

Regulatory Board Evaluation

**Real Estate Appraiser Licensure
and Certification Board**

**State Regulation of Real Estate
Appraisers Serves Public Interest**

**The Board Complies with Some
Chapter 30 Requirements and Other
Applicable Laws But the Complaint
Process Has Areas of Concern,
Public Accessibility Can Be Improved,
and Assessment of Administrative
Fees Are Not Adequately Documented**

**Greater Prudence Is Needed In
the Expending of the Board's Funds**



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(Vacancy)



OFFICE OF THE LEGISLATIVE AUDITOR

Aaron Allred
Legislative Auditor

John Sylvia
Director

Brian Armentrout
Research Manager

Jill Mooney
Research Analyst

Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

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

September 7, 2003

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

The Honorable J.D. Beane
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 Regulatory Board Evaluation of the Real Estate Appraiser Licensure and Certification Board, which will be presented to the Joint Committee on Government Operations on Sunday, September 7, 2003. The issues covered herein are "State Regulation of Real Estate Appraisers Serves Public Interest," "The Board Complies with Some Chapter 30 Requirements and Other Applicable Laws But the Complaint Process Has Areas of Concern, Public Accessibility Can Be Improved, and Assessment of Administrative Fees are not Adequately Documented;" and "Greater Prudence is Needed in the Expending of the Board's Funds."

We transmitted a draft copy of the report to the Real Estate Appraiser Licensure and Certification Board on August 22, 2003. We held an Exit Conference with the Board on September 3, 2003. We received the agency response on September 5, 2003.

Let me know if you have any questions.

Sincerely,

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

John Sylvia

JS/wsc

_____ *Joint Committee on Government and Finance* _____

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Executive Summary

Issue 1: State Regulation of Real Estate Appraisers Serves Public Interest.

Real estate appraisers are to accurately estimate and impartially value real property. Federal law requires that real estate appraisals utilized in connection with federally related transactions be performed by an individual whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Further, according to a report released in May 2003 by the General Accounting Office, 50% of mortgage loans in the United States are originated by mortgage brokers not federally regulated. Accurate appraisals can prevent consumers and lenders, often the government, from financial losses. Were West Virginia not to regulate the entire practice of real estate appraisal, not just those required by federal law, it would not have any regulatory authority over real estate appraisers conducting non-federally connected real estate appraisals and protect its citizens from possible financial harm. **Thus, in order to comply with federal law and to protect West Virginians, the Legislative Auditor determines that it is in the public interest to continue regulation.**

Issue 2: The Board Complies with Some Chapter 30 Requirements and Other Applicable Laws but the Complaint Process Has Areas of Concern, Public Accessibility Can Be Improved, and Assessment of Administrative Fees Are Not Adequately Documented.

The Board has complied with such Chapter 30 requirements as setting fees by rules, maintaining a record of its proceedings, and meeting at least annually but compliance with other laws can be improved upon.

The average length of time to complaint resolution, 188 days, is comparable to other licensing boards but outlying days to resolution of more than two and half years needs to be improved upon. Further, the Board, in its procedural rules, has given a subcommittee the authority to make final decisions relating to revocation of licenses, closing cases and proceeding with a hearing. A legal opinion indicates that Boards lack the authority to delegate of its responsibilities to subcommittees. This opinion indicates this is true whether the subcommittee is composed entirely of Board members or, as is this case with this Board, partially composed of non-Board members. The Legislative Auditor

recommends the Board's procedural rules be amended to allow the subcommittee to make recommendations to the Board.

While the Board does have the required telephone listing in the state government section of the Charleston area telephone book public accessibility could be improved upon by consistent, proper filing of open meeting notices with the Secretary of State's Office and providing that the website has correct information, allows the public to file complaints electronically, download complaint forms and view complaint resolution.

Although the Board is financially self-sufficient, the ending cash balance in FY 2002 was \$98,288 was almost half of what it had been in FY 2000 when it was \$185,142. Increases in employee salaries, increased member compensation and additional contractual and professional costs are contributing to the decreased cash balances.

Finally, administrative fees assessed have not been adequately documented and appear to be assessed inequitably. Board documentation is limited to handwritten worksheets without any supporting documentation such as invoices to reflect the actual administrative cost of carrying out an action such as an investigation leading to a consent decree. Also, documentation provided to the Legislative Auditor indicates at least three licensees who entered into consent decrees, one whom was put on probation and another whose licenses was suspended, were not assessed administrative costs. Adequate documentation should clearly define and account for administrative costs associated with investigating complaints that lead to disciplinary action

Issue 3: Greater Prudence Is Needed In the Expending of the Board's Funds.

The Board's expenses have risen over three years to where its end of year balance has declined by about half and license fees were raised in 2003 by \$40. **The Legislative Auditor has determined that one reason for the increase in expenses is that there have been unreasonable and imprudent expenditures incurred by the Board, and this is primarily because Chapter 30 licensing boards have limited criteria for reasonable costs.** Further the Board has not strictly followed travel regulations, which has led to unnecessary expenses. While the individual amounts of the travel regulation violations and the imprudent expenditures amount to a few thousand dollars a year, the frequency of these types of expenditures bear mentioning so that they do not become larger and turn into a major concern. There is a pattern that the Board is not exercising due care in avoiding unnecessary expenses. For

a board of this size, a few thousand dollars each year becomes significant. **The Legislative Auditor concludes that there is a need to establish for Chapter 30 licensing boards clear criteria for reasonable expenses to avoid rising costs that lead to increases in licensing fees.**

Recommendations

1. *The Legislative Auditor recommends that the Legislature continue regulation of real estate appraisers in accordance with federal law and regulate appraisers of non-federally related transactions.*
2. *The Legislative Auditor recommends that the Board amend its practice and procedural rules to ensure that subcommittees do not make final decisions on matters that are to be decided by the full Board, such as disciplinary actions. The Board's practice and procedural rules should allow subcommittees to make recommendations to the full Board to vote on.*
3. *The Legislative Auditor recommends that the Board should resolve all complaints in a timely manner as they are received.*
4. *The Legislative Auditor recommends that the Legislature consider amending WVC β30-1-12(c) to require all Chapter 30 licensing boards to have a website in operation by January 1, 2005. Such website should consist of the required information listed in this issue and be accessible from the State's website.*
5. *The Legislative Auditor recommends that the Board have clear documentation to substantiate administrative costs charged licensees for investigating complaints that lead to disciplinary action. The documentation should indicate the disciplinary action taken and a full account of the administrative costs.*
6. *The Legislative Auditor recommends that a register be maintained as required by 30-1-12(a).*
7. *The Board should strictly adhere to the travel guidelines set out by the Department of Administration and the State Auditor.*
8. *The Board should reexamine its expenditure practices in order to expend board funds in a fiscally prudent manner.*

9. *The Board should consider applying the federal statute to Board members by issuing W-2 forms when lodging by Board members is within 50 miles of their residence and in other appropriate situations.*

10. *The Board should consider requesting an ethics opinion from the Ethics Commission concerning the purchase of a gift for a professional association.*

11. *The Legislature should consider amending West Virginia Code β 30-1-11 to establish clear criteria for reasonable expenses.*

Review Objective, Scope and Methodology

This regulatory board evaluation of the Real Estate Appraiser Licensing and Certification Board is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5b of the West Virginia *Code*.

Objective

As stated in *Code* a regulatory board evaluation is to determine whether a Board is 1) necessary for the protection of public health and safety, and 2) whether the Board is operating in compliance with applicable laws and rules. This evaluation also examines the Board's use of its funds.

Scope

This regulatory board evaluation covers the period from CY 2000 through April 2003.

Methodology

Information compiled in this evaluation was acquired from the West Virginia *Code*, interviews with the Board's staff, examinations of annual reports, meeting minutes, expenditure schedules, and complaint files.

State Regulation of Real Estate Appraisers Serves Public Interest.

Issue Summary

This report is a *Regulatory Board Evaluation* of the Real Estate Appraiser Licensing and Certification Board. By law, it must be determined if it is in the public interest to continue licensure. Real estate appraisers are to accurately estimate and impartially value real property. Federal law requires that real estate appraisals utilized in connection with federally related transactions be performed by an individual whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Further, according to a report released in May 2003 by the General Accounting Office, 50% of mortgage loans in the United States are originated by mortgage brokers not federally regulated. Accurate appraisals can prevent consumers and lenders, often the government, from financial losses. Were West Virginia not to regulate the entire practice of real estate appraisal, not just those required by federal law, it would not have any regulatory authority over real estate appraisers conducting non-federally connected real estate appraisals and protect its citizens from possible financial harm. **Thus, in order to comply with federal law and to protect West Virginians, the Legislative Auditor determines that it is in the public interest to continue regulation.**

Real Estate Appraisals Can Help Protect Consumers from Financial Harm and the Government from Financial Losses

As of March 2003, the Real Estate Appraiser Licensure and Certification Board had 751 licensees. Real estate appraisers estimate the value of real estate through sales comparisons, cost of replacement, and income potential. They deal with both land and the buildings on the land. Real estate appraisers consider the value of trees, landscaping, water supply, minerals, farm crops, garages, bridges, and other features in order to arrive at market value.

While an appraisal of business or industrial property may require more detailed steps, the work of real estate appraisers consist of six basic steps:

- i investigation,
- i research of court records and deeds,
- i analysis of the neighborhood around the property,
- i property inspection,

-
- i analysis of the data, and
 - ii writing of the appraisal report.

Real estate appraisers provide opinions of the value of a property as of a specific date. These opinions of the value of a property are to provide evidence that the collateral value of the property is sufficient to avoid losses on loans if the borrower was unable to repay the loan. **Fraudulent and/or inflated appraisals can cause individual consumers financial harm and lenders, often governments, financial losses.**

Appraisals of Federally Related Real Estate Transactions

The Real Estate Appraiser Licensure and Certification Board was created by the Legislature in 1990 in response to the passage of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The law resulted from many cases of abuse nationally in which substandard or fraudulent appraisals performed without sufficient independence contributed to billions of dollars in losses and failures of lending institutions. The law requires that **all appraisals in connection with federally related real estate transactions** must be performed by state licensed or state certified appraisers and all federally related real estate transactions having a value of a million dollars or more must be performed by a certified appraiser.

Federal law requires that the profession be supervised when the appraisal is utilized in connection with a federally related transaction. FIRREA, Section 1101 of Title XI states,

*...to provide that federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and **whose professional conduct will be subject to effective supervision.** [Emphasis added]*

Under the provisions of Title XI of the FIRREA, the Appraiser Qualifications Board (AQB) establishes the minimum education, experience and examination requirements for real property appraisers to obtain a state certification. State agencies must consider whether transactions, either individually or collectively, are of sufficient financial or public policy importance to the United States that an individual who performs an appraisal in connection

with such transactions should be a state certified appraiser.

Title XI, Section 1117 states,

*To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State **may** establish a State appraiser certifying and licensing agency. [Emphasis added]*

While as can be seen in the law above, West Virginia is not required by law to establish a State appraiser certifying and licensing agency. The establishment of one has permitted the State to: 1) monitor and enforce appraiser compliance within its borders and 2) ensure that individuals wishing to purchase real property in West Virginia can find a certified or licensed person within the state.

Appraisal in Non-Federally Related Real Estate Transactions

Regulation of non-federally related transactions is not required by federal law but West Virginia and 25 other states regulate these appraisals. The other twenty-four states, including West Virginia's bordering states of Maryland, Ohio and Kentucky, either only have mandatory licensing for federally related real estate transactions or have voluntary licensing requirements. The Legislative Auditor recommends that the state continue regulating those persons who conduct appraisals of non-federally related transactions. Licensure of all appraisers ensures that the State can serve the public interest by setting minimum qualifications and experience.

Conclusion

Real estate appraisers are responsible for ensuring that appraisals are correct and unbiased. Licensure of real estate appraisers serves the public interest because if competency were not regulated, the public and government could sustain monetary losses. **Therefore, it is the Legislative Auditor's opinion that licensure of this profession protects the public interest and**

should be continued.

Recommendation 1

The Legislative Auditor recommends that the Legislature continue regulation of real estate appraisers in accordance with federal law and regulate appraisers of non-federally related transactions.

Issue 2

The Board Complies with Some Chapter 30 Requirements and Other Applicable Laws But the Complaint Process Has Areas of Concern, Public Accessibility Can Be Improved, and Assessment of Administrative Fees Are Not Adequately Documented.

Issue Summary

The Real Estate Appraiser Licensing and Certification Board has complied with some of the applicable state laws and rules. These laws and rules, primarily found within the Board's own article in the Code and in the general provisions of Chapter 30, are important in the effective operation of a licensing board. The Board has complied with the following requirements:

- ï A Board representative attended the orientation session provided by the State Auditor's Office in the required two year time frame (β30-1-2a);
- ï The Board meets at least once annually (β30-1-5(a));
- ï The Board has set fees by rule (β30-1-6(c));
- ï The Board has developed continuing education criteria, which includes course content, course approval, hours required and reporting periods (β30-1-7a(a));
- ï The Board has procedural rules that outline the procedures for investigation and resolution of complaints (β30-1-8(h));
- ï The Board maintains a record of its proceedings (β30-1-12(a));
- ï The Board has a listing in the state government section of the Charleston area telephone book (β30-1-12(c)); and
- ï A roster of licensees is maintained (β30-1-13).

Complaint Process Has Areas of Concern

The Board has procedural rules that outline the procedures for

investigation and resolution of complaints, denied licenses and hearing procedures. These rules are to ascertain that due process rights are provided and public protection is ensured. Regarding the complaint process, the Legislative Auditor has the following concerns:

1. **Some Complaints Took Too Long to Resolve**

Complaints received primarily allege inaccurate appraisals or violations of uniform appraisal standards. During the time period of 2000 through April 2003 the average length of time to resolve a complaint was 188 days, ranging from one to 1019 days to resolution. While the average of 188 days is comparable to other licensing boards that have undergone an evaluation, outlying days to resolution of more than two and half years needs to be improved upon. The oldest outstanding complaint is approximately three years old, the most recent, two months. According to the Board some of the complaints that have taken more than a year to resolve are attributable to a high turnover in legal representation from the Attorney General's Office. Since January 2000, the Board has been represented by three attorneys. Each time a new attorney was appointed to represent the Board, continuances were sought on cases dealing with complaints in order for the attorney to become familiar with the case. Table 1 shows the number of complaints received from calendar year 2000 through April 2003.

Year	# of Complaints	Dismissed	Open	Held**	Suspension	Probation
2000	26	15	2	5	1	3
2001	27	17	3	5	1	1
2002	35	8	12	2	8	5
2003*	11	5	6	-	-	-

* Data as of April 29, 2003
 ** Represents complaints classified as dismissed by the Board but subject to being before the Board should the person seek active or renewed licensure.

2. **Subcommittee Does Not Have Authority to Make Final Decisions**

Typically licensure boards form subcommittees of one or more board members to investigate complaints. Although many boards follow this practice

for investigating complaints, boards should be careful that these subcommittees are not making final decisions that only the full board has authority to make. The Real Estate Appraiser Licensing and Certification Board has procedural rules that permit the formation of a Standards Committee consisting of two board members and two non-board members to investigate the complaints. **These procedural rules give the Standards Committee the authority to make decisions including closing cases, proceeding with a hearing, subpoenaing witnesses or evidence, and entering into consent orders that can involve revocation of licenses.** Furthermore, the rules do not specify how the chairperson of the Standards Committee is selected. This is worth noting because the procedural rules permit consent orders to be signed by the Standards Committee chairperson, who could be one of the non-Board members. A legal opinion from Legislative Services indicates the following:

...the Board lacks authority to delegate any of its responsibilities or powers to a subcommittee consisting partially of non-board members, or even to a subcommittee containing only board members, but not the entire Board...the board may not delegate any of its responsibilities or powers to a subcommittee consisting partially of non-board members, since the Legislature has not authorized the use of subcommittees to act on behalf of the Board and since the Legislature has given the Board the authority to hire staff to assist it in meeting its responsibilities.

According to the legal opinion, only the full Board has the authority to make decisions about licensees. There is nothing wrong with boards forming subcommittees or using non-board members in the complaint process since boards have authority to hire staff to perform board functions. However, due process for licensees can be impaired if subcommittees are making the final decisions on matters such as revocation of licenses that only the full board has authority to make. **The Legislative Auditor recommends that the Board amend its practice and its procedural rules to allow the Standards Committee to recommend actions to the full Board and that the full Board vote on these recommendations.** The Board may also need to consider if the Board members who were on the Standards Committee should recuse themselves from the full Board vote, although this may not be absolutely necessary since the members from the subcommittee have in effect already made their decision through their recommendation.

Public Accessibility Can Be Improved

As stated previously, the Board does have the required telephone book listing. This Board also has a website but information is dated, including making references to incorrect statutory authority and rules. In reviewing Chapter 30 licensing boards however, many do not have websites. West Virginia Code §30-1-12(c) only stipulates that boards shall regularly evaluate the feasibility of adopting additional methods of providing public access through other means including computerized communication. It does not require that boards actually adopt such additional methods. The Legislature may wish to consider requiring all Chapter 30 licensing boards to have a website by the start of 2005. With society's technological growth and use of the internet for communication, it would provide enhanced service to the public if people could see if someone is licensed and in good standing.

A website for a licensing board should be required to have at least the following elements:

1. Where a licensee received the required education;
2. When a licensee completed the required education;
3. When a licensee was licensed;
4. The number of complaints, if any, filed against a licensee;
5. The number of substantiated complaints, if any, against a licensee;
6. A complaint form that can be downloaded and/or filed online; and
7. A link to and from the State's website.

Licensing boards may be able to obtain assistance from the Information Services and Communications Division within the Department of Administration in developing a website.

The Legislative Auditor has the following concerns related to public accessibility:

1. The Board does not provide the opportunity to the public to file a complaint electronically, download a complaint form from the website or view a complaint resolution from its website.
2. Table 2 illustrates how the filing of open meeting notices could be improved, as a few meetings were not properly filed with the Secretary of State's Office.

Table 2 Open Meeting Notices				
	2000	2001	2002	2003*
Notices Filed Timely	3**	6	7	2
Notice Filed Late	3	0	1	0
Notices Not Filed	1**	2***	0	0

*Data as of April 15, 2003. **State Register and Board provided information are at odds. ***The Board has a facsimile indicating one of these notices was sent.

The Board also provided the Legislative Auditor with meeting minutes for which the Secretary of State has no record of notice. Additionally meeting notices were filed for which the Legislative Auditor was not provided minutes, the Board stated that these dates were not board meetings but hearings. Notices not filed with the Secretary of State's Office in the prescribed manner hinders public access and could have potentially put any action of the Board in question. During these meetings where notices were not filed properly, license upgrades and complaints filed against licensees were voted on by the Board. These actions illustrate the importance Board actions can take in any given meeting. Public notice is important in the Board's charge to protect the public from possible incompetent practice.

The Board is Financially Self-Sufficient But There Are Financial Concerns

The Board is financially self-sufficient as required by West Virginia Code §30-1-6(c). The Board had an ending cash balance for FY 2002 of \$98,288 with average annual expenditures of less than \$215,000. As can be seen in Table 3 below however, the Board's year end cash balances have decreased by almost half in just two years. During the 2003 regular legislative session, the Board sought and was granted fee increases. **Issue three discusses some concerns about unnecessary expenses and violations of travel regulations that have resulted in inappropriate expenditures.**

Other factors that appear to be contributing to the decrease in cash balances are increases in employee salaries, growth in member compensation and contractual and professional costs. The line item expenditure related to Board member compensation increased by \$12,000 from FY 2001 to FY 2002. This is in part due to Board members being paid the maximum allowable

amount that became \$150 in April 2002 from what had been \$50. However, as discussed in Issue 3, Board members are being paid the \$150 compensation for days traveling, not actually spent attending official meetings or engaging in official duties. The Legislative Auditor reported in a previous audit that this practice is legal; however, it is not the intent of the Legislature. The practice of paying the \$150 compensation for travel days increases the Board's expenditures by about \$1,000 a year.

Another factor is increases in employee salaries, which increased 12% in FY 2001 and 10% in FY 2002. The third identified factor is the line item expenditure related to contractual and professional costs. Most of the approximately \$9,700 increase that occurred between FY 2000 and FY 2001 are legal fees paid to the attorney general's office. Expenditures in this category dropped off by about \$4,000 the next year and increased only slightly from FY 2002 to FY 2003.

Fiscal Year	Actual Revenues	Actual Expenditures	EOY Cash Balances
2000	\$175,258	\$197,061	\$185,142
2001	\$177,625	\$216,172	\$146,425
2002	\$181,921	\$229,812	\$98,288

Assessment of Administrative Costs Is Not Adequately Documented and Appears Inequitable

Chapter 30, Article 1, Section 8(a) discusses a board's authority to assess administrative costs associated with investigating complaints that result in disciplinary action, such as the suspension or revocation of licenses. The Board has assessed costs for investigations in several instances. However, the Board's documentation of these assessments is limited to a hand-written administrative worksheet which indicates licensees are being charged for such items as copies of documents for all board members and retrospective appraisals and field reviews. One licensee was assessed an administrative fee of \$2,625 and another licensee \$2,200 for investigations. **The Board should be able to document that the administrative fee assessed against a licensee reflects the actual administrative cost of carrying out an action such as an investigation leading to a consent decree.**

The Legislative Auditor is concerned that the process of assessing administrative fees is applied inconsistently. The Board provided the Legislative Auditor with documentation that at least three licensees who entered into consent decrees, one of whom was put on probation and another whose license was suspended, were not assessed administrative costs. It is the Legislative Auditor's opinion that the Board should develop adequate documentation that clearly defines and accounts for administrative costs associated with investigating complaints that lead to disciplinary action. The documentation should indicate the disciplinary action taken and a full account of the administrative costs.

Register Is Incomplete

A Board register of all applicants was requested by the Legislative Auditor. Under §30-1-12(a) of the *Code*, the register of a Board is required to detail all individuals who have applied for licensure, including whether a license was granted, any suspensions, and qualifications for licensure. The Board responded to the Legislative Auditor's request for the register by stating its roster was inclusive of its register. The following required fields were not included in the roster provided: all applicants for licensure not just those licensed, age of applicant, educational and other qualifications, place of residence, date of application, application granted or rejected, date application granted or rejected, all renewal dates, exam required, and suspensions and/or revocations.

Conclusion

The Board has complied with some of the general provisions of Chapter 30 of the West Virginia Code. The Board meets regularly, is financially self-sufficient and maintains a satisfactory records of its meetings. Its complaint process has areas of concern, public accessibility needs to improve, administrative costs should be documented fully and a register needs to be maintained.

Recommendations

2. *The Legislative Auditor recommends that the Board amend its practice and procedural rules to ensure that subcommittees do not make final decisions on matters that are to be decided by the full Board, such as disciplinary actions. The Board's practice and*

procedural rules should allow subcommittees to make recommendations to the full Board to vote on.

3. *The Legislative Auditor recommends that the Board should resolve all complaints in a timely manner as they are received.*
4. *The Legislative Auditor recommends that the Legislature consider amending WVC §30-1-12(c) to require all Chapter 30 licensing boards to have a website in operation by January 1, 2005. Such website should consist of the required information listed in this issue and be accessible from the State's website.*
5. *The Legislative Auditor recommends that the Board have clear documentation to substantiate administrative costs charged licensees for investigating complaints that lead to disciplinary action. The documentation should indicate the disciplinary action taken and a full account of the administrative costs.*
6. *The Legislative Auditor recommends that a register be maintained as required by 30-1-12(a).*

Greater Prudence Is Needed In the Expending of the Board's Funds.

Issue Summary

The Board's expenses have risen over the years to where its end of year balance has declined significantly and license fees for licensees were raised this year by \$40. The fee increase represents a 12% to 40% increase depending on the type of license being obtained. **The Legislative Auditor has determined that one reason for the increase in expenses is that there have been unreasonable and imprudent expenditures incurred by the Board, and this is primarily because Chapter 30 licensing boards have limited criteria for reasonable costs.** In addition, the Real Estate Appraiser Licensing Board has not strictly followed travel regulations, which has led to unnecessary expenses. While the individual amounts of the travel regulation violations and the imprudent expenditures amount to a few thousand dollars a year, the frequency of these types of expenditures bear mentioning so that they do not become larger and turn into a major concern. There is a pattern that the Board is not exercising due care in avoiding unnecessary expenses. For a board of this size, a few thousand dollars each year becomes significant. **The Legislative Auditor concludes that there is a need to establish for Chapter 30 licensing boards clear criteria for reasonable expenses to avoid rising costs that lead to increases in licensing fees.**

While Certain Expenditures Are Legal Are They Reasonable?

Chapter 30 boards have limited standards to determine the reasonableness of certain types of expenditures. As a result, excessive expenditures are incurred that contribute to rising costs and increases in licensing fees. West Virginia Code imposes standards for reasonable costs on members of the Legislature. Below is an illustration of how the Real Estate Appraiser Licensing Board compares with the standards that are imposed on legislative members:

- i Members of the Real Estate Appraiser Licensing Board were paid \$150 compensation for days in which they travel before or after the day of the meeting. Since October 2001, members

have not been compensated for travel days. Depending on the number of meetings, this averaged to around \$1,000 a year in additional costs. Legislators are not paid compensation for travel days.

- i A member of the Real Estate Appraiser Licensing Board was paid compensation of \$5,100 in CY 2002, which exceeds the maximum standard for Legislators during interim meetings by \$600. This does not violate current statute. According to a legal opinion from Legislative Services, the \$4500 limit on interim compensation does not serve to limit the annual amount of compensation to an individual member of the...Board. As such it is not illegal for board members to receive amounts that would exceed what a legislator could be paid for his or her interim duties.
- i Whether legislators commute daily or stay overnight, they are allowed a maximum daily amount of \$115. Licensing boards do not have such limits. If the legislative standards were applied to licensing boards the Real Estate Appraiser Licensing and Certification Board would have been in excess of the legislative daily limits by less than \$10 in CY 2003. Nevertheless, without a standard, licensing boards can have costs that exceed a reasonable standard for daily amounts.
- i The Board reimbursed a member for two days of lodging who was within 40 miles of his residence. The net result of paying for the hotel room for two nights as opposed to travel expenses for two nights was an additional cost of around \$164. Title 26, Section 162 of the United States Code for the Internal Revenue Service requires legislators to treat lodging reimbursement as taxable income if they are within 50 miles of their residence.

Legislators currently receive \$150 compensation and reimbursement for expenses when attending meetings, such as an extended regular session. Compensation, however, is not paid to legislators for travel time on days before or after meetings. Legislators receive only expense reimbursement for these days. The Board is compensating its members for travel to the Board on days before board meetings. For example, if a board member travels one day early, the member will be compensated \$150 for the day of travel in addition to receiving travel reimbursement. Members also receive \$150 compensation for the following day spent at the board meeting. A legal opinion from Legislative Services found that this was legal; however, the Legislative Auditor finds that this practice is not the intent of the Legislature. The legislative intent has been that board members be paid consistent with members of the Legislature.

A part of the confusion may be a lack of definition in the West Virginia Code concerning official duties of board members. One section of *Code* does appear to allow travel time to be compensated. West Virginia Code §12-3-7, which was last amended in 1925, states the following:

The members of all state boards and commissions, unless a different rate of compensation is provided by law, shall be allowed four dollars per day for each day necessarily employed as such (including the time spent in going to and returning from the place of meeting)... [emphasis added]

This statutory allowance may have been applicable for the time period of 1925 when traveling without an interstate highway system was a long and arduous commute. The policy of paying members for travel on days before meetings has added as much as an additional \$1000 to the Board's expenses in one calendar year.

The final expenditure that concerns the Legislative Auditor relates to the use of Board funds to purchase gifts for an association. When a member of the Board attends a professional association conference, a gift is taken. The cost of the gift has ranged from \$35 to \$50. There have been at least four conferences where a clock was taken to be presented as a gift. On at least one occasion the State Auditor questioned this expense payment. Chapter 30, article 1, section 10(a) requires licensing board funds to be used for purposes of administration and enforcement. West Virginia Code §6B-2-5 also prohibits the use of public funds for private gain or the gain of another person. The use of Board funds to purchase gifts is not acceptable and should cease. The Board may also want to consider requesting an ethics opinion from the Ethics Commission concerning this issue. In the exit conference with the Board, staff of the Legislative Auditor was informed the giving of gifts ceased in 2003.

Travel Regulations Have Not Been Followed In a Few Instances

Travel rules and guidelines are not being adhered to resulting in unnecessary expenditures. The list that follows reflects some of the travel violations:

- i Personal telephone calls up to \$3 per day are permitted. Claims for

amounts of approximately \$16, \$18 and \$44 have been paid.

- i The same telephone call was reimbursed twice, once it was included in the cost of the hotel bill and the second time it was listed separately. While the amount was small, \$4.68, such an example is an indication of lack of diligence in expending Board funds because it was paid twice and exceeded the limit on personal telephone calls.

Expenses such as those mentioned above not only contradict travel guidelines but result in unnecessary expenditures. While the Board is currently financially self-sufficient, as discussed in Issue 2, the end of year cash balances have decreased by about 50% in two years despite an increase in fees. Continued lack of diligence in abiding by allowable reimbursed amounts and in expending licensure fees unnecessarily can contribute to the Board experiencing financial difficulties and requiring unnecessary increases in licensee's fees.

Conclusion

Some of the Board's reimbursements violate travel rules. Although the amounts of the travel regulation violations are not material on an individual basis, the frequency of the violations reveal a pattern that could become more serious. Also, given the Board's financial condition and to avoid having to raise fees on licensees, the Board needs to exercise more prudence in processing travel reimbursements and other types of expenditures.

Recommendations

7. *The Board should strictly adhere to the travel guidelines set out by the Department of Administration and the State Auditor.*
8. *The Board should reexamine its expenditure practices in order to expend board funds in a fiscally prudent manner.*
9. *The Board should consider applying the federal statute to Board members by issuing W-2 forms when lodging by Board members is within 50 miles of their residence and in other appropriate situations.*
10. *The Board should consider requesting an ethics opinion from the Ethics Commission concerning the purchase of a gift for a professional association.*

-
11. *The Legislature should consider amending West Virginia Code §30-1-11 to establish clear criteria for reasonable expenses.*

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

August 22, 2003

Sharron L. Knotts, Executive Director
Real Estate Appraiser Licensing & Certification Board
2110 Kanawha Boulevard, East Suite 101
Charleston, WV 25311

VIA FACSIMILE

Dear Ms. Knotts,

This is to transmit a draft copy of the Regulatory Board Evaluation of the Real Estate Appraiser Licensing & Certification Board. This report is scheduled to be presented at the September 7-9, 2003 interim meeting of the Joint Committee on Government Operations to be held in Lewisburg, West Virginia. We will inform you of the exact time and location once the information becomes available. 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 need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting sometime between August 25-27, 2003. Please notify us to schedule an exact time. In addition, we will need your written response by noon on August 29, 2003 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, September 4, 2003 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Joint Committee on Government and Finance

Appendix B: Agency Response



STATE OF WEST VIRGINIA

REAL ESTATE APPRAISER LICENSING AND CERTIFICATION BOARD

Enola G. Ellis
Administrative Assistant

Sharron L. Knotts, Executive Director
2110 Kanawha Blvd., East Suite 101
Charleston, West Virginia 26311
304-558-3919 Fax 304-558-3983

Karen Hudson
Administrative Assistant

September 5, 2003

RECEIVED
SEP 05 2003

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

John Sylvia, Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

VIA FACSIMILE

RE: Regulatory Board Evaluation

Dear Mr. Sylvia:

This is to respond to the Regulatory Board Evaluation of the Real Estate Appraiser Licensing & Certification Board.

The Board came into existence in 1991 under Chapter 37, Article 14, of the WV Code. The Legislature, at that time, felt that the citizens of West Virginia would be better served if the practice of real estate appraising was regulated. In July of 2001, the Legislature moved the Board to Chapter 30, Article 38, to ensure that it complied with regulations applicable to all boards and commissions. Although while being under Chapter 30 requirements for such a short period of time, the Board welcomed the opportunity to participate in the audit performed by you and your staff. The issues discussed in the audit will give guidance in developing new procedures and refining those already in place to assure full compliance with applicable state laws and rules.

Issue 1: State Regulation of Real Estate Appraisers Serves Public Interest

The summary states, "Accurate appraisals can prevent consumers and lenders, often the government, from financial losses." This Board takes very seriously its duties and responsibility to protect and serve the citizens of West Virginia and fully agrees that the regulation of real estate appraisers should be continued.

BOARD MEMBERS

David Shields, Bluefield Virginia Shaw, New Haven Glenn Rohr, Buckhannon
David Burch, Hamlin Barbara Argabrite, Vienna Tim Helmick, Cross Lanes
Raymond Dunleavy, Charleston Larry Puccio, Fairmont Michael Jones, Farmington

Issue 2: The Board complies with some Chapter 30 requirements and other applicable laws but the complaint process has areas of concern, public accessibility can be improved and assessment of administrative fees are not adequately documented.

1. Some complaints took too long to resolve.

The Board does everything possible to resolve complaints in a timely manner. The average of 188 days (six months) from notification of a complaint to its resolution is reasonable. To give a licensee due process, a thorough investigation of a complaint is necessary, and time-consuming. The Board meets every three months and this needs to be factored into that time frame. There are complaints which, after investigation, must go to a disciplinary hearing. This procedure involves legal representation for the Board from the Attorney General's Office. There is a high rate of turnover in the Attorney General's Office and, unfortunately, boards and commissions suffer the consequences. There have been three (3) different attorneys assigned to this board during the time frame of the audit. This turnover has resulted in lengthy delays bringing complaints to resolution. Until this situation is resolved, these types of delays will continue to occur.

2. Subcommittee does not have authority to make final decisions.

The Standards Committee was formed by the Board for the investigation of complaints. The Board's "Investigative and Hearing Procedures" are set forth in procedural rule Title 190, Series 4. This rule was drafted by the Board's legal representative from the Attorney General's Office in 1997 and, as such, was assumed to be correct. The issue pointed out by the audit revealed that the Standards Committee should not be making decisions for the Board, only recommendations. While it is set out in the Rule that the Standards Committee can make decisions with respect to disciplinary actions, it has been the practice of the Committee and Board for the past three (3) years that only recommendations are made to the Board regarding disciplinary actions and the full Board decides how to proceed. The Board will amend its procedural rules to allow the Standards Committee to recommend actions to the full Board and the full Board vote on the recommendations.

3. Public accessibility can be improved.

- A) The Board has complied with all standards for public access. The Board maintains a website which is available to the public at all times. It is recognized that the site needs updating and the Board is currently working with individuals from the Information Services and Communications Division (IS&C) of the Department of Administration to accomplish this task. Please keep in mind, however, that these services are not "free" to the Board and the

availability of Board funds for this project will play an important role in this matter.

- B) The Board maintains office hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, to speak with the public and to provide complaint forms, either by mail or picked up in the office. Complaint forms are not currently available on the website but this is one of the issues being dealt with by IS&C.
- C) The Board makes every effort to comply with the Open Meetings Act by filing notices with the Secretary of State's Office, as required. After reviewing our records, we found that we are complying with this requirement; however, there is a discrepancy with the Secretary of State's Office. A procedure has been put into place to verify that the meeting notice is received once it has been faxed for placement in the register.

4. The Board is financially self-sufficient but there are financial concerns.

When licensing was implemented by the Legislature in 1991, there was no way of knowing how many appraisers would be licensed and fees were set to ensure that the Board has monies to operate. After several years, it was apparent that the fees were too high. The Board reduced licensing fees by \$50 on three (3) separate occasions to reduce the excess revenue. During the past several years there have been increases in expenses due to increased per diem levels from \$50 to \$150 to comply with the legislative standards, bringing employee salaries to a reasonable level, replacing old and worn out office equipment, and escalating fees from the Attorney General's Office for legal representation. To offset the rising costs of maintaining services to the citizens of West Virginia, a license fee increase of \$40 in each license category was sought and approved by the Legislature in 2003.

5. Assessment of administrative costs is not adequately documented and appears inequitable.

With no guidelines from the Legislature, and after years of debate between attorneys in the Attorney General's Office, it was determined that the Board could recoup costs for investigating complaints through administrative fees. This is a new practice by the Board and, at the time of the audit, it became clear that better documentation is needed. Procedures will be put into place to remedy this and provide a full accounting of the assessment of administrative costs.

6. Register is incomplete.

The Board maintains a roster of all applicants/licensees. While the roster does not include all fields required by §30-1-12(a) of the Code, the database was developed years before the Board was placed under this statute. The cost to upgrade the database is astronomical. The Board will make this a priority and it will be accomplished if and when funds become available.

Issue 3: Greater prudence is needed in expending of Board's funds.

The Board uses due diligence in keeping its expenditures reasonable and continue to maintain the functions it is mandated by statute to perform. The Legislative Auditor has stated in the report that expenditures made by the Board, in the area of travel reimbursement, have been "unreasonable and imprudent." All travel expense reports must go through the State Auditor's Office before they can be approved for payment.

- A) The Board has tried to comply with all guidelines with respect to travel reimbursement and members do not travel unnecessarily. It was pointed out that some members had been paid per diem for travel days. This was done only on one (1) occasion after the Board was placed under Chapter 30, between August and October of 2001, and has not occurred since that time.
- B) A member of the Board did exceed "the \$4,500 limit on compensation" in CY 2002 by \$600; however, as stated in the audit report, this does not violate any current statute.
- C) There are no maximum daily limits on licensing boards for daily or overnight travel. The Board has tried to comply with the legislative standards and was only in excess of those daily limits by \$10 on one (1) occasion. It would be very helpful to all boards and commissions to have written, understandable, guidelines to follow with respect to travel reimbursements.
- D) The audit report pointed out that the Board expended funds for a gift for national regulatory association meetings. This issue was discussed at length with the State Auditor's Office and it was determined that it did not violate any current statutes. The Board, however, has ceased the practice of taking a gift representing the State of West Virginia to this national meeting.
- E) The audit report states that "travel rules and guidelines are not being adhered to resulting in unnecessary expenditures." There have been a few instances where reimbursement for telephone calls has exceeded the amount permitted, and a mistake was made on one travel expense report that resulted in a duplicate payment of a telephone call of \$4.68.

A procedure has been put in place which will catch these types of errors.

Conclusion

The Real Estate Appraiser Licensing and Certification Board makes every effort to comply with all state regulations and guidelines set out by the Department of Administration and State Auditor and uses due diligence in carrying out its functions as outlined in §30-38 *et seq.*

Sincerely,

A handwritten signature in black ink, appearing to read "Sharron L. Knotts". The signature is fluid and cursive, with the first name being the most prominent.

Sharron L. Knotts
Executive Director

