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## PERFORMANCE EVALUATION AND RESEARCH DIVISION STATUS REPORT ON 2021 RECOMMENDATIONS

Office of the Chief Medical Examiner  
Child Protective Services Bureau for Children and Families  
General Services Division  
Board of Social Work Examiners  
Purchasing Division  
Board of Real Estate Appraisers  
Bureau of Senior Services  
Hospital Finance Authority  
Nursing Home Administrators Licensing Board  
Board of License Dietitians  
Board of Examiners in Counseling  
Department of Transportation



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# CONTENTS

Executive Summary ..... 5

## Agency Updates

Office of the Chief Medical Examiner (November 15, 2021)..... 9  
Child Protective Services Bureau for Children and Families (June 8, 2021) ..... 13  
General Services Division (November 15, 2021) ..... 15  
Board of Social Work Examiners (June 8, 2021).....23  
Purchasing Division (September 13, 2021) .....25  
Board of Real Estate Appraisers (November 15, 2021).....27  
Bureau of Senior Services (November 15, 2021).....29  
Hospital Finance Authority (November 15, 2021) .....35  
Nursing Home Administrators Licensing Board (June 8, 2021).....41  
Board of License Dietitians (September 13, 2021) .....45  
Board of Examiners in Counseling (June 8, 2021) .....49  
Department of Transportation (June 8, 2021) .....57

## List of Appendices

Appendix A: Transmittal Letters and Agency Responses.....59  
Appendix B: Objective, Scope and Methodology .....99



## EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this follow-up review of its reports issued in 2021, as directed by the legislative auditor and authorized by West Virginia Code §4-2-5. The objective of this follow-up is to determine the extent to which each agency responded to the recommendations made in the original reports. This update includes the reviews of the following state agencies and regulatory boards:

- The Office of the Chief Medical Examiner (OCME)
- Child Protective Services (CPS)
- The General Services Division (GSD)
- The Board of Social Work Examiners (SWE)
- The Purchasing Division (Purchasing)
- The Board of Real Estate Appraisers (REA)
- The Bureau of Senior Services (BSS)
- The Hospital Finance Authority (HFA)
- The Nursing Home Administrators Licensing Board (NHA)
- The Board of License Dietitians (BOLD)
- The Board of Examiners in Counseling (Counseling)
- The Department of Transportation (DOT)

The table below shows the designations used by PERD to determine the level of compliance for each recommendation issued in 2021.

<b>Levels of Compliance</b>	
In Compliance	The agency has corrected the problems identified in the previous audit report.
Partial Compliance	The agency has partially corrected the problems identified in the previous audit report.
Planned Compliance	The agency has not corrected the problem but has provided sufficient evidence to find that the agency plans to do so in the future.
In Dispute	The agency does not agree with either the problem identified or the proposed solution.
Non-Compliance	The agency has not corrected the problem identified in the previous audit report.
Requires Legislative Action	The recommendation was directed to the Legislature to one or more statutory issues.

The table below enumerates the number of recommendations in each category by report and ranges from 1 to 14 recommendations. As for the status of the recommendations, 15 are in compliance, 17 are non-compliant, and 15 still require legislative action. Furthermore, 11 are in planned compliance and 6 have partially complied. No recommendations are in dispute. Overall, most recommendations are either in non-compliance or the agency has additional work to complete in order to reach compliance.

Status of Recommendations							
Agency Responses to PERD's 2021 Recommendations							
Agency	In Compliance	Partial Compliance	Planned Compliance	In Dispute	Non-Compliance	Requires Legislative Action	Totals
OCME	1	2	--	--	--	--	3
CPS	2	--	--	--	--	--	2
GSD	1	--	--	--	--	3	4
SWE	1	--	--	--	--	--	1
Purchasing	--	--	--	--	2	--	2
REA	1	--	--	--	--	--	1
BOSS	--	--	--	--	4	4	8
HFA	2	2	6	--	2	--	12
NHA	4	1	2	--	--	2	9
BOLD	--	1	1	--	1	3	6
Counseling	3	--	2	--	8	1	14
DOT	--	--	--	--	--	2	2
<b>Totals:</b>	15	6	11	0	17	15	64

## Report Highlights

### Office of the Chief Medical Examiner

House Bill 4559 (2022) required the OCME to file emergency rules related to the disposition of unclaimed and unknown decedents within its custody, which the agency filed with the Secretary of State in June 2022. However, the disposition methods described in the updated rule does not comply with the requirements of *West Virginia Code*. Specifically, the updated rule stipulates that unidentified decedents in the custody of the OCME will be cremated rather than buried, while Code states that they are to be buried.

### Child Protective Services, Bureau for Children and Families

The DHHR complied with the two recommendations from PERD's June 2021 report on the Bureau for Children and Families, now known as the Bureau for Social Services. Although the DHHR considered using child population in the allocation of child protective service workers but decided against it, Senate Bill 273 directs the DHHR to include county population in the allocation process. In addition, the DHHR acted on the recommendations in the 2019 Post Audit Division's report on the agency's Child Protective Services through a combination of pay raises, recruitment incentives, and retention incentives. However, the Legislature provided further flexibility by exempting the Bureau for Social Services from the Division of Personnel as well as exempting the agency from uniformity of pay between regions.

### General Services Division

Of the eight outstanding recommendations of the September 2015 report, the DOA is compliant with three of them and in planned compliance with another. The remaining four recommendations require legislative action, and legislation was introduced for two of those recommendations. The DOA is under an administrative moratorium on the purchase or construction of buildings, which was issued by Governor Justice in 2019. If agencies abide by the administrative moratorium, it precludes the need for a legislative moratorium. However, there is no requirement for future administrations to consider financial analyses or determining the sufficiency of funds prior to purchasing or building facilities.

### Board of Social Work Examiners

In the original PERD letter report from January 8, 2021, there were 18 eligible individuals who could take the national exam by the effective date of the bill or by June 30, 2020. The Board approved the recommendation from PERD in December 2020. The Board contacted 16 of the individuals by email, and out of those, 9 responded to the Board expressing an interest to take the test. The other two individuals were not contacted because they received their bachelor's degree in social work. Although the legislative auditor concludes that the Board responded to the report's recommendation by requesting a waiver for those individuals to take the national exam, it is unfortunate that they were not informed earlier.

### Purchasing Division

The agency indicated that it did not act upon PERD's recommendation because it did not receive negative feedback from affected parties. The legislative auditor continues to maintain that, even if the Department of Administration did not receive negative feedback, that the process should include soliciting information from affected parties to the greatest extent possible. Without the input from affected parties, the qualifications remain subjective and do not address the issues cited by the agency, such as competency of vendors, in the 2021 PERD Report.

The remaining 7 updates include 4 regulatory board reviews, 2 special reports, and an agency review with a total of 51 recommendations reviewed. The level of compliance varies with 24 recommendations in compliance, partial compliance, or planned compliance. Twelve recommendations require legislative action. The remaining 15 recommendations have not been acted upon by the agencies, with the Bureau of Senior Services and Board of Counseling making up the majority with 4 and 8 non-compliant recommendations, respectively.

## **PERD's Evaluation of the Agencies' Written Responses**

PERD received written responses to this update from 6 of the 12 agencies. The written responses can be found in Appendix A. Four agencies concur with the findings and recommendations: OCME, GSD, REA, and BSS. OCME was the only agency update with a new recommendation. The agency concurs with that recommendation as well.

The DOT and BOSS provided responses that dispute the recommendations. The DOT indicated that the two recommendations in the Dual Title report were directed to the Legislature and believe the inaction on the Legislature's part makes the recommendations moot. While the agency is correct that the recommendations are directed to the Legislature, the findings remain valid and therefore are not "moot." The DOT's response is

located on pages 91 through 92 of this report. The Bureau for Senior Services did not respond to four of the eight recommendations directed towards it, because it disagrees with them. The other four recommendations are directed towards the Legislature, and it has not responded to them. The legislative auditor continues to contend that all eight recommendations would improve BOSS's programs' effectiveness and efficiency if implemented. BOSS's response is located on pages 83 through 87 of this report.



## Office of the Chief Medical Examiner ( November 15, 2021)

### Original Issue Title:

The Office of the Chief Medical Examiner Is Retaining Unclaimed and Unidentified Decedents, Both as Cremated Remains and in Frozen Storage Dating Back to 1977

### Updated Issue Title:

The Legislature Authorized the Office of the Chief Medical Examiner to Dispose of Unclaimed and Unidentified Decedents' Remains; However, the OCME's Rules and Policies Conflict with the Allowable Means of Disposition for Unidentified Decedents

### Original Recommendation 1 (2021)

*The Legislature should consider amending West Virginia Code to authorize the Department of Health and Human Resources to establish methods for the disposition of unidentified and unclaimed remains including those that are cremated.*

### **Level of Compliance: Legislation was passed into law**

During the 2022 regular session, House Bill 4559 was passed by the Legislature and signed by the governor, which amended *W. Va. Code* §61-12-1 et seq., to allow the Office of the Chief Medical Examiner (OMCE) to dispose of unclaimed and unknown remains, as well as, provided legislative rulemaking authority to the Chief Medical Examiner related to the disposition of unidentified and unclaimed remains. The new code specifically states that the OCME, “*shall cremate unclaimed human remains and shall bury unidentified human remains from its facility.*” The bill also established that the OCME is to locate an appropriate cemetery for the disposition of the remains, with the assistance of the city of Charleston, and it outlines other provisions related to the disposition.

### Original Recommendation 2 (2021)

*The Department of Health and Human Resources should review and update §64-84-1 et seq. of the Code of State Rules to ensure that it aligns with West Virginia State Code.*

### **Level of Compliance: Partial Compliance**

House Bill 4559 required the OCME to file emergency rules related to the disposition of unclaimed and unknown remains within its custody, which the agency filed with the Secretary of State in June 2022. However, the disposition methods described in the updated rule does not comply with the requirements of *West Virginia Code*. Specifically, the updated rule stipulates that unidentified decedents in the custody of the OCME will be cremated rather than buried. Under the emergency rules promulgated by the agency, the *Code of State Rules* (CSR) §64-84-25.3.b.4 was changed to have the Bureau for Social Services, within the Department of Health and Human Resources, “take responsibility for making the arrangements for disposition of the decedent by means of cremation.” The Bureau for Social Services assists the OCME in setting up the cremation, but the remains continue to be under the authority of the OMCE. Once the cremation is completed, the OCME obtains the remains and eventually, “At an appropriate time, as determined by the OCME, the remains may be temporarily interred in a columbarium or crypt that is the property of the OCME.”

The Legislative Auditor questioned if the process outlined in CSR 64-84 align with the requirements under *W. Va. Code*, specifically, the requirement that unidentified remains be buried rather than cremated. As part of this update, PERD asked the OCME if the agency discussed the different disposition methods required under Code in drafting the emergency rule and its basis for determining that cremation of unidentified remains is allowable. The OCME responded by stating that it agreed with PERD and that it is, “not authorized to conduct cremation of unidentified decedents.” The OCME informed PERD that it had expected the Code to be amended further to allow for cremation because the cost of purchasing multiple burial plots and temporarily burying the unidentified decedents would be prohibitive. The OCME estimates it would cost around \$10,000 per decedent for burial, which would result in a total cost of about \$500,000 initially. The agency estimates that the cost for cremation meanwhile would be around \$1,200 per decedent for a total initial cost of \$60,000. The agency added that these costs may be reduced further and that negotiations on pricing was ongoing with multiple crematoriums. PERD did not evaluate these cost estimates and makes no conclusions as to their accuracy. The OCME concluded its response by stating that it will not cremate or bury unidentified decedents until it can approach the Legislature with its concerns in hopes of a suitable resolution.

PERD determines that the agency is in partial compliance with recommendation 2 because it promulgated emergency rules, but they are inconsistent with the amended statutory language, and disposing of unidentified human remains has been delayed due to concerns of costs. If the agency feels that complying with the law will be cost prohibitive as it relates to unidentified human remains, then it should approach the Legislature and seek a remedy.

### **Original Recommendation 3 (2021)**

*The Office of the Chief Medical Examiner should develop policies and procedures enumerating evidentiary standards for the retention of decedent remains.*

#### ***Level of Compliance: Partial Compliance***

PERD determined that the OCME is in partial compliance for the same reasons as outlined in the discussion of recommendation 2. The agency has established policies and procedures, but the process for disposing unidentified decedents conflicts with the language in Code.

### **Conclusion**

The Legislature provided the OCME with the statutory means to deal with the growing number of unclaimed and unknown decedent remains in its custody by authorizing the disposing of cremated unclaimed remains and burial of unidentified remains. Disposing of unclaimed cremated remains is in process as of the writing of this report; however, the agency has stated that burial of unidentified human remains would be cost prohibitive. The OCME indicated that it will delay burial or cremation of unidentified remains until it can approach the Legislature with its concerns. If the Legislature chooses to leave the statutory language as is, then it may need to provide additional funding to the OCME, and the OCME will need to find a cemetery with adequate space for the internment of the remains it currently has as well as for future decedents that the agency receives. If the Legislature changes the Code to align with the OCME’s current plan, then the OCME can proceed with its current plans. Either option will lead to the desired outcome of removing unidentified decedent remains from the OCME’s facility but burying the remains will be more costly according to the agency. **Therefore, the legislative auditor recommends that the agency should approach the Legislature**

**with its concerns and desire to be able to cremate and dispose of unidentified decedents instead of burying them as the current law requires.**

**New recommendation (2023)**

*The Office of the Chief Medical Examiner, through the Department of Health and Human Resources, should approach the Legislature to seek remedy to the cost implications of disposing of unidentified decedent remains between burial and cremation.*



## **Child Protective Services Bureau for Children and Families (June 8, 2021)**

### **Original Issue Title**

The Bureau for Children and Families Allocates Positions for Child Protective Services Workers Based Mainly on Caseload Data; However, Incorporating Child Population and Poverty Rates in the Allocation Process Should Be Considered. *(June 2021 Issue 1 Report Title)*

### **Original Recommendation 1 (2021)**

*The Bureau for Children and Families should consider examining or incorporating other variables that are significantly correlated with CPS referrals and accepted cases, such as child population and the poverty rate, as part of the process of allocating CPS workers authorized positions throughout the state.*

### **Level of Compliance: In Compliance**

In its response, the Department of Health and Human Resources (DHHR) notes that it dissolved the Bureau for Children and Families in 2021 and created two new bureaus: the Bureau for Social Services (BSS) and the Bureau for Family Assistance. The child welfare agency is now located within the BSS. The DHHR also stated that:

*“at the beginning of 2022, the new deputy commissioners for field operations began considering the allocation of child protective workers throughout the state. Attached as Exhibit A are the different scenarios that the deputies considered. These scenarios included allotment by child population, by total population, by total referrals, and by total caseloads. The final determination was to utilize the average number of cases by county for calendar year 2021, the percentage of total caseload per region and district, current allocated child protection service workers and child protection services senior, and the vacancies in these positions.”*

Although the agency considered child population in its allocation methodology, it ultimately decided against it and determined to use different variables. However, the Legislature, in the 2023 legislative session, passed Senate Bill 273 that directed the DHHR to allocate child protective service workers “by county based on **population** (emphasis added), referrals, and average caseload,” effective July 1, 2024. Thus, the agency will now be required to include an additional variable beyond caseload, average number of cases per county, current allocation, and vacancies.

### **Original Recommendation 2 (2021)**

*The Bureau for Children and Families should consider implementing the recruitment and retention recommendations outlined in the 2019 Post Audit Division’s report on the agency’s Child Protective Services.*

## **Level of Compliance: In Compliance**

The DHHR responded that it initiated several recruitment and retention efforts. Those efforts include increasing salaries, increasing recruitment incentives, and implementing retention incentives. In addition, another feature of Senate Bill 273 is that it provides additional flexibility to the DHHR by exempting it from the Division of Personnel which allows the agency to implement a merit-based system with no requirement for uniformity in pay between regions.

## **Conclusion**

The DHHR complies with the two recommendations from PERD's June 2021 report on the Bureau for Children and Families, now known as the Bureau for Social Services. Although the DHHR considered using child population in the allocation of child protective service workers but decided against it, Senate Bill 273 directs the DHHR to include county population in the allocation process. In addition, the DHHR acted on the recommendations in the 2019 Post Audit Division's report on the agency's Child Protective Services through a combination of pay raises, recruitment incentives, and retention incentives. However, the Legislature provided further flexibility by exempting the Bureau for Social Services from the Division of Personnel as well as exempting the agency from uniformity of pay between regions.

## General Service Division (November 15, 2021)

### Original Issue 1 Title (*September 2015*):

**Issue 1: The General Services Division Is Finding It Difficult to Properly Maintain State Facilities Because the Department of Administration Purchases Properties with Little Concern of the Financial Implications**

### Updated Issue Title:

**The General Services Division Continues to Find It Difficult to Properly Maintain State Facilities but It Is Improving Its Financial Condition**

### Recommendation 1 (2015)

*The Legislature should consider requiring the Department of Administration to perform and document a cost-benefit analysis prior to any purchase of real property in excess of a specified threshold purchase price.*

#### ***Level of Compliance: Requires Legislative Action***

The Legislature has not acted on this recommendation. The agency response indicates it intends to continue to perform cost-benefit analysis prior to the purchase of any real property in excess of \$1 million, regardless of legislative action on the recommendation. The response further states that the General Services Division (GSD) has not acquired real property, nor does it currently plan to acquire any property with a purchase price in excess of \$1 million. While the current administration has indicated the intent to perform and document cost-benefit analysis prior to purchasing real property, future administrations may elect not to do so. **Therefore, while the Department of Administration (DOA) responded to the recommendation administratively, the legislative auditor continues to recommend the Legislature consider requiring statutorily the DOA to perform and document a cost-benefit analysis prior to any purchase of real property in excess of a specified threshold purchase price.**

### Recommendation 2 (2015)

*The Legislature should consider placing a moratorium on the Department of Administration from purchasing real property above the price of \$1 million until the Department can demonstrate it has strengthened its financial resources.*

#### ***Level of Compliance: Requires Legislative Action***

The Legislature has not responded to this recommendation. However, in May 2019, Governor Justice imposed on the executive branch a moratorium on purchases of real property for the use of office or storage space, and in January 2023 the governor issued another administrative order indicating the moratorium remains in effect. Nevertheless, the legislative auditor recommends the Legislature still consider imposing a moratorium on the GSD. The agency continues to lack adequate financial balances to take on additional properties, and the agency is still years from achieving an appropriate financial position to acquire new property above the \$1 million threshold. The agency indicates it is using an appropriation from the Legislature to replace buildings on property already owned by the State, including the building which houses the Office of Technology central mailroom, the GSD Grounds Section facility, and two warehousing locations used by GSD.

### Recommendation 3 (2015)

*If the Legislature chooses not to place a moratorium on the Department of Administration from purchasing real property, the Department should avoid significant additions to its stock of real property until it has substantially improved its financial resources.*

***Level of Compliance: In Compliance [November 2021 determination]***

PERD assessed DOA as in compliance in the 2021 report. However, DOA responded to this recommendation for this update by saying that since 2021 it entered into agreement with the Tax Department for limited renovations of the Revenue Center (Building 22) in Charleston. The response further indicates the two parties will enter into an additional agreement for further renovations in the upcoming year.

### Recommendation 4 (2015)

*The Legislative Auditor recommends that the Legislature clarify its intent of the Capitol Dome and Capitol Improvements Fund (Fund 2257), established in W. Va. Code (§5A-4-2(c)), for its use in capital improvements and repairs of state-owned buildings. Also, a specific definition for capital improvements should be provided in the statute as it relates to Fund 2257.*

***Level of Compliance: Requires Legislative Action***

The Legislature has not acted on this recommendation. However, House Bill 4516, introduced during the 2016 regular legislative session, sought to clarify the intent of the Legislature for proper use of fund 2257. While the bill did not leave the committee of first reference; it would have addressed all the concerns expressed in the audit. Specifically, the bill would have prohibited using fund 2257 for operating expenses, purchasing, or constructing stand-alone buildings, repairing leased properties or making debt service payments. In the original September 2015 report and the October 2017 and November 2021 update reports, PERD found that the DOA was still using fund 2257 to pay custodial and utility bills, purchase office furniture, make leasehold improvements and make debt service payments. This is shown in Table 1, which duplicates a table in the original 2015 report and the October 2017 and November 2021 update reports but adds data for FY 2022 through June 2023. Table 1 shows that the amount spent on operating expenses from fund 2257 has been gradually declining through FY 2023. In FY 2022, the GSD paid \$604,247 for custodial services. However, in April 2023, the DOA stated that the GSD ended reliance on Fund 2257 to pay operating expenses starting with fiscal year 2023. Although there are expenses in Fund 2257 for FY 2023 that are coded as operating costs, they are arguably for maintenance, repairs, and capital improvement purposes, which is the statutory intent of the fund. Most of the \$54,836 that was coded as custodial services are arguably capital expenses and justified to come out of the fund. There was also some miscoding. PERD determines that the amount of operating expenses coming out of Fund 2257 has all but been eliminated as of FY 2023. The agency concurs with the recommendation and would like the Legislature to clarify W. Va. Code (§5A-4-2(c)) on what are appropriate expenses from the fund.



**Table 1  
General Services Division  
Operating Expenses Paid From Fund 2257 Instead of Fund 2241  
FY 2007 through FY 2023**

<b>Fiscal Year</b>	<b>Utilities<sup>^</sup></b>	<b>Custodial Services</b>	<b>Security Personnel</b>	<b>BRIM Insurance</b>	<b>Furniture Expenditures</b>	<b>Total</b>
2007	\$4,465	--	\$4,949	--	\$10,459	\$19,873
2008	--	--	--	--	\$53,470	\$53,470
2009	\$3,949	\$1,406,835	--	--	\$207,672	\$1,618,456
2010	\$254,127	\$767,192	\$142,417	--	2,386,126	\$3,549,862
2011	\$667,630	\$1,640,778	\$151,145	--	\$106,741	\$2,566,294
2012	\$126,158	\$2,526,745	\$127,198	\$23,421	\$14,942	\$2,818,464
2013	\$730,686	\$1,935,082	\$4,349	\$22,045	--	\$2,692,162
2014	\$22,856**	\$2,320,540	\$10,465	--	\$73,162	\$2,427,023
2015	\$75,823**	\$1,804,389**	--**	--	--	\$1,880,211
2016	\$11,529	\$2,405,586	\$2,170	--	--	\$2,419,284
2017	\$3,576	\$1,962,799	\$303	--	\$132,696	\$2,099,374
2018	\$5,204**	\$915,574	--	--	\$77,856	\$998,634
2019	\$3,318	\$675,417	--	--	--	\$678,735
2020	\$5,022	\$768,169**	--	--	--	\$773,191
2021	\$4,101	\$585,850	--	--	\$344	\$590,294
2022	--	\$604,247	--	--	--**	\$604,247
2023*	\$400**	\$54,283**	--	--	\$153**	\$54,836
<b>Total</b>	<b>\$1,918,843</b>	<b>\$20,373,486</b>	<b>\$442,996</b>	<b>\$45,466</b>	<b>\$3,063,621</b>	<b>\$25,844,410</b>

Source: PERD compilations using data from wvOASIS report Document Listing by Document ID (WV-FIN-GL-065).

\*Through June 2023, does not include 13<sup>th</sup> month expenditures.

<sup>^</sup>Utilities include gas, electric, water/sewage, fire service, and sanitation/disposal.

\*\*In FY 2014, the DOA transferred \$687,796 in utility expenses from Fund 2257 to Fund 2241.

In FY 2015, the DOA transferred \$27,590 in utility expenses and \$126,449 in energy expense from Fund 2257 to Fund 2462.

In FY 2015, the DOA transferred \$12,469 in utility expenses from Fund 2241 to Fund 0230.

In FY 2015, the DOA transferred \$2,088,358 in custodial expenses from Fund 2257 to Fund 2462.

In FY 2015, the DOA transferred \$9,731 in security personnel expenses from Fund 2257 to Fund 2462.

In FY 2018, the DOA transferred \$363 in utility expenses from Fund 2257 to Fund 2241.

In FY 2020, the DOA transferred \$7,907 in custodial expenses from Fund 2257 to Fund 2241.

In FY 2022, the DOA transferred \$344 for furniture expenses from Fund 2257 to Fund 2241.

In FY 2023, the DOA coded an expense of \$400 for a construction dumpster to support a building renovation project under utilities.

In FY 2023, the DOA miscoded expenses of \$540 for parking expenses for contract janitors in Beckley under custodial services.

In FY 2023, the DOA coded expenses of \$14,405 for campus fountain maintenance to custodial services.

In FY 2023, the DOA coded an expense of \$39,388 for emergency water damage mitigation to custodial services.

In FY 2023, the DOA coded an expense of \$153 for minor equipment that has the same object code as the object code for furniture.

The legislative auditor took exception to the use of Fund 2257 for operating expenses because the fund was created statutorily for “*maintenance and repairs of the capitol dome and other capital improvements and repairs to state-owned buildings*” (W. Va. §5A-4-2(c)). All operating expenses should have been expended from Fund 2241, but it does not have sufficient funds. The DOA acknowledged this in response to the original report and in the 2017 and 2021 PERD updates. However, as Table 2 shows, fund 2257 has been depleted to a precarious level. This level of funding is inadequate to properly maintain and improve the Capitol Dome and other GSD buildings.

<b>Fiscal Year</b>	<b>Total Expenditures</b>	<b>Total Revenues</b>	<b>End-of-Year Balance</b>
2000	\$387,546	\$1,060,639	\$721,454
2001	\$269,623	\$1,811,221	\$2,263,053
2002	\$652,800	\$2,531,758	\$4,142,012
2003	\$640,886	\$2,981,220	\$6,482,347
2004	\$1,669,864	\$4,226,068	\$9,038,551
2005	\$2,985,632	\$6,195,095	\$12,248,014
2006	\$3,776,900	\$6,576,769	\$15,047,884
2007	\$5,616,001	\$6,799,727	\$16,198,996
2008	\$6,860,303	\$57,665,705	\$67,004,398
2009	\$14,569,030	\$23,958,701	\$76,394,069
2010	\$24,654,839	\$4,883,446	\$56,622,675
2011	\$16,272,706	\$7,371,903 <sup>^</sup>	\$47,721,873
2012	\$21,371,939	\$13,193,495 <sup>^</sup>	\$39,543,429
2013	\$15,875,300	\$4,069,279	\$27,737,408
2014	\$15,459,351	\$3,511,228	\$15,789,284
2015	\$4,435,267	\$2,596,796	\$13,959,813
2016	\$4,278,751	\$2,200,641	\$11,874,911
2017	\$6,301,598	\$2,155,201	\$7,725,789
2018	\$3,785,881	\$2,355,201	\$6,295,110
2019	\$2,774,795	\$2,296,256	\$5,816,571
2020	\$4,217,613	\$1,520,670	\$3,119,629
2021	\$2,040,919	\$1,846,256	\$2,924,966
2022	\$2,379,668	\$1,996,256	\$2,541,554
2023*	\$314,238	\$1,796,256	\$4,023,572

*Source: PERD compilations using data from wvOASIS report Digest of Revenues Sources (WV-FIN-GL-064).*  
<sup>^</sup>*Includes grant funding of \$2.5 million in FY 2011, and a reimbursement fund transfer of \$8.1 million in FY 2012.*  
\**Through June 2023, does not include 13<sup>th</sup> month expenditures.*

Table 3 shows that Funds 2241, 2257, and 2462, which are the primary funds for operating, maintenance, and improvement of GSD properties, continue to be at relatively low levels as of the end of FY 2023, particularly funds 2241 and 2257.

<b>Fiscal Year</b>	<b>Fund 2241</b>	<b>Fund 2257</b>	<b>Fund 2462</b>
2004	\$425,429	\$9,038,551	\$5,000,000
2005	\$772,488	\$12,248,014	\$6,922,242
2006	\$632,778	\$15,047,884	\$8,723,995
2007	\$898,471	\$16,198,886	\$13,274,195
2008	\$784,967	\$67,004,398	\$9,049,107
2009	\$1,350,906	\$76,394,069	\$4,425,920
2010	\$904,145	\$56,622,675	\$4,248,055
2011	\$1,045,006	\$47,721,873	\$5,862,542
2012	\$977,050	\$39,543,429	\$10,358,244
2013	\$2,219,396	\$27,737,408	\$14,422,937
2014	\$3,354,239	\$15,789,284	\$14,744,592
2015	\$3,774,445	\$13,950,813	\$9,912,964
2016	\$3,452,068	\$11,874,911	\$10,283,147
2017	\$2,778,675	\$7,725,789	\$8,062,968
2018	\$3,550,574	\$6,295,110	\$7,638,637
2019	\$3,393,345	\$5,816,571	\$7,893,782
2020	\$2,040,714	\$3,119,629	\$9,235,049
2021	\$2,699,264	\$2,924,966	\$10,516,360
2022	\$1,968,276	\$2,541,554	\$13,975,916
2023*	\$2,307,073	\$4,023,572	\$15,846,634

Source: PERD compilations using data from wvOASIS report Digest of Revenues Sources (WV-FIN-GL-064).  
\*Through June 2023, does not include 13<sup>th</sup> month expenditures.

## Recommendation 5 (2015)

*The Department of Administration should take steps to improve its process of monitoring rent revenues and expenditures with the intention of raising rent appropriately to cover rising costs.*

### **Level of Compliance: Planned Compliance**

In its response, the DOA indicates that it plans to continue to monitor rent revenues and expenditures and intends to appropriately increase rent in fiscal year 2024 to cover rising costs. While there is evidence of some rent increases in 2022 and 2023 for half a dozen state agency tenants in four buildings, cost overruns continue in many buildings. These include the buildings in Huntington, Weirton, Clarksburg, Fairmont, Logan, Williamson, and the following buildings in Charleston: Davis Square, Greenbrooke, and Building 3 on the capitol complex. During the 2021 update audit, the DOA further indicated that it plans to continue to

adjust new lease rates to a level that will cover operating costs associated with leased spaces. The legislative auditor did find evidence that DOA has continued to adjust new lease rates.

The DOA has increased rent for certain buildings as it mentioned during the 2021 update and in response to this update, and expenditures are declining for some buildings. However, compared to the results from the 2021 update, expenditures are again outpacing revenues (see Table 4). The total amount of expenditures exceeding revenues is negative -\$1,401,925 compared to \$703,082 in 2021. As such there are buildings in which the costs to maintain them exceeds revenues. In the case of the Greenbrooke Building, some tenants have moved out of the building, which has reduced revenue for that building.

<b>Table 4</b>					
<b>General Services Division</b>					
<b>Total Revenue Less Total Expenditures for the Years Specified</b>					
<b>Building</b>	<b>Time Period</b>	<b>Revenue less Expenditures (2015 Report)</b>	<b>Revenue less Expenditures (2017 Update)</b>	<b>Revenue less Expenditures (2021 Update)</b>	<b>Revenue less Expenditures (2023 Update)</b>
<b>Bonds Issued:</b>					
Huntington – Building 32	2009-2023	-\$1,282,511	-\$1,816,530	-\$2,250,949	-\$2,465,257
Weirton – Building 34	2009-2023	-\$51,093	-\$198,363	-\$389,053	-\$705,394
One Davis Sq. – Building 36	2009-2023	-\$763,057	-\$608,091	\$83,502	-\$572,188
DEP Kanawha City – Building 37	2009-2023	\$153,832	\$981,232	\$2,512,446	\$2,387,202
Greenbrooke - Building 86	2010-2023	-\$530,612	-\$1,707,216	-\$1,483,863	-\$2,471,844
Williamson – Building 97	2009-2023	-\$312,367	-\$382,210	-\$124,199	-\$926,084
<b>Cash Purchases:</b>					
DNR – Building 74	2010-2023	\$370,255	\$1,037,479	\$1,784,823	\$2,386,959
Corrections – Building 84	2010-2023	-\$451,533	-\$162,786	\$277,560	\$556,052
7 Players Club – Building 88	2012-2023	-\$26,995	\$90,035	\$292,805	\$408,631
<b>Totals</b>		<b>-\$2,894,081</b>	<b>-\$2,766,450</b>	<b>\$703,072</b>	<b>-\$1,401,925</b>
<i>Source: PERD compilations based on data from the State Auditor's Office.</i>					

## **Recommendation 6 (2015)**

*The Department of Administration should pay all appropriate operating costs of DOA facilities from Fund 2241.*

### ***Level of Compliance: In Compliance***

The DOA indicates in its response that it concurs with the recommendation. The agency has reached a point where Fund 2257 is not being used for operating expenses as it was in the past. Some expenditures in Fund 2257 are arguably justified to come out of the fund, and if it was not for some miscoding, Fund 2257 has not been used inappropriately. Debt service obligations are declining and revenues from intended rent increases are realized for Fund 2241. Although Fund 2241 will continue to be challenged to meet all operating expenses, the fund currently is in a good financial position. According to the DOA, in fiscal year 2022 and in early 2023, two debt service payments that are paid from Fund 2241 ended, which freed approximately \$1 million in annual expenses to dedicate to covering operating expenses. The response indicates it intends to make every effort, to the extent funding allows, to comply with the recommendation.

## **Recommendation 7 (2015)**

*The Department of Administration should comply with statute to pay all appropriate bond payments solely from Fund 2241 pursuant to W. Va. Code 5-6-8(a).*

### ***Level of Compliance: In Compliance***

The DOA states it is aware of no instances in which payments for State-issued bonds for GSD buildings are encumbered to be made from any other fund other than Fund 2241. DOA notes the exception to this is debt service payments made for the Piedmont Parking Garage paid for from Fund 2255. This is permitted because the bond was not issued by the Department of Administration and thus is not statutorily required to be paid for out of Fund 2241 (W. Va. Code §5-6-5). The legislative auditor reviewed expenditures and found no instances in which expense codes for bond principle or interest were charged to Fund 2257.

## **Recommendation 8 (2015)**

*The Legislature should consider requiring the Department of Administration to have a structural engineering inspection performed on buildings prior to the purchase that evaluates the structural integrity of the building, the roof, the basement, HVAC systems, plumbing, electrical wiring, and other major areas of the building. The results of the inspection should be factors to consider in the cost-benefit analysis specified in recommendation 1.*

### ***Level of Compliance: Requires Legislative Action***

The Legislature has not acted on this recommendation. However, House Bill 3013 was introduced during the 2017 and 2018 regular legislative session and sought to require an inspection or inspections of any building prior to purchase or major renovation by the State. This bill did not leave committee of second reference. The DOA and PERD continue to agree on a revision to the original recommendation which would be to require an engineering analysis performed by a professional engineer prior to the purchase of a building.

Subsequently, if during the analysis the engineering report identifies concerns over the building structure and recommends a structural engineering report, the agency agrees it should be acquired and the report considered in any decision to purchase a particular piece of property. The DOA further responds that the GSD would appreciate being provided clarity as to which fund would qualify to pay for assessments of properties not currently owned or operated by the DOA.

## **Conclusion**

Of the eight outstanding recommendations of the September 2015 report, the DOA is compliant with three of them and in planned compliance with another. The remaining four recommendations require legislative action, and legislation was introduced for two of those recommendations. The DOA has a self-imposed moratorium on the purchase or construction of buildings. This may preclude the need for a legislative moratorium if the agency abides with the self-imposed one. However, there is no requirement for future administrations to consider financial analyses or determining the sufficiency of funds prior to purchasing or building facilities. The legislative auditor has previously found that the absence of formal, written policies and procedures concerning purchasing real property has contributed to the current state of the DOA having an overextended stock of property. Therefore, the legislative auditor considers it important for the Legislature to codify a moratorium on the DOA from purchasing real property above the price of \$1 million until the DOA can demonstrate it has strengthened its financial resources.

## **Board of Social Work Examiners (June 8, 2021)**

### **Original Report:**

**Senate Bill 559 Requested a Performance Audit of the Provisional License to Practice as a Social Worker and the Application Process by which a Provisional Licensee May Become a Licensed Social Worker**

### **Updated Report Title:**

**The Board of Social Work Complied with PERD’s 2021 Letter Report Recommendation; However, Important Information Regarding Test Eligibility Was Not Shared with Eligible Licensees for Almost Two Years**

### **Original Recommendation 1 (2021)**

*The legislative auditor recommends that those individuals who have completed the four-year training program designed by DHHR should be eligible to take the national exam within their college education level either by the effective date of the bill or by June 30, 2020.*

### **Level of Compliance: In Compliance**

The Board complied with the recommendation by requesting and received a waiver for those individuals from the PERD report to take the national exam. The Association of Social Work Boards granted the waiver on August 11, 2021. However, information was not shared with the eligible licensees until March 6, 2023. The Board provided to PERD the notification that was distributed to licensees by email. The email to those eligible stated, *“Unfortunately, for a number of reasons, notification of your test authorization got off our radar screen until now. As you were one of the 18 individuals who the Legislative Auditor noted as completing the DHHR training plan, please accept this email as notification of your ability to sit for the Bachelor’s social work license exam. While you are currently of the Service Worker Registry, if you elect to sit and pass the Bachelor’s exam, you may convert to a Licensed Social Worker which will give you full practice privileges within the scope of practice in WV.”*

### **Conclusion**

In the original PERD letter report from January 8, 2021, there were 18 eligible individuals who could take the national exam by the effective date of the bill or by June 30, 2020. The Board approved the recommendation from PERD in December 2020. However, the Board reported it *“...delayed your authorization until a waiver to national exam policy was sought and granted from the Association of Social Work Boards on August 11, 2021.”* The Board indicated that *“Mr. Sylvia submitted the report to the Legislature in June 2021 noting our failure to follow through. However, had the Board implemented the policy for testing in January, participants would have had less than six months to test, and would not have had the opportunity to test again should they not pass their first attempt.”*

The waiver request, which was received on August 11, 2021, and was only valid for two-years, should have prompted the Board to reach out at that point; however, the Board’s executive director reported, *“at the time we received that approval, I was the only staff person at the offices as our Administrative Assistant had*

*left the previous month. My focus was on keeping up with new applications and renewals in addition to trying to advertise, interview and hire two staff; we were not fully staffed until January 2022. Simply put, it got off my radar screen until your email.”*

The Board contacted 16 of the individuals by email, and out of those, 9 responded to the Board expressing an interest to take the test. The other two individuals were not contacted because they received their bachelor’s degree in Social Work. Although the legislative auditor concludes that the Board responded to the report’s recommendation by requesting a waiver for those individuals to take the national exam, it is unfortunate that they were not informed earlier. Hopefully, those who expressed interest in taking the national exam will be successful.



## **Purchasing Division (September 13, 2021)**

### **Original Issue Title:**

To Address an Accounting Firm’s Costly Errors, the Department of Administration Imposed Requirements on State Agencies Contracting Accounting Firms that Restrict Trade and Do Not Address the Issue of Competency. *(June 2021 Issue Report Title)*

### **Updated Issue Title:**

The Department of Administration Still Has Not Altered the Requirements Imposed on Agencies, Nor Has the Agency Sought the Input of Affected Entities

### **Original Recommendation 1 (2021)**

*The Legislative Auditor recommends the DOA convene a workgroup representing a cross section of the accounting industry and revisit the mandatory requirements to ensure they are reasonable and do not cause unintended consequences on state agencies and accounting firms.*

### ***Level of Compliance: Non-Compliant***

PERD determined that the agency is non-compliant because the Department of Administration stated in its response that it “*looked to industry to respond to the mandatory requirements, and if problematic, the DOA would expect to see protests of the requirements after their publication. In the time following publication of the requirements, there have not been any protests of specifications, nor have the issues previously encountered arisen again.*”

### **Original Recommendation 2 (2021)**

*The Legislative Auditor recommends the Purchasing Division initiate suspension and/or debarment procedures against the vendor that triggered the mandatory requirements and all such firms in the future.*

### ***Level of Compliance: Non-Compliant***

PERD determined that the agency is non-compliant because the Department of Administration stated in its response that “*were it possible, the Purchasing Division would have taken this action against the problematic vendor. While the vendor was problematic, the behavior did not meet the legal standard necessary for debarment.*” It should be noted that the agency did not address the option of suspension, nor was the legal standard for debarment noted by the agency in its response to PERD’s June 2021 report.

## Conclusion

As part of the review process, PERD requested from the Department of Administration if the Purchasing Division complied with the recommendations from the 2021 report. The agency indicated that it did not act upon PERD's recommendation because it did not receive negative feedback from affected parties. The legislative auditor continues to maintain that, even if the Department of Administration did not receive negative feedback, that the process should include soliciting information from affected parties to the greatest extent possible. Without the input from affected parties, the qualifications remain subjective and do not address the issues cited by the agency, such as competency of vendors, in the 2021 PERD Report.

## **Board of Real Estates Appraisers (November 15, 2021)**

### **Original Letter Report:**

**Reported Complaints Were Substantiated that the West Virginia Board of Real Estate Appraisers Was Not in Compliance with W. Va. Code §30-38-17 that required Public Hearings Be Held when the Board Adopted New Editions of the Uniform Standards of Professional Appraisals Practice (USPAP)**

### **Updated Letter Report Title:**

**The Board of Real Estate Appraisers' Proposal to Repeal the Requirement to Have Public Hearings when New Editions of the USPAP Were Adopted Became Law Effective June 10, 2022**

### **Original Recommendation 1 (2021)**

*The Board should follow W.Va. Code §30-38-17 and conduct public hearings or public comment periods when a new edition of the USPAP is up for adoption or present a viable alternative to the Legislature.*

### ***Level of Compliance: In Compliance***

In response to the recommendation of the letter report, the West Virginia Real Estate Appraiser Licensing and Certification Board (Appraiser Board) proposed to the Legislature that it repeal the requirement in W. Va. Code §30-38-17 to conduct public hearings or public comment periods when a new edition of the USPAP is up for adoption. In response to the Appraiser Board's proposal, the Legislature passed House Bill 4285 during the 2022 legislative session. The bill was signed by the governor on March 30, 2022. It became effective on June 10, 2022.

## **Conclusion**

The Appraiser Board responded to PERD's recommendation by proposing the elimination of the hearing requirement within W. Va. Code §30-38-17. The Legislature agreed with the proposal and passed legislation that was signed into law.



## Bureau of Senior Services ( November 15, 2021)

### **Issue 1: The Bureau of Senior Services Should Continue the Process of Consolidating Regional Aging and Disability Resource Centers to One Statewide ADR Center to Annually Free Between \$225,000 to \$305,000 for Other Services (November 2021 Issue 1 title)**

#### **Recommendation 1 (2021)**

*The Bureau of Senior Services should further consolidate the regional ADR Centers from four to one, and administer the counseling, referral, and information services in-house if consolidating these would not result in an offsetting loss of federal grant funds.*

#### **Level of Compliance: Non-Compliance**

The Bureau of Senior Services (Bureau) is still operating four regional Aging and Disabled Resource (ADR) Centers in Dunbar, Fairmont, Petersburg, and Princeton to supply long-term support and service information, referrals, and counseling. In its response, the Bureau indicates that it has not and does not see the value of consolidation. Additionally, the Bureau's response to this recommendation does not address whether the State would save state monies. It only addresses experiencing a corresponding loss in federal grant funds. Furthermore, the Bureau's response indicates that closing the regional ADR Centers means that current staff will lose their jobs if not able to commute to the Charleston area. This response indicates the Bureau has decided that ADR Center staff have to be physically present in an office to provide the information, referral, and counseling service. However, as stated in the November 2021 report, it is the legislative auditor's opinion that the State does not need walk-in locations to serve the public because 88 percent of all contacts occurred either through the telephone or via email/mail. **Based on the agency's own contact data, ADR Centers are primarily operating as call centers, and therefore do not necessitate walk-in locations to provide the information and referral services.** In addition, the agency's response contradicts the Bureau's response to the 2013 audit where it said it concurred with the recommendation to consolidate ADR Centers. In fact, following the 2014 audit the Bureau did consolidate 10 ADR Centers into four. More concerning is that the Bureau does not see the value of, at a minimum, annually applying a quarter of a million dollars in state lottery monies elsewhere while still providing the same level of information and referral services. PERD reiterates that a properly staffed ADR Center, administered by the Bureau itself, is more cost-effective than answering those same calls from multiple sites where a substantial portion of the lottery dollars are being used to support the operations of the host Area Agency on Aging.

#### **Recommendation 2 (2021)**

*The Legislature should consider reducing the line-item appropriation for the ADR Centers appropriately as the ADR Centers are consolidated if consolidating the ADR Centers would not result in an offsetting loss of federal grant funds.*

***Level of Compliance: Requires Legislative Action***

In its response, the Bureau acknowledges that it wrote its federal grant proposals based on having regional ADR locations. However, it does not address whether there would be loss of federal grant funds if it writes a grant proposal based on having one office that serves the state. When the Bureau and the federal Department of Health and Human Services Administration for Community Living (ACL) officials met with PERD staff in 2021 they indicated that further consolidation may result in the loss of federal grant funds. PERD recognizes that the loss of federal grant funds could offset any state funding savings. Thus, in 2021 PERD recommended that the Bureau discuss with ACL officials whether consolidating the four ADR Centers would still meet the purposes of the grants while saving the State funds that can be used for other senior services. In response to this follow-up, the Bureau gives no indication that it has discussed with ACL meeting the purposes of the grants with one ADR Center. As seen in Table 1, at one time there were 10 ADR Centers which had a line-item appropriation of \$1 million in 2010. This amount was reduced to \$935,000 for a few years. Following the 2014 PERD report, the Bureau consolidated the 10 ADR Centers into 4 and the line-item appropriation was lowered appropriately to \$425,000. PERD determines that the number of ADR Centers can be consolidated to one Bureau-operated ADR Center and the line-item appropriation can be reduced substantially below its current amount.

**Table 1**  
**Appropriations, Actual Expenditures for ADR**  
**Centers, and the Number of ADR Centers**  
**FY 2010 through FY 2023**

<b>Fiscal Year</b>	<b>Line-Item Appropriation</b>	<b>Actual Expenditures</b>	<b>Number of ADR Centers</b>
<b>2010</b>	\$1,000,000	\$996,822	10
<b>2011</b>	\$935,000	\$921,368	10
<b>2012</b>	\$935,000	\$930,000	10
<b>2013</b>	\$935,000	\$906,000	10
<b>2014</b>	\$864,875	\$731,539	7
<b>2015</b>	\$425,000	\$292,608	4
<b>2016</b>	\$425,000	\$354,010	4
<b>2017</b>	\$425,000	\$293,806	4
<b>2018</b>	\$425,000	\$298,144	4
<b>2019</b>	\$425,000	\$427,165	4
<b>2020</b>	\$425,000	\$355,830	4
<b>2021</b>	\$425,000	\$388,374	4
<b>2022</b>	\$425,000	\$379,527	4
<b>2023</b>	\$425,000	\$390,687	4

*Source: Our Advanced Solutions with Integrated Systems (OASIS) Report WV-FIN-GL-146 and Financial Information Management System.*

If the Bureau were to act on recommendation 1 and consolidate the regional ADR Centers from four to one Bureau-operated ADR center, the Legislature could reduce the line-item appropriation for ADR Centers by as much as \$305,000. In the event the Bureau decides it could absorb the cost of providing some of the information, referral, and counseling services with its existing staff and resources, the Legislature could appropriate a lesser amount of monies to fund the services. However, the Bureau may feel it needs to hire three to five counselors to respond to telephone calls and maintain the website with the information related to long-term care supports and services that assist seniors and those with disabilities. In this instance, the cost for each full-time counselor is estimated to be approximately \$40,000 for salary, benefits, and possibly one-time costs for furniture and equipment. Therefore, the current appropriation of \$425,000 state lottery funds could be reduced to \$120,000 or as much as \$200,000, for an annual savings of between \$225,000 to \$305,000. These savings can be transferred to other purposes the Legislature considers beneficial to West Virginia citizens, as stipulated by the State Lottery Act, such as the Lottery Education Fund, the School Construction Fund, the Lottery Senior Citizens' Fund, the Division of Natural Resources, or the Development Office (W. Va. Code §29-22-18). The Legislature has not acted on this recommendation.

**Issue 2: A Seven-year Accumulation of Nearly \$354,000 of Unexpended Appropriations for ADR Centers Remains Idle Because the Bureau Has No Spending Authority to Use It, and the Accountability of State Funds Granted to ADR Centers Is Inadequate (*November 2021 Issue 2 title*)**

**Updated Issue 2: A Nine-year Accumulation of Over \$374,000 of Unexpended Appropriations for ADR Centers Remains Idle Because the Bureau Has No Spending Authority to Use It, and the Accountability of State Funds Granted to ADR Centers Is Inadequate**

**Recommendation 3 (2021)**

*The Legislature should consider further reducing the line-item appropriation to operate the ADR Centers.*

***Level of Compliance: Requires Legislative Action***

From FY 2015 through 2023, the Legislature appropriated a total of \$3,825,000 in lottery monies specifically to the Senior Citizens Fund in line-item appropriations to run the four ADR Centers. The Bureau then awards most of these monies in the form of grants to three of the State's four AAAs. However, Table 2 shows that in every year except FY 2019 the appropriated amount exceeded what was needed to operate the ADR Centers. The unexpended amount totals \$376,644 from FY 2015 through FY 2023. These unexpended appropriations remain in the fund, but the Bureau has no spending authority for them, therefore, the monies are serving no purpose. Unspent line-item appropriations remain with a particular lottery fund and can only be spent by the Bureau if a supplemental or additional appropriation in the amount of the unspent balance is made by the Legislature. No appropriations have been made for these unexpended balances. Pursuant to the State Lottery Act, this unspent balance can be used elsewhere, such as: 1) the Lottery Education Fund,

2) the School Construction Fund, 3) the Division of Natural Resources, or 4) the Development Office. The Legislature has not acted on this recommendation.

<b>Fiscal Year</b>	<b>Appropriations</b>	<b>Expenditures</b>	<b>Remaining Funds</b>
<b>2015</b>	\$425,000	\$296,334	\$128,666
<b>2016</b>	\$425,000	\$371,108	\$53,892
<b>2017</b>	\$425,000	\$380,599	\$44,401
<b>2018</b>	\$425,000	\$343,936	\$81,064
<b>2019</b>	\$425,000	\$427,165	-\$2,165
<b>2020</b>	\$425,000	\$380,887	\$44,113
<b>2021</b>	\$425,000	\$421,015	\$3,985
<b>2022</b>	\$425,000	\$408,143	\$16,857
<b>2023</b>	\$425,000	\$421,169	\$3,831
<b>Total</b>	<b>\$3,825,000</b>	<b>\$3,450,356</b>	<b>\$374,644</b>

*Source: OASIS Report WV-FIN-GL-146.*

#### **Recommendation 4 (2021)**

*If the ADR Centers are not closed, the Bureau of Senior Services should enforce the terms of awarded grant agreements and develop a plan for funding that more directly benefits senior citizens.*

#### ***Level of Compliance: Non-Compliance***

The Bureau does not address the finding of its inadequate oversight of the accountability of state grant funds. Instead, it references its approval of ADRC budgets not the ADR Center spending of those grant funds. The Bureau does not indicate that it will gain more assurances over the use of the monies it was appropriated, and for which it is thus ultimately responsible. Instead, it asserts that it has the discretion to administer funds in a manner to make sure ADR Centers are adequately funded so the ADR Center can meet the Bureau's expectation in serving seniors. The Bureau receives monies as a line-item appropriation specifically for the purpose of funding ADR Centers. It is the Legislature's expectation that this is how the Bureau will use the monies. The Bureau has chosen to administer these funds by distributing the monies in the form of grants. As such the Bureau is to comply with the law with respect to statutory grant requirements. However, regardless of how the Bureau spends the appropriated monies, not only should the Bureau be aware of exactly how much money it has disbursed, but whether the money is being used to support ADR Center operations only.



### **Recommendation 5 (2021)**

*The Legislature should consider expiring the unexpended line-item appropriations for the ADR Centers through supplementary appropriation in order to re-purpose them.*

#### ***Level of Compliance: Requires Legislative Action***

The Legislature has not acted on this recommendation.

### **Recommendation 6 (2021)**

*The Legislature should consider amending W. Va. Code §12-4-14 to provide clear accountability when an audit is substituted for the required report.*

#### ***Level of Compliance: Requires Legislative Action***

The Legislature has not acted on this recommendation.

### **Issue 3: Eight County Senior Citizen Centers Generally Meet Federal Accessibility Guidelines for Most Requirements (*November 2021 Issue 3 title*)**

### **Recommendation 7 (2021)**

*The Bureau of Senior Services should review the accessibility of the county senior citizen centers and provide guidance and assistance as necessary and feasible.*

#### ***Level of Compliance: Non-Compliance***

The Bureau indicates that the monitors of the Area Agencies on Aging and Bureau will review ADA compliance during visits. The agency gives no indication of any visits that have occurred in the approximately 16 months between the departmental audit and its response to PERD's request for it to indicate how it responded to the recommendations. Furthermore, it does not indicate any scheduled visits. Furthermore, the Bureau states that it is up to the Senior Centers to prioritize available funding for center renovations to any ADA deficiency. PERD reiterates that the Bureau, as the state agency on aging, should assume responsibility to provide guidance and assistance to county senior centers as they strive to maintain handicap accessibility.

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## **Issue 4: The Bureau of Senior Services' Website Needs Modest Improvements Overall to Enhance User-Friendliness and Transparency (*November 2021 Issue 4 title*)**

### **Recommendation 8 (2021)**

*The Bureau should consider incorporating the core website elements identified by the legislative auditor to enhance the transparency of the website.*

#### ***Level of Compliance: Non-Compliance***

The Bureau's response gives no indication that it plans to incorporate identified website elements to enhance the transparency of its website. It does indicate that it is discussing with a vendor to upgrade its website among other things security issues and the link between the Bureau and ADR center websites. However, as identified in the November 2021 report, the Bureau's website could benefit from additional transparency features such as a general email contact address, an online complaint form, an online freedom of information submission form, relevant graphics such as maps, and agency performance measures. PERD's review of the Bureau's website in 2023 finds that the agency incorporated the recommended website update status on more of the Bureau's webpages than identified in 2021. However, the change to some webpages and the Bureau's response are not sufficient for the legislative auditor to conclude the Bureau intends to incorporate recommended changes.

## **Hospital Finance Authority (November 15, 2021)**

### **Original Issue Title**

The Hospital Finance Board Has Not Established Internal Control or Oversight Over Timekeeping, Revenue, Purchasing, or Travel, Resulting in Significant Errors (*November 2021 Report Issue 1 Title*)

### **Updated Issue Title**

The Hospital Finance Authority Has Made Some Progress in Establishing Internal Control and Oversight Over Timekeeping, Revenue, Purchasing, and Travel

### **Original Recommendation 1 (2021)**

*The Board should establish job descriptions for both the secretary-treasurer and the director and perform evaluations based on the job descriptions.*

### ***Level of Compliance: Planned Compliance***

The Board responded that it had drafted a job description for the director, and it is under review by members. The director has retired, and when replaced, the Board will conduct periodic performance evaluations.

### **Original Recommendation 2 (2021)**

*The Board should establish appropriate policies, procedures, and control activities for travel, purchasing, and timekeeping as well as document the Board's action with regard to the policies, procedures, and control activities.*

### ***Level of Compliance: Partial Compliance***

The Board responded that it believes that policies, procedures, and control activities are provided through the arrangement with the State Treasurer's Office. However, the sole employee did establish procedures for review and approval of documentation prior to submission to the State Treasurer's Office. PERD notes that, while the Board may believe that policies, procedures, and control activities exist through the memorandum of understanding with the State Treasurer's Office, as evidenced in PERD's 2021 report, the existing relationship did not prevent instances of non-compliance with the State Travel Rule.

### **Original Recommendation 3 (2021)**

*The Board should establish an oversight mechanism for its sole employee.*

***Level of Compliance: Planned Compliance***

The Board responded that it intends to formalize the leave use policy.

**Original Recommendation 4 (2021)**

*The Board should establish control activities for travel to provide reasonable assurance of compliance with the State Travel Rule.*

***Level of Compliance: Planned Compliance***

The Board responded that it would have the new director review future requests for travel by board members to assure compliance.

**Original Recommendation 5 (2021)**

*The Board should require itemized receipts for travelers to comply with the State Travel Rule.*

***Level of Compliance: Planned Compliance***

The Board responded it intends to require itemized receipts from travelers prior to submitting requests for reimbursement.

**Original Recommendation 6 (2021)**

*The Hospital Finance Authority should establish control activities over disbursements to include a reconciliation of expenses to receipts and a monitoring system such as verification by a board member.*

***Level of Compliance: Planned Compliance***

The Board responded it intends to adopt a policy that would require consent of the Board or a member of the Board if a meeting of the Board will not be held in time to approve the disbursement prior to it being made.

**Original Recommendation 7 (2021)**

*The Hospital Finance Authority should seek reimbursement for the overpayment from the State Treasurer's Office.*

***Level of Compliance: In Compliance***

In the September 2021 report, PERD identified that the State Treasurer's Office owed the Board \$873.44 for overpayments of expenses associated with attendance at a conference. This was due to the STO

using outdated hotel folio's that included 1) tax ultimately removed prior to the final charges and 2) expenses ultimately moved from the State Treasurer's Office's Purchasing Card to a personal card for one of the travelers. In total, the STO billed the Authority \$2,774.40. However, after removal of \$209.22 in taxes and \$664.22 in expenses charged to a personal card, the actual total due was \$1,900.96. Based on documentation in OASIS, the State Treasurer's Office billed the Authority for charges to the card for the dates of the stays but was unaware of the removal of tax and other expenses occurring after the travel due to the outdated folio, resulting in an overpayment of \$873.44. The Board responded that it requested and received reimbursement for the overpayment. PERD confirmed receipt of the reimbursement.

### **Original Recommendation 8 (2021)**

*The Hospital Finance Authority should establish control activities and oversight for timekeeping to ensure correct leave usage.*

#### ***Level of Compliance: Non-Compliance***

The September 2021 PERD report identified that the Board had not established control activities or a monitoring process over timekeeping for the sole employee. The sole employee did not use a timesheet, and the Board believed that the "Treasurer's office tracked and entered...sick and annual leave." However, the State Treasurer's Office indicated that it was not the staff's responsibility to monitor her time. When PERD inquired as to if the Board implemented control activities or oversight, it responded that "the processing of the sole employee's time through the State Treasurer's Office provides some control and oversight as does the practice of the employee advising the Chairman when annual leave and sick leave is going to be used. Since the Authority has only one employee, the Authority would appreciate suggestions as to what additional control activities should be implemented to ensure correct leave usage." PERD notes that, at the time of the audit, no controls over timekeeping existed. The State Treasurer's Office was required to provide a "sign off" so that that Kronos would interact with the payroll system. The continued reliance on the State Treasurer's Office is not an effective control activity as this did not prevent the issues identified in the September 2021 report. Rather, the Board could adopt a process such as the use of signed timesheets and leave requests submitted to the Board. The Board could then forward approved items directly to the State Treasurer's Office staff for processing. This would provide both a simple control activity and monitoring process.

### **Original Recommendation 9 (2021)**

*The Board should reduce the secretary-treasurer's leave balance by the appropriate amount to compensate for the failure to use leave.*

#### ***Level of Compliance: In Compliance***

The Board responded that it reduced the secretary-treasurer's leave balance by 29.5 hours as recommended.

### **Original Recommendation 10 (2021)**

*The Hospital Finance Authority should comply with the Ethics Act by creating a monitoring process to ensure the secretary-treasurer uses leave appropriately.*

#### ***Level of Compliance: Non-Compliance***

As noted in the September 2021 report, PERD's review of the secretary-treasurer's records within the Kronos electronic timekeeping system found five instances when the secretary-treasurer did not use leave for attendance at meetings of the Board of Barbers and Cosmetologists while receiving the \$150 per diem (a total of \$750) and her regular salary for hours paid by the Authority, thus paid by two public entities for the same hours. This was a violation of the Ethics Act because a public employee may not be paid by two state agencies for the same hours unless vacation time is used. The Board responded that *"the processing of the sole employee's time through the State Treasurer's Office provides some control and oversight as does the practice of the employee advising the Chairman when annual leave and sick leave is going to be used. Since the Authority has only one employee, the Authority would appreciate suggestions as to what additional control activities should be implemented to ensure correct leave usage."* As previously noted, the Board did not have a monitoring process in place to ensure the secretary-treasurer used leave appropriately. A monitoring process could include regular comparisons of approved leave requests to leave recorded in Kronos.

### **Original Recommendation 11 (2021)**

*The Hospital Finance Authority should seek a contract exemption from the Ethics Commission for continued attendance at the Hospital Association's conferences held at The Greenbrier Resort.*

#### ***Level of Compliance: Planned Compliance***

The Board responded that the Authority will obtain an appropriate contract exemption from the Ethics Commission prior to attending any future Hospital Association Conferences at The Greenbrier Resort. PERD confirmed that neither the board members nor staff have traveled to the Greenbrier for conferences.

### **Original Recommendation 12 (2021)**

*The Hospital Finance Authority should implement a succession plan.*

#### ***Level of Compliance: Partial Compliance***

The Board responded that the Authority has requested the governor appoint a new member to fill the current vacancy on the Board. Similar requests will be submitted to the governor as additional vacancies arise. Since the members of the Board are appointed by the governor, the succession plan is largely under the control of the Governor's Office. However, the members of the Board will be asked to give as much advance notice as possible if they intend to resign from the Board so that requests for replacements may be submitted to the Governor's Office as timely as possible.

## **Conclusion**

The Board has made some progress in addressing internal control and oversight by establishing policies and procedures as they related to its sole employee. The primary reason for the Board's delay in complying with some of PERD's recommendations is that the sole employee left the agency. Thus, the Board made limited progress on a job description, evaluations, and certain policies. In addition, the Board has requested the appropriate appointments for members; however, it must wait on action by the governor. Lastly, the Board indicated that it has not acted on some recommendations as it believes the current arrangement with the State Treasurer's Office provides sufficient oversight. However, PERD notes that while the Board may believe that oversight exists as a result of the State Treasurer's Office services and that it is adequate, as evidenced in PERD's 2021 report, the arrangement did not prevent several timekeeping and travel reimbursement errors from occurring. Moreover, it is ultimately the responsibility of the Board to exercise oversight of the employees, as well as establish internal control for the agency.





## **Nursing Home Administrators Licensing Board (June 8, 2021)**

### **Original Issue Title:**

**The Board Is Necessary to Protect the Public but Could Be Placed Within a Multi-Professional Licensing Agency**

### **Updated Issue Title:**

**The Board Is Still Necessary to Protect the Public but Could Be Placed Within a Multi-Professional Licensing Agency**

### **Original Recommendation 1 (2021)**

*The legislative auditor recommends that the Legislature consider requiring the DHHR to report why W.Va. §30-1-15 has not been implemented and report the feasibility of creating a consolidated health-related board.*

#### ***Level of Compliance: Requires Legislative Action***

PERD reviewed legislative action of the 2022 and 2023 legislative sessions and found no bills affecting or related to West Virginia Code §30-1-15, which stipulated the creation of the Office of the Executive Secretary of the Health Profession Licensing Boards. This would consolidate all health-related licensing boards within one agency. Also, the Board did not indicate this recommendation was responded to by the Legislature but instead reported that the “*DHHR licenses all long-term care facilities in the State. With the recommendation, DHHR would be licensing facilities and the nursing home administrators of those facilities. Is this perhaps a conflict of interest?*” PERD has made multiple recommendations in the past and reported the benefits of creating a multi-professional licensing agency.

### **Original Recommendation 2 (2021)**

*The Legislative Auditor recommends that the Board be considered for inclusion in any multi-professional licensing agency that is created.*

#### ***Level of Compliance: Requires Legislative Action***

The Board did not comment on this recommendation; however, this legislative action has not taken place or been considered as previously discussed.

### **Original Issue Title:**

**The Board Complies with Most of the General Provisions of Chapter 30 of the West Virginia Code**

**Updated Issue Title:****The Board Has Responded to the 2021 Recommendations that Would Improve Its Compliance with the General Provisions of Chapter 30 of the West Virginia Code****Original Recommendation 3 (2021)**

*The Board's chairperson, executive director, and members should adhere to W.Va. Code 30-1-2a(2) and attend the State Auditor's Seminar on Regulatory Boards as required.*

***Level of Compliance: Planned Compliance***

The Board reported that it *“has plans to attend all State Auditor's Seminar on Regulatory Boards. The executive director has missed one Seminar in 10 years due to the death of her husband the day of the Seminar in 2017. The Board's chairperson and executive director attended the 2022 State Auditor's Seminar. All current board members will attend at least one Seminar each term as required in WV Code.”* PERD verified that the Board's chairperson and executive director attended the 2022 State Auditor's Seminar.

**Original Recommendation 4 (2021)**

*The Board should continue to request new member appointments from the governor in a timely manner.*

***Level of Compliance: In Compliance***

The Board reported that the governor made an appointment on February 10, 2023, for the one-member vacancy of the seven-member board. PERD confirmed that all positions are now filled.

**Original Recommendation 5 (2021)**

*The Board should consider utilizing the State Treasurer's lockbox to further reduce the risk of fraud.*

***Level of Compliance: In Compliance***

The NHALB signed a lockbox agreement with the State Treasurer's Office on March 15, 2021, and the lockbox has been implemented since that date. PERD confirmed this account by obtaining the lockbox agreement.

**Original Recommendation 6 (2021)**

*The Board should maintain a complete register of applicants as required by W.Va. Code §30-1-12(a).*

***Level of Compliance: Planned Compliance***

The Board reported it is currently working with the Office of Treasurer's IT group to provide a complete register as required and discussing the roster requirements with the Association of Board members.

### **Original Recommendation 7 (2021)**

*The Board should consider establishing a procedure to notify licensees and nursing homes when licensees have not renewed their licenses and have not requested in writing to be placed on the inactive list.*

#### ***Level of Compliance: In Compliance***

The Board reported the recommendation is under consideration and that several attempts are made by email to contact the licensee when the license is about to expire after a renewal letter and form is not returned completed within the deadline.

### **Original Recommendation 8 (2021)**

*The Board should maintain and publish accurate active and inactive licensee rosters.*

#### ***Level of Compliance: Partial Compliance***

The Board reported an inactive list is on the website and updated as needed, which PERD confirmed. An up-to-date roster is forthcoming on the website.

### **Original Issue Title:**

**The Board's Website Needs Modest Improvements to Enhance User-Friendliness and Transparency**

### **Updated Issue Title:**

**The Board Has Made Some Changes Suggested in the 2021 Report to Its Website And Is Currently Working with the Office of Treasurer's IT Staff to Upgrade Additional Areas**

### **Original Recommendation 9 (2021)**

*The Board should make modest improvements to its website to provide more transparency and user-friendliness for online public users.*

#### ***Level of Compliance: In Compliance***

The Board indicated that improvements have been made to the Board's website and the Board is currently working with the Office of Treasurer's IT staff to upgrade the site in additional areas. PERD verified that improvements have been made such as a specific page that contains the complaint form, information on how to submit a FOIA request with an online submission form, and the agency organization chart. The Board currently still lacks budget data being available on the website which could add to its transparency.



## **Board of License Dietitians (September 13, 2021)**

### **Original Issue 1 Title:**

The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Substantially Duplicates the National Commission on Dietetic Registration, and Title Protection Can Be Provided Statutorily

### **Updated Issue Title:**

The Legislature Should Consider Terminating the West Virginia Board of Licensed Dietitians Because It Continues to Substantially Duplicate the National Commission on Dietetic Registration

### **Original Recommendation 1 (2021)**

*The Legislature should consider termination of the Board of Licensed Dietitians and establish title protection for dietitians and nutritionists by statute alone.*

### **Level of Compliance: Requires Legislative Action**

The Board's position stands that it should be continued as currently regulated. The Board also stated that it is addressing its duplication with the Commission on Dietetic Registration by requiring prospective and renewing licensees to complete one hour of continuing education related to topics pertinent to practice in West Virginia. This program will be provided to licensees by the Board at no charge. However, it is the opinion of the legislative auditor that one hour of West Virginia-specific continuing education does not reduce the substantial duplication of the Commission on Dietetic Registration. Therefore, the legislative auditor continues to recommend the termination of the Board of Licensed Dietitians and establish title protection statutorily.

### **Original Recommendation 2 (2021)**

*If the Board is continued, the Legislature should consider defining more specific practices in defining the scope of practice for licensed dietitians and nutritionists.*

### **Level of Compliance: Require Legislative Action**

The Board responded that it does not have plans to propose to the Legislature a statutory change to the definition of the scope of practice. The Legislature has not initiated an amendment to the West Virginia Code in response to PERD's recommendation.

### **Original Issue 2 Title:**

The West Virginia Board of Licensed Dietitians Complies with Most General Provisions of Chapter 30 of the West Virginia Code

### **Updated Issue Title:**

The West Virginia Board of Licensed Dietitians Has Complied with One of Two Recommendations Regarding Adherence to W. Va. Code Chapter 30

**Original Recommendation 3 (2021)**

*The Board should maintain a register of applicants with all information specified in W. Va. Code §30-1-12.*

***Level of Compliance: Non-Compliance***

The Board responded that the register is available on the Board's website under the Public Information tab. However, the document the Board referred to is a roster of licensees, not a register of applicants. Moreover, PERD acknowledged that part of the register is online, but what the Board provided during the 2021 review did not include application dates, education and other qualifications, place of residence, and examination information as required by West Virginia Code §30-1-12.

**Original Recommendation 4 (2021)**

*The Board should ensure it handles complaints in compliance with West Virginia Code §30-1-5.*

***Level of Compliance: Planned Compliance***

The Board's response indicates planned compliance. The Board has resolved four complaints since the conclusion of the audit and stated those complaints have been addressed per W. Va. Code §30-1-5(c), but it did not provide documentation to support this statement. West Virginia Code §30-1-5(c) requires regulatory boards send status updates to complainants and respondents within six months of receiving complaints. Furthermore, all the Board's complaints in the original audit with open and closed documentation exceeded the 18-month limit for complaints to be resolved. The receipt and resolution of complaints, however, is an ongoing process which requires continued effort and attention. The Board may need more time to show evidence of proper response to this recommendation.

**Original Issue 3 Title:**

The West Virginia Board of Licensed Dietitians Website Needs Improvements to Enhance User-Friendliness and Transparency

**Updated Issue Title:**

The Assessment Score of the West Virginia Board of Licensed Dietitians Website Has Not Changed Since the Original Audit

**Original Recommendation 5 (2021)**

*The Legislative Auditor recommends the Board make improvements to its website to provide more transparency and user-friendliness for online public users.*

***Level of Compliance: Partial Compliance***

PERD's original assessment of the Board's website was a score of 48, which was in the category of "More Improvement Needed," but slightly below the score of 51, which is the beginning threshold of "Modest Improvement Needed." However, since the original audit, the Board not made changes that increase the score from 48 points. The Board sent out a mass email to licensees requesting suggestions on how to improve the website. The Board received only positive feedback and no recommendations. The Board also indicated it

discusses the website at each board meeting to identify areas that need clarification or revisions. The Board indicated that it has updated the Frequently Asked Questions tab based on questions it receives, and it has added policies and procedures to the website to increase transparency. Nevertheless, these additions did not enhance PERD's assessment score. The Board should consider the items on PERD's Website Criteria Checklist that it did not receive points for, including the site map, mobile functionality, agency history, website updates, calendar of events, and FOIA information. Given that the Board has made efforts to address the needs of its website, PERD determined that the Board is in partial compliance.

### **Original Recommendation 6 (2021)**

*The Legislative Auditor recommends creation of a central design standard for state websites, including the use of the .gov domain.*

#### ***Level of Compliance: Requires Legislative Action***

The Board responded that it has submitted the request and authorizing documents to proceed with changing to the “.gov” domain. In the 2023 legislative session, the Legislature introduced House Bill 2768 that would have required all government agencies to use a “.gov” domain. The scope of the bill was amended so that the requirement would apply only to Chapter 30 boards, but the legislation did not pass prior to the end of session.

### **Conclusion**

The Board was found to have responded to two of the three recommendations directed towards it. The remaining three recommendations require legislative action. Since the release of the original report in September 2021, the legislative auditor continues to recommend that the Legislature consider terminating the Board of Licensed Dietitians. Title protection is essentially the only thing provided by the existence of the Board, but a stand-alone board is not needed to provide title protection since it can be established statutorily.





## Board of Examiners in Counseling (June 8, 2021)

### Issue 1: The Board of Examiners in Counseling Complies With Most of the General Provisions of Chapter 30 of the W. Va. Code; However, Improvement Is Needed (*June 2021 Issue 1 title*)

#### Recommendation 1 (2021)

*The Board should send status reports to the party filing the complaint and the respondent within six months after the complaint is initially filed pursuant to W Va. Code §30-1-5(c).*

#### ***Level of Compliance: Non-Compliance***

According to W. Va. Code §30-1-5(c), each regulatory board must resolve a complaint within 18 months of the initial filing. Furthermore, the Board is required to send status reports to the party filing the complaint and the respondent within six months after the complaint was initially filed. The Board received 32 complaints during fiscal years 2021 through 2023. Table 1 illustrates the Board's level of compliance with the status report requirement for those complaints. Although nine status reports were sent timely, seven were sent after the six-month period. Moreover, 14 complaints have no evidence that a status report was sent when they should have been. Some of the 14 complaints have been resolved while others are still ongoing. Although the Board is demonstrating efforts to comply with the law, it is concerning that many complainants and licensees do not know the status of complaints that were filed more than six months ago. More than half of the complaints received since the previous report was issued are not in compliance with law. Therefore, the legislative auditor concludes that the Board is not in compliance with recommendation 1.

<b>Status Report Condition</b>	<b>Number of Complaints</b>
Sent – Timely	9
Sent - Not Timely	7
Required but Not Sent	14
Status Report still have time to be sent in compliance with law	2
<b>Total</b>	<b>32</b>
<i>Source: PERD analysis of Board documents.</i>	

## Recommendation 2 (2021)

*The Board should strike CSR 27-5-5.1e as it creates an unnecessary burden on those filing complaints with the Board and further recommends that the Board forward the licensee's or applicant's response to the complainant in order to ensure consistent handling of complaints received by the Board.*

### ***Level of Compliance: In Compliance***

In its response, the Board states that it agreed in a board meeting on February 17, 2023, that it would review and revise all rules to reflect the recommended changes. On August 31, 2023, the Board filed a change to this procedural rule with the Secretary of State's Office that proposes to strike this requirement. If it becomes effective, this procedural rule will no longer require complaints to be notarized. As such, the legislative auditor concludes the Board has done its part and is in compliance with recommendation 2.

## Recommendation 3 (2021)

*The Board should amend CSR 27-5-4.1, CSR 27-11-4.1, CSR 27-5.5.17, and CSR 27-11-5.17 so that these rules are in compliance with W. Va. Code and caselaw.*

### ***Level of Compliance: Non-Compliance***

The Board's rules for licensed professional counselors (Code of State Rules (CSR) §27-5-4.1) and MFT (CSR §27-11-4.1) still permit it to deny licensure applications if the applicant has been convicted of a felony. Additionally, the Board's rules state if it finds that if the Board dismisses a complaint, the Board shall remove all information related to that investigation from his or her file. However, the West Virginia Supreme Court of Appeals established that there is a public right of access to complaints of professional misconduct once a licensing board has concluded its investigations, including complaints that have been dismissed. The Supreme Court has struck down statutes that restrict or prevent this public access to dismissed complaints. *Daily Gazette Co. v. W. Va. Bd. of Med.*, 177 W. Va. 316, 352 S.E.2d 66 (1986) and *Thompson v. W. Va. Bd. of Osteopathy*, 191 W. Va. 15, 442 S.E.2d 712 (1994). Since CSR 27-5-4.1, CSR 27-11-4.1, CSR 27-5.5.17, and CSR 27-11-5.17 contradict West Virginia law, **the Board should amend these rules to comply with law.** The Board's response indicates that, at present, it has not amended these two procedural rules to comply with W. Va. Code and caselaw but that it intends to do so. The legislative auditor notes however, that the Board also agreed with this recommendation in February of 2021 and indicated at that time it would seek to amend its rules in time for the 2022 legislative session. Furthermore, the legislative auditor notes that the Legislature amended W.Va. Code §30-1-24 in 2019 and required boards to update their rules for the 2020 legislative session. Moreover, while the Board filed a proposed rule change to stop requiring complaints be notarized in this same procedural rule CSR §27-5, the changes recommended here are not incorporated. Additionally, the Board is not proposing any changes to CSR §27-11-et al. As such these procedural rules continue to not comply with W. Va. Code and caselaw. Therefore, the legislative auditor concludes that although the Board stated it plans to comply with the recommendation, the evidence indicates that the Board is not in compliance with recommendation 3.

## **Recommendation 4 (2021)**

*The Board should amend CSR 27-1-6.1.d. to disallow committees from being able to determine the sufficiency of an applicant for licensure 's education.*

### ***Level of Compliance: Non-Compliance***

On September 5, 2023, the Board submitted an amendment to this rule that adds board staff to this committee of two board members. This does not address the recommendation. Moreover, the Board responded similarly in February of 2021 when it indicated it would amend this rule to clarify the committee's duties. However, the current and previous versions of the rule describe which board members are on the committee of the Board. Furthermore, the Board went through the rule-making process in 2021 following receipt of this report and this rule was amended in the 2022 legislative session. However, the Board did not seek to have the rule amended to reflect either the recommendation, or to clarify the committee's duties as it had indicated it would.

Additionally, in 2021, and now in 2023, the Board does not agree that a committee is deciding the sufficiency of an applicant for licensure's education. In practice, the Board's minutes indicate that the committee brings recommendations to the full Board, and it is the Board that votes on those recommendations. Although the Board is stating that in practice it decides the sufficiency of an applicant for licensure education, the Board's rule says the opposite. The Board should amend its rules to remove this authority, since such a power to make the final determination for licensure should be made by the Board and not a committee of the Board. The legislative auditor maintains his June 2021 stance that currently a committee of the Board is deciding the sufficiency of education for licensure not the Board, and such practice violates West Virginia Code §30-31-12 that requires the Board to make final decisions. Therefore, the legislative auditor concludes that although the Board stated it plans to comply with the recommendation, the evidence indicates that the Board is not in compliance with recommendation 4.

## **Recommendation 5 (2021)**

*The Legislature should consider whether it wishes to create legislation that clarifies its intent regarding a person who serves as an officer or board member of an organization that represents the interests of a profession can also serve as a member of a regulatory board of the same profession.*

### ***Level of Compliance: Requires Legislative Action***

The Legislature has not acted on this recommendation.

## **Recommendation 6 (2021)**

*The Board should consider utilizing the State Treasurer's lockbox and incorporating a license renewal feature to its website to further reduce the risk of fraud.*

***Level of Compliance: In Compliance***

In its response, the Board states that it will review the procedures need to access the State Treasurer's lockbox feature. The Board responded similarly to the 2021 regulatory board review when it indicated it would inquire about gaining access to the West Virginia State Treasurer's Office Lockbox System. However, the Board did not respond in 2021 or in 2023 to the second part of the recommendation that it consider incorporating a license renewal feature on its website. Nevertheless, PERD's review of the Board's website indicates that the Board has incorporated a payment feature on its website whereby all fees associated with licensure can be paid online. This feature aids in reducing the risk of fraud because it allows for a reduction in the handling of revenues by board staff.

**Recommendation 7 (2021)**

*The Board should deposit money received within one business day as required by W Va. Code §12-2-2(a).*

***Level of Compliance: Non-Compliance***

The Board responded it will work to ensure West Virginia Code is followed. In FY 2023, the Board received 54 percent, or \$167,659, of its revenues online which were thus paid directly into the State Treasury. As such, it is expected that the legal requirement for depositing monies is met for those monies. However, for the other 46 percent of its revenues, the Board needs to take measures to ensure it deposits revenues in compliance with the law. PERD's review of the Board's deposit dates does not show daily deposits even during the license renewal period when one would expect revenue to arrive daily. Therefore, the legislative auditor determines the Board is not in compliance with this recommendation.

**Recommendation 8 (2021)**

*The Board should maintain a complete register of applicants as required by law.*

***Level of Compliance: Planned Compliance***

The Board responded to this recommendation by stating it maintains an active roster. However, the law requires both a roster and a register be maintained. The roster does not contain the elements required for a complete register of all applicants with appropriate information specified in code, including the date of the application, whether the license was granted or denied, and any suspensions and/or revocations. Effective October 2023, the Board will have a new licensing management database that is intended to have the capacity to records the information statutorily required for a register. As such, the Board is in planned compliance with this recommendation.

## **Issue 2: The Board’s Inadequate Cybersecurity and Internal Control Put the State at Risk By Exposing Case Counseling Notes (*June 2021 Issue 2 title*)**

### **Recommendation 9 (2021)**

*The Board should work with the Office of Technology and the State Privacy Office to establish appropriate internal control regarding cybersecurity and ensuring the security of information it receives in its regulatory duties.*

#### ***Level of Compliance: Non-Compliance***

In its response, the Board states that it is now able to send and receive encrypted emails. This is virtually the same response the Board provided in 2021. As such, our assessment, then and now is that the Board could send encrypted emails with its former email address and having the new email address does not automatically result in an encrypted email. The Board additionally stated that it is in the final stage of developing a regulatory database platform. The Board did not elaborate. However, in 2021 the Board stated it was implementing a commercial regulatory database platform that will help avoid risking data breaches. Much like the sending of emails, implementing this regulatory database platform does not in and of itself establish cyber security internal controls or ensure the security of information the Board receives in its regulatory duties. PERD again emphasizes that the Board should follow best practice cybersecurity internal controls.

### **Recommendation 10 (2021)**

*The Board should consider encrypting its website.*

#### ***Level of Compliance: In Compliance***

The Board responded that it now has a secure website. PERD’s review finds that the Board’s website has the secure status symbol.

### **Recommendation 11 (2021)**

*The Board should consider registering for a “.gov” domain.*

#### ***Level of Compliance: Planned Compliance***

In its response, the Board states that its website platform does not offer “.gov” domain names. The Board further indicated it would confer with the Office of Technology to find the path to procure a “.gov” domain. However, the legislative auditor notes that the Board had indicated in its 2021 response that it was working with OT to obtain a “.gov” website.

## **Recommendation 12 (2021)**

*The Board should improve its cyber-security as well as follow the protocols of the Office of Technology and the State Privacy Office associated with unauthorized access of information.*

### ***Level of Compliance: Non-Compliance***

The Board responded that when it sends documents to those outside the state organization it utilizes a feature in free email service that prevents the recipient to forward, copy, print, or download the email message or its attachments. Although this procedure has its merits, it does not speak to what gave rise to the recommendation. It was not information that the Board sent anyone, but that the Board had not secured information it placed on its website which was not secure. Furthermore, when the legislative auditor informed the Board of the exposure, it did not follow executive branch procedures and report the exposure to the Office of Technology. As such, PERD states again that the Board should follow best practice cybersecurity internal controls.

## **Issue 3: The Board of Examiners in Counseling Needs to Consider What Measures It Needs to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans With Disabilities Act (June 2021 Issue 3 title)**

## **Recommendation 13 (2021)**

*The Board should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.*

### ***Level of Compliance: Non-Compliance***

In its response the Board states that Board staff would assist, as needed, the rare visitors to its office. The Board further indicated that there was a ramp that provides access to a restroom and a conference room to allow adequate space for meetings. Additionally, the Board said it was not financially feasible for it to change office location.

As stated in 2021, assistance by Board staff may not be sufficient for physical access to the Board's office. The elevator leading to the Board's office on the second floor of the building did not meet ADA standards and the door to the Board's conference room is narrower than the door to its office. The Board's office remains out of compliance with ADA standards and the legislature auditor reiterates that the Board needs to take action to improve handicap accessibility to its office.

## **Issue 4: The Board’s Website Needs More Improvement to Enhance User-Friendliness and Transparency (*June 2021 Issue 4 title*)**

### **Recommendation 14 (2021)**

*The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.*

#### ***Level of Compliance: Non-Compliance***

In response, the Board states it revised its website to be more user-friendly. In the 2021 review the user-friendliness of the Board’s website received 4 of 18 possible points. PERD finds that none of the user-friendly attributes recommended in 2021 report were incorporated into the revisions to the website. The recommended user-friendly attributes include: a search tool, a help link, the ability to adjust font size, a frequently-asked-questions section, and a feedback option. Additionally, the 2021 review measured the Board’s transparency at 16, or 50 percent, of the possible points. PERD finds that the Board has not incorporated any of the recommended transparency attributes into its website. The recommended transparency attributes include: a privacy policy, budget data, a calendar of events, information on how to submit a FOIA request, downloadable agency publications, and website updates. PERD finds that the Board is not in compliance with the recommendation.





## Department of Transportation (June 8, 2021)

### Original Letter Report:

**A Review Was Initiated Due to a Legislative Request for PERD to Examine the Cost, Possible Duplication of Services, and Rationale for a Person Having the Dual Title and Responsibilities of Secretary of the Department of Transportation and the Commissioner of the Division of Highways**

### Updated Letter Report Title:

**Since the 2021 Letter Report the Legislature Has Not Eliminated the Dual Title Provision or Clarified the Powers, Duties and Responsibilities of the Commissioner of Highways**

### Original Recommendation 1 (2021)

*The Legislative Auditor recommends the Legislature should consider eliminating the dual-title provision.*

#### ***Level of Compliance: Requires Legislative Action***

As of this date, the Legislature has not made any changes to W. Va. Code §6-7-2A since the 2021 PERD report. When asked to respond to the question of if any change has been considered by the Legislature regarding eliminating the dual-title provision, the current Secretary of Transportation and Commissioner of Highways reported, “*As an agency head it is not my role to direct policy decisions of the Legislature. However, I am uniquely situated to offer some insight on this recommendation. I echo the explanation presented to the Legislative Auditor by former Secretary and Commissioner Byrd White.*” The Secretary also indicated that he “*...didn’t see the potential for efficiencies or benefits in having two people divide the positions. The salary and benefit expenditures would increase. Potentially the efficient operation of the Department would be diminished depending on the individuals in those roles. Should the Legislature choose to consider to remove the dual role option for the Secretary and Commissioner, I would appreciate the opportunity to discuss the proposal.*”

### Original Recommendation 2 (2021)

*The Legislative Auditor recommends that the Legislature clearly define and distinguish the powers, duties, and responsibilities of the commissioner of highways.*

#### ***Level of Compliance: Requires Legislative Action***

As of this date, the Legislature has not made any changes to W. Va. Code §17-2A-2. However, in response to the question of if the Legislature has made the changes recommended, the current Secretary of Transportation and Commissioner of Highways stated that “*The second recommendation posed in your letter is a bit misguided. The ‘powers, duties, and responsibilities of the Commissioner of Highways’ are specified in length in W.Va. Code §17-2A-8 as well as generally through chapter 17. In addition, the duties and responsibilities for the Secretary of Transportation may be found in W.Va. Code §17-2-1.*”

## Conclusion

As part of the audit process, PERD reviewed any legislative bills presented during the 2022 and 2023 legislative session. During both years no bills were presented that either consider eliminating the dual-title provision or attempt to clearly define the powers, duties and responsibilities of the commissioner of highways. Therefore, both recommendations from the 2021 PERD letter report will continue to require legislative action to be completed.

# Appendix A

## Transmittal Letters and Written Responses

### WEST VIRGINIA LEGISLATURE

*Performance Evaluation and Research Division*

1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890



**John Sylvia**  
Director

July 10, 2023

Matt Izzo, Administrator  
West Virginia Office of the Chief Medical Examiner  
619 Virginia St. West  
Charleston, WV 25302

Dear Mr. Izzo:

This is to transmit a draft copy of the Update of the Office of the Chief Medical Examiner. This report is tentatively scheduled to be presented during the September interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by July 21, 2023. In addition, we need your written response by noon on July 28, 2023 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 304-340-3192 by Thursday, September 7, 2023 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the Legislative Auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

Enclosure





**STATE OF WEST VIRGINIA  
WV Department of Health and Human Resources**

**Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary**

September 28, 2023

John Sylvia, Director  
Performance Evaluation and Research Division  
West Virginia Legislative Auditor's Office  
1900 Kanawha Blvd. East, Room W-314  
Charleston, West Virginia 25305

Dear Mr. Sylvia:

The West Virginia Department of Health and Human Resources (DHHR) and the Office of the Chief Medical Examiner (OCME) in the Bureau for Public Health have reviewed the draft letter-report on the renewed evaluation of the Chief Medical Examiner's management of unclaimed and unidentified decedents, as prepared by the West Virginia Legislative Auditor's Office, Performance Evaluation and Research Division (PERD).

The DHHR concurs with the new recommendation (2023) within the report that the OCME seek legislative remedy to the excessive cost of disposing of unidentified decedent remains via burial versus cremation and will continue to work collaboratively with the West Virginia Legislature to address these cost-related concerns. The DHHR will continue to follow the current OCME practice of delaying burial or cremation of unidentified decedent remains pending resolution of this matter by the West Virginia Legislature.

On behalf of the DHHR, I thank the staff members of the PERD for their time and effort expended on the preparation of the draft letter-report, and for the conclusions and recommendations reflected therein. The DHHR looks forward to a resolution of this matter that affords a timely disposition of unidentified decedent remains in a cost-effective manner.

Sincerely,

A handwritten signature in blue ink, appearing to be "S. Young", written over a circular blue stamp or seal.

Sherri A. Young, DO, MBA, FAAFP



**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890



**John Sylvia**  
Director

September 19, 2023

Mark D. Scott, Secretary  
Department of Administration  
Building 1, E-119  
1900 Kanawha Boulevard, E  
Charleston, WV 25305

Dear Secretary Scott:

This is to transmit a draft copy of the update to the November 2021 departmental review of the General Services Division. This report is tentatively scheduled to be presented during the October 15-17, 2023, interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Monday, September 25, 2023. In addition, if you wish to provide a written response, we will need it by noon on Tuesday, October 3, 2023, 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 304-340-3192 by Thursday, October 12, 2023, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the legislative auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,  
*John Sylvia*  
John Sylvia

C: John McHugh, Director  
General Services Division







STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION

MARK D. SCOTT  
CABINET SECRETARY

October 3rd, 2023

John Sylvia, Director  
Office of the West Virginia Legislative Auditor  
Performance Evaluation and Review Division  
1900 Kanawha Boulevard East  
Building One, Room W314  
Charleston WV 25305

Dear Director Sylvia:

I am happy to provide the following responses to the September 27, 2023, update to the November 2021 Departmental Review of General Services Division:

**Recommendation 1 (2015)**

*The Legislature should consider requiring the Department of Administration to perform and document a cost-benefit analysis prior to any purchase of real property in excess of a specified threshold purchase price.*

***Level of Compliance: Requires Legislative Action***

**PERD Update of November 2021 Departmental Review:**

“The Legislature has not acted on this recommendation. The agency response indicates it intends to continue to perform cost-benefit analysis prior to the purchase of any real property in excess of \$1 million, regardless of legislative action on the recommendation. The response further states that the General Services Division (GSD) has not acquired real property, nor does it currently plan to acquire any property with a purchase price in excess of \$1 million. While the current administration has indicated the intent to perform and document cost-benefit analysis prior to purchasing real property, future administrations may elect not to do so. **Therefore, while the Department of Administration (DOA) responded to the recommendation administratively, the Legislative Auditor continues to recommend the Legislature consider requiring statutorily the DOA to perform and document a cost-benefit analysis prior to any purchase of real property in excess of a specified threshold purchase price.**”

**DOA/GSD Response (October 2023):**

The Department of Administration and General Services Division remain unaware of any action taken by the Legislature to codify a requirement of this kind. DOA and GSD reiterate their intent to continue to perform cost-benefit analyses prior to the purchase of any real property in excess of \$1 million, regardless of Legislative action on the PERD recommendation. Following the original review, DOA and GSD have not acquired any real property, nor do they currently plan to acquire any property with a purchase price in excess of \$1 million.

**Recommendation 2 (2015)**

*The Legislature should consider placing a moratorium on the Department of Administration from purchasing real property above the price of \$1 million until the Department can demonstrate it has strengthened its financial resources.*

***Level of Compliance: Requires Legislative Action*****PERD Update of November 2021 Departmental Review:**

“The Legislature has not responded to this recommendation. However, in May 2019, Governor Justice imposed on the executive branch a moratorium on purchases of real property for the use of office or storage space, and in January of 2023 the governor (sic) issued another administrative order indicating the moratorium remains in effect. Nevertheless, the Legislative Auditor recommends the Legislature still consider imposing a moratorium on the GSD. The agency continues to lack adequate financial balances to take on additional properties, and the agency is still years from achieving an appropriate financial position to acquire new property above the \$1 million threshold. The agency indicates it is using an appropriation from the Legislature to replace buildings on property already owned by the State, including the building which houses the Office of Technology central mailroom, the GSD Grounds Section facility, and two warehousing locations used by GSD.”

**DOA/GSD Response (October 2023):**

The Department of Administration and General Services Division are unaware of any action taken by the Legislature to impose such a moratorium, but intend to continue to comply with the Governor’s moratorium. Acquisition of the small parcels to complete the aforementioned East Campus renovations project, from the City of Charleston (portions of Jefferson Street and Michigan Avenue) and the Division of Highways (one GSD building being replaced was located on property being leased at no-cost from the DOH), were no-cost transactions and were logistically necessary to fulfill the intent of the project.

**Recommendation 3 (2015)**

*If the Legislature chooses not to place a moratorium on the Department of Administration from purchasing real property, the Department should avoid significant additions to its stock of real property until it has substantially improved its financial resources.*

**Level of Compliance: In Compliance (November 2021 determination)****PERD Update of November 2021 Departmental Review:**

“PERD assessed DOA as in compliance in the 2021 report. However, DOA responded to this recommendation for this update by saying that since 2021 it entered into agreement with the Tax Department for limited renovations of the Revenue Center (Building 22) in Charleston. The response further indicates the two parties will enter into an additional agreement for further renovations in the upcoming year.”

**DOA/GSD Response (October 2023):**

The Department of Administration and General Services Division will continue to seek reimbursements from tenant agencies to fund improvements to existing buildings that benefit the tenant agencies. The Department of Administration and General Services Division also intend to continue to comply with the Governor’s moratorium. Please note that the Department of Administration was scheduled to take over maintenance of the Diamond Building (Building 35) and the DHHR Parking Garage (Building 31) in Charleston after DHHR’s having satisfied the payment of the lease-purchase of the properties on December 31, 2022. The Department of Administration, Real Estate Division, has entered into a lease (eff. January 1, 2023) with the DHHR which supplies the GSD with ample annual rent revenue to cover operating expenses for the facilities.

**Recommendation 4 (2015)**

*The Legislative Auditor recommends that the Legislature clarify its intent of the Capitol Dome and Capitol Improvements Fund (Fund 2257), established in W. Va. Code (§5A-4-2(c)), for its use in capital improvements and repairs of state-owned buildings. Also, a specific definition for capital improvements should be provided in the statute as it relates to Fund 2257.*

**Level of Compliance: Requires Legislative Action****PERD Update of November 2021 Departmental Review:**

“The Legislature has not acted on this recommendation. However, House Bill 4516, introduced during the 2016 regular legislative session, sought to clarify the intent of the Legislature for proper use of fund 2257. While the bill did not leave the committee of first reference; it would have addressed all the concerns expressed in the audit. Specifically, the bill would have prohibited using fund 2257 for operating expenses, purchasing or constructing stand-alone buildings, repairing leased properties or making debt service payments. In the original September 2015 report and the October 2017 and November 2021 update reports, PERD found that the DOA was still using fund 2257 to pay custodial and utility bills, purchase office furniture, make leasehold improvements

and make debt service payments. This is shown in Table 1, which duplicates a table in the original 2015 report and the October 2017 and November 2021 update reports but adds data for FY 2022 through June 2023. Table 1 shows that the amount spent on operating expenses from fund 2257 has been gradually declining through FY 2023. In FY 2022, the GSD paid \$604,247 for custodial services. However, in April 2023, the DOA stated that the GSD ended reliance on Fund 2257 to pay operating expenses starting with fiscal year 2023. Although there are expenses Fund 2257 for FY 2023 that are coded as operating costs, they are arguably for maintenance, repairs, and capital improvement purposes, which is the statutory intent of the fund. Most of the \$54,836 that was coded as custodial services are arguably capital expenses and justified to come out of the fund. There was also some miscoding. PERD determines that the amount of operating expenses coming out of Fund 2257 has all but been eliminated as of FY 2023. The agency concurs with the recommendation and would like the Legislature to clarify W. Va. Code (§5A-4-2(c)) on what are appropriate expenses from the fund. (Table 1 is presented). The legislative auditor took exception to the use of Fund 2257 for operating expenses because the fund was created statutorily for “*maintenance and repairs of the capitol dome and other capital improvements and repairs to state-owned buildings*” (W. Va. §5A-4-2(c)). All operating expenses should have been expended from Fund 2241, but it does not have sufficient funds. The DOA acknowledged this in response to the original report and in the 2017 and 2021 PERD updates. However, as Table 2 shows, fund 2257 has been depleted to a precarious level. This level of funding is inadequate to properly maintain and improve the Capitol Dome and other GSD buildings. (Table 2 is presented). Table 3 shows that Funds 2241, 2257, and 2462, which are the primary funds for operating, maintenance, and improvement of GSD properties, continue to be at relatively low levels as of the end of FY 2023, particularly funds 2241 and 2257. (Table 3 is presented).”

#### **DOA/GSD Response (October 2023):**

The Department of Administration and General Services Division are unaware of any action on the part of the Legislature to clarify intent regarding the use of Fund 2257, but continue to make every effort to correctly allocate only appropriate transactions to the fund. The GSD would appreciate any statutory clarity regarding the use of any of its funds. In regard to Table 2, GSD offers that the Agency continues to make every effort to not use the fund for expenses understood to be operating expenses, and that the cash balance has increased from FY 2022 to FY 2023 year-end due to such effort; the GSD would also note that, over the time covered by Table 2, incoming revenue to fund 2257, beyond the control of GSD, has decreased significantly. GSD continued in FY 2023 to have no operating expenses on Fund 2462, and continues to make every effort to identify miscoding of funds and make appropriate corrections.

#### **Recommendation 5 (2015)**

*The Department of Administration should take steps to improve its process of monitoring rent revenues and expenditures with the intention of raising rent appropriately to cover rising costs.*

#### ***Level of Compliance: Planned Compliance***

**PERD Update of November 2021 Departmental Review:**

“In its response, the DOA indicates that it plans to continue to monitor rent revenues and expenditures and intends to appropriately increase rent in fiscal year 2024 to cover rising costs. While there is evidence of some rent increases in 2022 and 2023 for half a dozen state agency tenants in four buildings, cost overruns continue in many buildings. These include the buildings in Huntington, Weirton, Clarksburg, Fairmont, Logan, Williamson, and the following buildings in Charleston: Davis Square, Greenbrooke, and Building 3 on the capitol complex. During the 2021 update audit, the DOA further indicated that it plans to continue to adjust new lease rates to a level that will cover operating costs associated with leased spaces. The legislative auditor did find evidence that DOA has continued to adjust new lease rates.

The DOA has increased rent for certain buildings as it mentioned during the 2021 update and in response to this update, expenditures are declining for some buildings. However, compared to the results from the 2021 update, expenditures are again outpacing revenues (see Table 4). The total amount of expenditures exceeding revenues is negative -\$1,401,925 compared to \$703,082 in 2021. As such there are buildings in which the costs to maintain them exceeds revenues. In the case of the Greenbrooke Building, some tenants have moved out of the building, which has reduced revenue for that building.”

**GSD Response (October 2023):**

The Department of Administration and General Services Division reiterate that they continue to monitor rent revenues and expenditures, and intend to appropriately increase rent in Fiscal Year 2024, to cover rising costs. The Agency would add to the PERD Update that Building Four is under complete renovation until some time in early FY 2025, leaving the Agency with additional, temporary reduced rent revenue opportunities. The building is programmed to be fully occupied at the completion of renovations, which should increase its expenses, but also provide ample revenue to cover those expenses.

**Recommendation 6 (2015)**

*The Department of Administration should pay all appropriate operating costs of DOA facilities from Fund 2241.*

**Level of Compliance: In Compliance****PERD Update of November 2021 Departmental Review:**

“The DOA indicates in its response that it concurs with the recommendation. The agency has reached a point where Fund 2257 is not being used for operating expenses as it was in the past. Some expenditures in Fund 2257 are arguably justified to come out of the fund, and if it was not for some miscoding, Fund 2257 has not been used inappropriately. Debt service obligations are declining and revenues from intended rent increases are realized for Fund 2241. Although Fund 2241 will continue to be challenged to meet all operating expenses, the fund currently is in a good financial position. According to the DOA, in fiscal year 2022 and in early 2023, two debt service payments that are paid from Fund 2241 ended, which freed approximately \$1 million in annual expenses to dedicate to

covering operating expenses. The response indicates it intends to make every effort, to the extent funding allows, to comply with the recommendation.”

**DOA/GSD Response (October 2023):**

The Department of Administration and General Services Division concur that Fund 2241 will continue to be challenged to meet all operating expenses if its current good financial position is not maintained. The General Services Division will continue to make every effort to comply with the recommendation. GSD adds that the next additional debt service to be completed will be in late FY 2024 (reducing expenses by approximately \$250,000 per year).

**Recommendation 7 (2015)**

*The Department of Administration should comply with statute to pay all appropriate bond payments solely from Fund 2241 pursuant to W. Va. 5-6-8(a).*

**Level of Compliance: In Compliance**

**PERD Update of November 2021 Departmental Review:**

“The DOA states it is aware of no instances in which payments for State-issued bonds for GSD buildings are encumbered to be made from any other fund other than Fund 2241. DOA notes the exception to this is debt service payments made for the Piedmont Parking Garage paid for from Fund 2255. This is permitted because the bond was not issued by the Department of Administration and thus is not statutorily required to be paid for out of Fund 2241 (W. Va. Code §5-6-5). The legislative auditor reviewed expenditures and found no instances in which expense codes for bond principle or interest were charged to Fund 2257.”

**DOA/GSD Response (October 2023):**

The Department of Administration and General Services Division concur with this recommendation and are aware of no instances in which payments for State-issued bonds for GSD buildings are paid from any fund other than Fund 2241.

**Recommendation 8 (2015)**

*The Legislature should consider requiring the Department of Administration to have a structural engineering inspection performed on buildings prior to the purchase that evaluates the structural integrity of the building, the roof, the basement, HVAC systems, plumbing, electrical wiring, and other major areas of the building. The results of the inspection should be factors to consider in the cost-benefit analysis specified in recommendation 1.*

**Level of Compliance: Requires Legislative Action**

**PERD Update of November 2021 Departmental Review:**

“The Legislature has not acted on this recommendation. However, House Bill 3013 was introduced during the 2017 and 2018 regular legislative session and sought to require an inspection or inspections of any building prior to purchase or major renovation by the

State. This bill did not leave the committee of second reference. The DOA and PERD continue to agree on a revision to the original recommendation which would be to require an engineering analysis performed by a professional engineer prior to the purchase of a building. Subsequently, if during the analysis the engineering report identifies concerns over the building structure and recommends a structural engineering report, the agency agrees it should be acquired and the report considered in any decision to purchase a particular piece of property. The DOA further responds that the GSD would appreciate being provided clarity as to which fund would qualify to pay for assessments of properties not currently owned or operated by the DOA.

**DOA/GSD Response (October 2023):**

The Department of Administration and General Services Division are unaware of any action on the part of the Legislature to implement this requirement or provide such clarity, but continue to agree with the final recommendation.

Sincerely,



Mark Scott, Cabinet Secretary  
WV Department of Administration





**WEST VIRGINIA LEGISLATIVE**  
*Performance Evaluation and Research Division*

**1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890**



**John Sylvia  
Director**

July 10, 2023

Vickie James, Executive Director  
West Virginia Board of Social Work  
1124 Smith Street, Suite B 200  
Charleston, WV 25301

Dear Director James:

This is to transmit a draft copy of the Update of the Board of Social Work. This report is tentatively scheduled to be presented during the September 10-12, 2023, interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Friday, July 21, 2023. In addition, we need your written response by noon on Friday, July 28, 2023, 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 304-340-3192 by Thursday, September 7, 2023, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the Legislative Auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

*John Sylvia*  
John Sylvia

Enclosure

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*Joint Committee on Government and Finance*



## WEST VIRGINIA BOARD OF SOCIAL WORK

P.O. Box 5459 Charleston, WV 25361 Phone: (304) 400-4980 Fax: (304) 400-4976  
www.wvsocialworkboard.org



September 7, 2023

John Sylvia, Director  
Performance, Evaluation and Research Division  
1900 Kanawha Blvd. East Building 1, Room W-314  
Charleston, WV 25305-0610

Board Members

**Charles S. Inghram, Ed.D.**  
LGSW, Chair  
Mercer

**Robert D. Musick, LCSW**  
Vice Chair, Monongalia

**Natalie Buskirk Murphy, LSW**  
Secretary, Cabell

**Joanne M. Boileau, LSW**  
Raleigh

**Katherine Shelek-Furbee, LCSW**  
Brooke

**Stephanne C Thornton, LICSW**  
Jackson

Office Staff

**Vickie James, LCSW**  
Executive Director

Dear Mr. Sylvia:

Thank you for the opportunity to respond to the Draft Update Report on Provisional Licensure. I will agree that it is unfortunate test authorizations for the universe of 16 individuals was not acted on sooner. I conveyed a few reasons in the emails with Mr. Burton, which were noted in the report. I would like to take this opportunity to provide additional information-not to make excuses but to provide the context of why authorizations did not occur sooner.

We are a very small agency with one Executive Director, one administrative assistant and one part time employee. As a small agency, often we are faced with competing priorities. At the time the audit was initiated in spring 2020, we had a vacancy and only two staff, had 4419 licensees and had entered an unprecedented time navigating COVID and the resultant impacts on licensing, continuing education, waivers for telehealth, and conducting Board meetings. Additionally, our Board was in the process of implementing the Service Worker Registry provisions from SB 312 which was to be effective June 2020. The impact of the aforementioned strained our resources exponentially.

For the fiscal year that ended June 30, 2023, we now have 4,822 licensees or registrants under our oversight, an increase of 403 or 9% of licensees/registrants. Additionally, with the increased enrollment in instate MSW programs, we have more individuals seeking clinical supervision working toward independent clinical licensure-processes that are also under the oversight of this Board. Additionally, our mission to protect the public through the receipt of complaints and follow up investigation and possible discipline can also become a competing and sometimes unexpected priority.

In the past three years, we have navigated the aftermath of COVID, implemented two new registration processes (and filed corresponding rules) as a result of legislation- the Service Worker Registry and Interstate Telehealth Provider. To implement the Service Worker Registry, it also

Email: [Admin@wvsocialworkboard.org](mailto:Admin@wvsocialworkboard.org)

PERD Update Response  
September 7, 2023  
Page 2.

required the conversion of several hundred provisional licensees to the registry. As noted in the report, our Board filed and was granted a waiver from ASWB in August 2021 to allow provisional licensees to continue to test. At that time, I had two staff positions vacant and while one part time position was filled at the end of August, the Board was not fully staffed until January 2022. Training new staff must take priority; given the volume of licensees we have, other staff by necessity assume the workload until that new person is on board. In March 2022, we were one of nine boards whose fees were decreased by the House Government Organization Committee, which amounted to an overall 10.5 % decrease in revenues for this Board. This necessitated a change to all our forms, notices and applications in order to comply. Shortly after, almost half our Board-three members were replaced due to term limits; onboarding and acclimating new members became a priority as well as changing letterhead, forms and license templates.

After a procurement process, we are now in the initial implementation of a web-based licensing system which will be more user friendly for our licensees in making application and renewing their licenses. We also hope it will increase efficiencies and support staff. However, getting there is a deliberative process and again an initiative that becomes a priority, which will be done with the same number of staff.

When one is faced with staffing shortages and increases in responsibilities without a corresponding increase in manpower, unfortunately some things do get placed on the back burner and overlooked and “off the radar” in an ever-changing environment of competing priorities. However, as soon as my oversight was brought to my attention by Mr. Burton’s inquiry, all sixteen individuals were immediately notified. The opportunity to rectify this oversight through your office’s follow up is appreciated. The nine individuals who requested to test were authorized until December 31, giving them at least 3 testing opportunities should more than one be needed. Study resources were also provided to those individuals. Two individuals have tested thus far-one passed the exam and has been converted to an LSW and the other person failed the exam but has the ability to test again twice more before the expiration on December 31, 2023. I will be happy to provide you a full update on the results of those individuals who elected to test at the conclusion of the authorization period in December.

Sincerely,



Vickie James, ACSW, LCSW  
Executive Director

**WEST VIRGINIA LEGISLATIVE**  
*Performance Evaluation and Research Division*

**1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890**



**John Sylvia  
Director**

July 10, 2023

Jeffrey B. Burrell, Executive Director  
West Virginia Real Estate Appraiser Licensing and Certification Board  
405 Capitol Street  
Suite 906  
Charleston, WV 25301

Dear Director Burrell:

This is to transmit a draft copy of the Update of the West Virginia Real Estate and Appraiser Licensing and Certification Board. This report is tentatively scheduled to be presented during the September 10-12, 2023, interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Friday, July 21, 2023. In addition, we need your written response by noon on Friday, July 28, 2023, 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 304-340-3192 by Thursday, September 7, 2023, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the Legislative Auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

*John Sylvia*  
John Sylvia

Enclosure

---

*Joint Committee on Government and Finance*



## West Virginia Real Estate Appraiser Licensing and Certification Board

405 Capitol Street, Suite 906  
Charleston, West Virginia 25301  
Telephone 304.558.3919  
FAX 304.558.3983  
WEBSITE: <https://appraiserboard.wv.gov>



Dean E. Dawson  
Board Chair

Jeffrey B. Burrell  
Exe. Director

July 24, 2023

John Sylvia, Director  
WV Legislature  
Performance Evaluation and Research Division  
1900 Kanawha Blvd, East  
Building 1, Room W-314  
Charleston, WV 25305-0610

Dear Mr. Sylvia,

This letter is presented by the West Virginia Real Estate Appraiser Licensing and Certification Board (WVREALCB) to acknowledge our receipt of the draft of the Update Report to be presented during the September 10-12, 2023, interim meeting of the Joint Committee on Government Organization.

We have reviewed the Draft Report and found the report to be accurate. The WVREALCB is in agreeance with the report as written, and a representative of our agency will be present to answer any questions the committee members may have at the meeting.

If you need any further information, or if I can be of further assistance to you on this matter, please do not hesitate to contact me anytime.

Respectfully,

A handwritten signature in blue ink, appearing to read "JBB".

Jeffrey B. Burrell  
Executive Director





**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890



**John Sylvia**  
Director

September 19, 2023

Denise R. Worley, Commissioner  
Bureau of Senior Services  
1900 Kanawha Boulevard, E.  
Charleston, WV 25305

Dear Commissioner Worley:

This is to transmit a draft copy of the update to the November 2021 departmental review of the Bureau of Senior Services. This report is tentatively scheduled to be presented during the October 15-17, 2023, interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Monday, September 25, 2023. In addition, if you wish to provide a written response, we will need it by noon on Tuesday, October 3, 2023, 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 304-340-3192 by Thursday, October 12, 2023, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the Legislative Auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

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

John Sylvia





**STATE OF WEST VIRGINIA**  
**BUREAU OF SENIOR SERVICES**  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0160  
Telephone (304) 558-3317  
FAX (304) 558-5609  
[www.wvseniorservices.gov](http://www.wvseniorservices.gov)

Denise R Worley  
Commissioner

To: John Sylvia  
Director  
Performance Evaluation and Research Division

From: Denise R Worley *new*  
Commissioner

Date: October 3, 2023

Subject: Performance Review 21-12-646 Follow-Up

In response to your letter dated February 2, 2023, regarding recommendations from the Performance Review 21-12-646, the Bureau has not been contacted by the Legislature regarding any issues outlined in the report and is not aware of any actions taken by the Legislature.

**Issue 1: Consolidation of Regional Aging & Disability Resource Centers (ADRC) to one statewide ADR Center.**

**Recommendation 1:** *The Bureau of Senior Services should further consolidate the regional ADR Centers from four to one, and administer the counseling, referral, and information services in-house if consolidating these would not result in an offsetting loss of federal grant funds.*

**Answer:** Closing these regional offices would mean current staff would lose their jobs if not able to commute to the Charleston area. These staff are experienced and have been working within the ADRC for many years. Finding trained, qualified staff in the Charleston area has been difficult not only with the ADRC but for

positions at the Bureau of Senior Services. This would create a hardship for the remaining staff to assist all incoming calls and clients as well as conducting statewide outreach to meet federal program requirements while searching for new staff. The Bureau has not and does not see the value of consolidation within the ADRC and the No Wrong Door System. Regional staff also have a better understanding of the resources available in their local regions and have well-established relationships with local agencies. This allows them to provide better quality information on the resources available and ensure those seeking assistance are able to connect with the agency they need. Consolidation would mean that all staff would have to know all the resources across the state and would lose that local connection with partner agencies jeopardizing the quality of information someone seeking assistance may receive. Since the legislative audit, the ADRCs have also begun to provide the direct work for federal funding from 2023 Congressional Directed Spending to assist with home modifications to allow older adults to remain in their home.

**Recommendation 2:** *The Legislature should consider reducing the line-item appropriation for the ADR Centers appropriately as the ADR Centers are consolidated if consolidating the ADR Centers would not result in an offsetting loss of federal grant funds.*

**Answer:** The Bureau at the time of the report did not agree with this assessment and its position has not changed. At the time of the report, the Bureau discussed concerns regarding the impact reducing appropriations would have to the No Wrong Door project set forth by the Administration for Community Living (ACL). The Bureau still has those concerns. In addition, the Aging and Disability Resource Center regional locations are critical in maintaining the ability to meet federal grant requirement with the SHIP, SMP, and MIPPA Medicare related programs. The Administration for Community Living requires statewide coverage to provide virtual and in-person program coverage. Per ACL, Statewide coverage means the applicant must have the capacity to provide services, including group education and one-on-one assistance, in each county, parish, or borough within the state or territory. These grant proposals were built around having the regional ADRC locations. The regional ADRC offices also allow the public the ability to see counselors in-person at the ADRC location without having to travel long distances. While many services can be provided by phone and online, there are times that older adults and people with disabilities need to see someone in person to help resolve an issue they are experiencing or get access to services they need. Asking them to travel to Charleston is not reasonable. Having regional counselors also allows the counselors to be able to travel for outreach within their region only meaning they may be able to provide counseling for part of the day and also

conduct outreach. Having staff travel from the Charleston area will increase costs due to travelling further distances, needs for overnight stays, and counselors will be out of the office more traveling instead of providing direct assistance. Also having these regional locations means that the staff who work there are more familiar with their local community, learning about new resources for consumers and developing established relationships with community partners.

## **Issue 2: Unexpended Appropriations and Accountability.**

**Recommendation 3:** *The Legislature should consider further reducing the line-item appropriation to operate the ADR Centers.*

**Answer:** The Bureau's spending authority for a Fiscal Year appropriation is July 1-June 30, with the month of July to pay and any June 30, outstanding fiscal year commitments. This has not changed, and future use of any unspent funds are at the discretion of the Governor and or Legislature. In addition, funding for this appropriation has been at its current level of \$425,000 since FY 2014.

**Recommendation 4:** *If the ADR Centers are not closed, the Bureau of Senior Services should enforce the terms of awarded grant agreements and develop a plan for funding that more directly benefits senior citizens.*

**Answer:** Regarding accountability, the Bureau receives planned budgets for each award the ADRC receives the ADRC receive and signs off on conditions each fiscal year. These budgets are primarily staff cost related. It is the Bureau's discretion to administer funds in a manner to insure the ADRC is adequately funded so that it can meet the expectations of the Bureau in serving seniors.

The ADRC via the No Wrong Door Committee's Partners are continuing to develop and expand partnerships and data connections, and structure to increase services via the five core ADRC partners. Federal funding was received to create a new data system for tracking ADRC work and allowing warm transfer of a need to partner agencies. Round 1 of this system was implemented in June 2023.

**Recommendation 5:** *The Legislature should consider expiring the unexpended line-item appropriations for the ADR Centers through supplementary appropriation in order to repurpose them.*

**Answer:** It is the Bureau's understanding that all unspent funds at fiscal year-end are in fact at the discretion of the WV Legislature and the Governor, reappropriated as they deem appropriate.

**Recommendation 6:** *The Legislature should consider amending W. Va. Code §12-4-14 to provide clear accountability when an audit is substitute for the required report.*

**Answer:** W. Va. Code §12-4-14 was last amended in the 2021 Legislative Session.

### **Issue 3: Meeting Federal Accessibility Guidelines.**

**Recommendation 7:** *The Bureau of Senior Services should review the accessibility of the county senior citizen centers and provide guidance and assistance as necessary and feasible.*

**Answer:** Senior Centers, when additional funding is available for center renovations, are to prioritize any ADA deficiency to ensure efforts are being made to comply with those requirements. Area Agencies on Aging when monitoring during site visits, do review ADA Compliance and make recommendations. With that, each Senior Center is a 501 3C Corporation that consists of its own Board of Governors. It is their decision on what renovations that can fiscally fund. The Bureau does not have the authority to dictate how they operate. The Bureau would never take any adverse action financially that would negatively impact services to seniors.

The Bureau just learned that it is the recipient of 2024 Congressionally Directed Spending Grant from Senator Manchin where a certain percentage of funds are committed to ADA deficiencies.

### **Issue 4: Bureaus Website Improvements.**

**Recommendation 8:** *The Bureau should consider incorporating the core website elements identified by the legislative auditor to enhance the transparency of the website.*

**Answer:** The Bureau is seeking input from staff as well as samples from seniors to assist us in creating a website that is timely and clear. Along with the

recommendations this framing will allow the Bureau to offer a more robust and intuitive experience when using the site.

Prior, the Bureau stated that website security is a chief concern. West Virginia Interactive has now become Tyler Technology. With the company's merger, we anticipate the development of a website that will incorporate new resource access points such as the No Wrong Door System. Included in the earlier response was the importance of linking between the Bureau and the ADRC. The Bureau will work towards the website becoming the prime digital location for current as well as any new services that become available to West Virginia's senior population.





**WEST VIRGINIA LEGISLATIVE**  
*Performance Evaluation and Research Division*

**1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890**



**John Sylvia  
Director**

July 10, 2023

Jimmy Wriston, P.E.  
Cabinet Secretary/Commissioner of Highways  
West Virginia Department of Transportation  
Building 5  
1900 Kanawha Blvd. E  
Charleston, WV 25305

Dear Cabinet Secretary Wriston:

This is to transmit a draft copy of the Update of the Department of Transportation. This report is tentatively scheduled to be presented during the September 10-12, 2023, interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Friday, July 21, 2023. In addition, we need your written response by noon on Friday, July 28, 2023, 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 304-340-3192 by Thursday, September 7, 2023, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the Legislative Auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

*John Sylvia*  
John Sylvia

Enclosure

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*Joint Committee on Government and Finance*





WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
**Division of Highways**

1900 Kanawha Boulevard East • Building Five • Room 110  
Charleston, West Virginia 25305-0430 • (304) 558-3505

Gregory L. Bailey, P.E.  
Interim  
State Highway Engineer

Jimmy Wriston, P. E.  
Secretary of Transportation  
Commissioner of Highways

July 11, 2023

**Brandon Burton**  
West Virginia Legislative  
Performance Evaluation and Research Division  
Building 1, Room W-314  
Charleston, West Virginia 25305-0610

Dear Mr. Burton:

On behalf of Cabinet Secretary Wriston, thank you for the opportunity to address PERD's concerns with the Legislature's long standing determination that the positions of Secretary of the Department of Transportation and the Commissioner of the Division of Highways may be held by one person. This letter is to address your concerns and to decline the opportunity to have an exit conference. The original recommendation is listed first and the response follows in bold.

**Original Recommendation 1 (2021)**

*The Legislative Auditor recommends the Legislature should consider eliminating the dual-title provision.*

As previously stated in the draft report, this recommendation requires Legislative action. In as much as PERD is an arm of the Legislature and the recommendation was made to it, it appears that the Legislature has indicated its decision on this matter by choosing not to separate the two positions. Neither the Legislative Auditor nor an executive agency have the authority to overturn the Legislatures decision; this matter is moot.

**Original Recommendation 2 (2021)**

*The Legislative Auditor recommends that the Legislature clearly define and distinguish the powers, duties, and responsibilities of the commissioner of highways.*

This recommendation also requires Legislative action. In response to the Legislative Auditor's recommendation, the Department of Transportation, with approval of the Governor, requested that the Legislature provide duties and responsibilities for the Secretary of Transportation. The Legislature agreed and enacted SB610 during the 2022 regular session of the Legislature. (W. Va. §17-2-1)

As explained in former Secretary Byrd's response, the powers and duties of the Commissioner of Highways are very clearly specified in W.Va. Code §17-2A-8 which currently lists 40 specific duties of the Commissioner of Highways. Additional authority

E.E.O./AFFIRMATIVE ACTION EMPLOYER

**Brandon Burton, PERD**

**Page 2**

**July 11, 2023**

and responsibilities are specified in other parts of Chapter 17 such as W.Va. Code 17-2D-1 et seq. Highway Design-Build Program and W.Va. Code 17-16-1 et seq. Obstructions.

This issue is also moot as the Legislature has provided general and specific duties and authority for the Secretary of Transportation and the Commissioner of Highways.

Both of the recommendations in the proposed report require legislative action. It is our contention that the Legislature has responded to both recommendations and the audit should be concluded.

Sincerely,



**Rita A. Pauley, Esq.**  
**Assistant Commissioner of Highways**

**JW:Rs**

**cc: John Sylvia, PERD Director**

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

**1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890**

**John Sylvia  
Director**



July 11, 2023

Mallory Mount, Chairperson  
Board of Licensed Dietitians  
101 Dee Drive, Suite D  
Charleston, WV 25311

Dear Chairperson Mount:

This is to transmit a draft copy of the update to the 2021 regulatory board review of the Board of Licensed Dietitians. This report is tentatively scheduled to be presented during the September 10 through 12 interim meetings of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by July 21, 2023. In addition, we need your written response by noon on July 28, 2023, 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 304-340-3192 by Thursday, September 7, 2023, to make arrangements.

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Sincerely,  
*John Sylvia*  
John Sylvia

Enclosure

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*Joint Committee on Government and Finance*



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*Performance Evaluation and Research Division*

1900 Kanawha Blvd. East  
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**John Sylvia**  
Director

September 21, 2023

Cheryl Henry, Executive Director  
Board of Examiners in Counseling  
815 Quarrier St, Ste 212  
Charleston, WV 25301

Dear Director Henry:

This is to transmit a draft copy of the update to the June 2021 regulatory board review of the Board of Examiners in Counseling. This report is tentatively scheduled to be presented during the October 15-17, 2023 interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Monday, September 25, 2023. In addition, if you wish to provide a written response we need it by Thursday, October 5, 2023 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 304-340-3192 by Thursday, October 12, 2023 to make arrangements.

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Sincerely,

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

John Sylvia





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*Performance Evaluation and Research Division*

1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890



**John Sylvia**  
Director

July 10, 2023

Veronica Cummings, Executive Director  
West Virginia Nursing Home Administrators Licensing Board  
PO Box 522  
Charleston, WV 25213

Dear Director Cummings:

This is to transmit a draft copy of the Update of the Nursing Home Administrators Board. This report is tentatively scheduled to be presented during the September 10-12, 2023, interim meeting of the Joint Committee on Government Organization. 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 answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Friday, July 21, 2023. In addition, we need your written response by noon on Friday, July 28, 2023, 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 304-340-3192 by Thursday, September 7, 2023, to make arrangements.

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Sincerely,

*John Sylvia*  
John Sylvia

Enclosure

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*Joint Committee on Government and Finance*



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## Appendix B

### Objective, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this follow-up review of all its reports issued in calendar year 2021, as directed by the legislative auditor pursuant to West Virginia Code §4-2-5. This follow-up review includes the following agencies:

- The Office of the Chief Medical Examiner
- Child Protective Services
- The General Services Division
- The Board of Social Work Examiners
- The Purchasing Division
- The Board of Real Estate Appraisers
- The Bureau of Senior Services
- The Hospital Finance Authority
- The Nursing Home Administrators Licensing Board
- The Board of License Dietitians
- The Board of Examiners in Counseling
- The Department of Transportation

#### Objective

The objective of this update is to determine the level of compliance for each agency reviewed regarding the 64 recommendations made in PERD reports issued in calendar year 2021.

#### Scope

The scope of this audit is limited to the agency's activities necessary to respond to the recommendations made in each report issued in 2021. The period covers the agencies' level of compliance and legislative action since the reports were issued in 2021.

#### Methodology

PERD requested that each agency provide a written response on how it responded to their respective recommendations made in the reports issued in 2021. PERD reviewed each agency's responses and requested additional documentation, when necessary. In several instances, the agency's responses warranted confirmation by PERD using corroborating information, and in some cases PERD needed to update financial data. PERD also requested a legal opinion from the Legislative Services Division within the Office of the Legislative Auditor regarding the follow-up to the special report on the Office of the Chief Medical Examiner. Additionally, agency finances were analyzed for the updates on the Bureau of Senior Services, the Board of Counseling, and the General Services Division utilizing reports from the State's Enterprise Resource System, WVOASIS. Information was also obtained from the *West Virginia Code* and Code of State Rules, when necessary for corroboration purposes.

We conducted this performance audit in accordance with generally accepted government auditing standards, except for performing audit risk and fraud risk assessments because these had been done in the

original audits and auditors relied on them given the limited nature of the update reviews. No elements of a finding were identified since the findings had already been established in the original audits and no appropriate criteria exist since state agencies may disagree with PERD recommendations and agencies are not required by law to adhere to them.



WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR  
**PERFORMANCE EVALUATION & RESEARCH DIVISION**

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