 days, there were a few that were late in excess of 90 days. Late inspections could result in injuries and liability to the counties and state, particularly for older elevators. While the Legislative Auditor feels that the Division must make every effort to inspect elevators within the annual time frame, **the Division should be commended for inspecting the majority of elevators within the required time frame and late inspections average a relatively short period of time.**

Table 5 Late Inspected Elevators for 2001		
Days Late	Number	Percent
1 - 20	851	64.7%
21-30	216	16.4%
31 - 50	158	12.0%
51 - 90	78	5.9%
91+	13	1.0%
Total	1,316	100.0%

Conclusion

From the data that was provided by the Division of Labor, the Legislative Auditor has determined elevators are being inspected in a reasonably timely manner. As stated in the code, elevators should be inspected on an annual basis. Analysis showed that 55% of elevators within the State are inspected within the required time period. Of those that are inspected after the certificate of operation has expired, they are on average only 20 days late.

Recommendation 4:

The Division of Labor should continue its effort to reduce the number of late inspections of elevators.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
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John Sylvia
Director

December 26, 2001

James R. Lewis, Commissioner
West Virginia Division of Labor
Building 6, Room B-749
Charleston, WV 25305

Dear Commissioner Lewis:

This is to transmit a draft copy of the Full Performance Evaluation of the West Virginia Division Of Labor. This report is scheduled to be presented at the Sunday, January 6, 2002 interim meeting of the Joint Committee on Government Operations. 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 committee may have. We would like to schedule an exit conference to discuss the report with you on Friday, December 28, 2001 if this is convenient with you. We would appreciate your written response by Thursday, January 3, 2002 in order for it to be included in the final report.

Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/

c: Alisa L. Bailey, Commissioner
West Virginia Bureau of Commerce

Joint Committee on Government and Finance

APPENDIX B
Agency Response

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HTTP://WWW.STATE.WV.US/LABOR

BOB WISE
Governor



JAMES R. LEWIS
Commissioner

January 2, 2002

RECEIVED
JAN 3 2002

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

John Sylvia
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
Charleston, West Virginia 25305

Dear Mr. Sylvia:

We are in receipt of the draft copy of the Full Performance Audit Evaluation and are in agreement with most of its contents. There is one (1) correction on Page 13, Table 2, "**Minimum Wage & Maximum Hour**" the **number of inspections were 200 not 220.**

I also want to respond to **Recommendation 4:** "*The Division of Labor should continue its effort to reduce the number of late inspections of elevators.*"

- **The Safety Section now has a procedure in place to more closely monitor the timeliness of elevator inspections. We will generate a weekly report that will show late inspections within ten (10) days.**

If you have any questions, please contact me at 558-7890.

Sincerely,

A handwritten signature in cursive script that reads "James R. Lewis".

James R. Lewis
Commissioner

JRL/bm

cc: Alisa L. Bailey
West Virginia Bureau of Commerce



