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SPECIAL REPORT

REGISTRATION STUDY FOR CORPORATIONS AND CHARITABLE ORGANIZATIONS

AUDIT OVERVIEW

The State Is Providing Grants to Organizations That Are Not Properly Registered With the Secretary of State as a Corporation and/or a Charitable Organization



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WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

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

Aaron Allred
Legislative Auditor

John Sylvia
Director

Denny Rhodes
Research Manager

Jared Balding
Referencer

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EXECUTIVE SUMMARY

Issue 1: The State Is Providing Grants to Organizations That Are Not Properly Registered With the Secretary of State as a Corporation and/or a Charitable Organization.

Statute requires for-profit and non-profit corporations doing business within the state to register with the West Virginia Secretary of State. Additionally, non-profit corporations that are charitable organizations are required to file an additional annual registration statement with the Secretary of State. In order to determine whether corporations receiving grants from the State are properly registering with the Secretary of State, the Legislative Auditor reviewed all entities that have received grant money from the State from July 1, 2010 – August 25, 2010. The objective is two-fold; one is to determine whether grantees of state funds are properly registered with the Secretary of State as a profit or non-profit corporation, and two is to determine whether those registered as non-profit corporations are properly registered as charitable organizations

The final list used for the study included 358 organizations that received grant money from the State. Total payments were in the amount of \$22,640,198. Analysis of the grantees found that 106 or 30 percent were not registered as corporations with the Secretary of State. It is not known at this time whether each of the 106 that are not registered are out of compliance, but with many it is clear that they should be registered. For example, the organization has “incorporation” in its title. Furthermore, there were several organizations that were at one time registered with the Secretary of State, but the corporate registration has been revoked, because they have not stayed current with their annual report filings and fees.

The second objective of this study was to determine whether the non-profit corporations were properly registered as charitable organizations, if necessary. Several types of charitable organizations are exempt such as educational institutions and religious organizations. Additionally, charitable organizations do not have to register with the Secretary of State if it receives less than \$25,000 during a calendar year and does not employ a professional solicitor or fund-raiser. A list of organizations reporting income of \$25,000 or more was provided to the Secretary of State’s office. **With the exception of three, the Secretary of State responded that based on the copies of the Form 990’s, all of**

Statute requires for-profit and non-profit corporations doing business within the state to register with the West Virginia Secretary of State. Additionally, non-profit corporations that are charitable organizations are required to file an additional annual registration statement with the Secretary of State.

Analysis of the grantees found that 106 or 30 percent were not registered as corporations with the Secretary of State.

the organizations or 35 percent of organizations in the sample, should also be registered as a charitable organization. Thus, the State has given over \$2.2 million to charitable organizations that are not properly registered. The Secretary of State also identified seven organizations that at one time were registered as a charitable organization but let their registration expire. The Secretary of State stated to the Legislative Auditor that all organizations will be notified of their need to register. The Legislative Auditor will follow up at a later date to determine the outcome of the Secretary of State's notifications

The State has given over \$2.2 million to charitable organizations that are not properly registered.

At a minimum, the State should ensure that it is not granting monies to organizations that are not legally registered as corporations to do business in the state, and/or organizations that are not legally registered as charitable organizations. Thus, the Legislative Auditor recommends that the Legislature consider requiring state agencies to verify whether grantees are properly registered with the Secretary of State's office. This can be done by checking the Secretary of State's online database or directly contacting the Secretary of State's office. The Legislature could also consider increasing the enforcement powers of the Secretary of State's office to include granting authority to enforce corporate registration. Furthermore, the Secretary of State should follow up on organizations whose registrations are revoked or expire to determine whether they are still conducting business or raising funds. The Legislative Auditor recommends that the Secretary of State determine whether organizations are still in operation one year following revocation or expiration.

The State should ensure that it is not granting monies to organizations that are not legally registered as corporations to do business in the state, and/or organizations that are not legally registered as charitable organizations.

Recommendations

1. *The Legislative Auditor recommends that the Legislature consider requiring state agencies to verify whether grantees are properly registered with the Secretary of State.*
2. *The Legislative Auditor recommends that the Legislature consider amending statute to provide the Secretary of State with authority to enforce corporate registrations, and increased authority to enforce charitable registration.*
3. *The Legislative Auditor recommends that on the one year anniversary of an organization's registration being revoked or expiring, the Secretary of State should determine whether that organization is still in operation or fund-raising.*

OBJECTIVE, SCOPE & METHODOLOGY

This study of corporate and charitable organization registration with the Secretary of State is authorized by §4-2-5 of the West Virginia Code, as amended.

Objective

The objective for this study was two-fold; the first was to determine whether grantees of state funds were properly registered with the Secretary of State as a profit or non-profit corporation, and the second was to determine whether those registered as non-profit corporations were properly registered as charitable organizations.

Scope

This study focused on organizations receiving state grant funds from July 1, 2010 – August 25, 2010. The determination of whether organizations were in compliance with the statutory requirement for corporations to register was made in September and October 2010 by the Legislative Auditor with the assistance from the Secretary of State's office. Notification that the WVSU Metro Area Agency on Aging Inc., had its corporate registration revoked on November 1, 2010 was received by the Legislative Auditor on November 9, 2010. Notification that Senior Life Services of Morgan County had become in compliance with its registration was received on December 10, 2010. The determination of whether charitable organizations were in compliance with the statutory requirement to register was made in September and October 2010 by the Legislative Auditor with final verification from the Secretary of State's office on November 9, 2010. Organizations may have become in compliance with registration requirements at the time of this report's publishing.

Methodology

The analysis for this study was conducted from a list of grant payments made by the State from July 1, 2010 through August 25, 2010 that were assigned object "083 Grants and Scholarships" in WVFIMS. The list was provided by the West Virginia State Budget Office. Payments to individuals, counties, municipalities, and other public entities were removed for a final list of 358 organizations. The Secretary of State's online database was used to assist in determining compliance with registration requirements, and staff from the Secretary of State's office provided further assistance.

ISSUE 1

The State Is Providing Grants to Organizations That Are Not Properly Registered With the Secretary of State as a Corporation and/or a Charitable Organization.

Issue Summary

West Virginia Code requires organizations to register with the Secretary of State if it is a for-profit or non-profit corporation. A separate registration is required if it is a charitable organization. The Legislative Auditor reviewed organizations receiving state grant funds from July 1, 2010 – August 25, 2010 to determine whether they were in compliance with statute. Thirty (30) percent of the 358 organizations granted money by the State were not registered as corporations, and thirty-five (35) percent of the 203 non-profit organizations were not registered as charitable organizations. The Secretary of State’s office plans to notify the 71 charitable organizations of the requirement to register. The Legislature requires registration with the Secretary of State as a measure to protect citizens from fraudulent activity from corporations, and to help the public determine the credibility and worthiness of contributing to a charitable organization. Thus, the State should ensure that it is not granting monies to organizations that are not legally registered as corporations to do business in the state, and/or organizations that are not legally registered as charitable organizations. The Legislative Auditor recommends that the Legislature consider requiring state agencies to verify whether grantees are properly registered with the Secretary of State, and should also consider increasing the Secretary of State’s enforcement powers for organizations not registered as a corporation.

The West Virginia Business Corporation Act and the West Virginia Non-profit Corporation Act require for-profit and non-profit corporations doing business within the state to register with the West Virginia Secretary of State. The Solicitation of Charitable Funds Act requires non-profit corporations that are charitable organizations to file an additional annual registration statement with the Secretary of State.

Statute Requires All Corporations to be Registered with the Secretary of State’s Office

The West Virginia Business Corporation Act – West Virginia Code §31D-1-101 et. seq. – and the West Virginia Non-profit Corporation Act – West Virginia Code §31E-1-101 et. seq. – require for-profit and non-profit corporations doing business within the state to register with the West Virginia Secretary of State. Additionally, West Virginia Code §29-19-1 et. seq. – the Solicitation of Charitable Funds Act - requires non-profit corporations that are charitable organizations to file an additional annual registration statement with the Secretary of State.

The Legislative Auditor Reviewed Corporations to Determine Whether They Were Properly Registered With the Secretary of State

In order to determine whether corporations receiving grants from the State are properly registering with the Secretary of State, the Legislative Auditor reviewed all entities that have received grant money from the State from July 1, 2010 – August 25, 2010. **Essentially, this review would serve as a sample of corporations conducting business in West Virginia, and give some indication as to whether statute is being followed.** The objective is two-fold; one is to determine whether grantees of state funds are properly registered with the Secretary of State as a profit or non-profit corporation, and two is to determine whether those registered as non-profit corporations are properly registered as charitable organizations.

The final list used for the study included 358 organizations that received grant money from the State. Total payments were in the amount of \$22,640,198.

The Legislative Auditor requested from the State Budget Office all grant payments in FY 2011 up to August 25, 2010. Payments assigned the object code – 083 Grants and Scholarships were reviewed. The original list included over 1,400 different grantees, but included payments to individuals, counties, municipalities, and other public entities. For the purposes of this study, the interest is only in corporations. Thus, the following were removed from the initial list:

1. Public entities/schools/educational institutions
2. Individuals
3. Public libraries

The final list used for the study included 358 organizations that received grant money from the State. Total payments were in the amount of \$22,640,198. Table 1 shows a breakdown of the organizations that were identified as profit or non-profit. Analysis of the grantees found that 106 or 30 percent were not registered as corporations with the Secretary of State.

Table 1 Organizations Receiving State Grant Funds FY 2011*		
Organization Type	Number of Grantees	Amount of State Grants Received
For Profit Corporation	49	\$12,841,293
Non-profit Corporation	203	\$7,019,003
Not registered	106	\$2,779,902
Total	358	\$22,640,198
<i>Source: West Virginia Budget Office and Secretary of State's Office *July 1, 2010 - August 25, 2010</i>		

The Legislative Auditor initially checked the business organization database on the Secretary of State’s website to determine whether a corporation was properly registered. A listing of those organizations that could not be found in the database was then provided to the Secretary of State for verification that the organization was indeed not registered. It is not known at this time whether each of the 106 that are not registered are out of compliance, but with many it is clear that they should be registered. For example, the organization has “incorporated” in its title. Furthermore, there were several organizations that were at one time registered with the Secretary of State, but the corporate registration has been revoked, because they have not stayed current with their annual report filings and fees. Table 2 is a list of the entities that have had their corporate registrations revoked, yet are still not only conducting business in the state, but are receiving grant monies from the State. It must be noted that in addition to registering with the Secretary of State, all organizations conducting business in West Virginia must have a current business license with the State Tax Department. The Legislative Auditor did not confirm if these organizations had registered with the Tax Department.

There were several organizations that were at one time registered with the Secretary of State, but the corporate registration has been revoked, because they have not stayed current with their annual report filings and fees.

Table 2 Organizations Receiving Grants With Revoked Corporate Registrations (July 1, 2010 – August 25, 2010)		
Grantee	Registration Type	Year Registration Revoked
Arts Monongahela, Incorporated	Non-profit	2008
Barbour County Fair Association, Incorporated	Non-profit	2009
Boone County Community Organization	Non-profit	2009
Clay County Business Development Authority	Non-profit	1997
Graham House Preservation Society, Incorporated	Non-profit	2009
Greater Bluefield Chamber of Commerce, Incorporated	Non-profit	2006
Middleway Conservancy Association, Incorporated	Non-profit	2001
Rock Forge Neighborhood House, Incorporated	Non-profit	2009
Senior Life Services of Morgan County	Non-profit	2009*
WV Center for Civic Life	Non-profit	2006
WVSU Metro Area Agency on Aging, Incorporated	Non-profit	2010**
<i>Source: WV State Budget Office and Secretary of State's Office</i> * Organization became in compliance on November 8, 2010 after it had received state grant money. **Organization received state grant money before its registration was revoked on November 1, 2010.		

The Secretary of State currently does not have any enforcement powers in requiring corporations to register. The Secretary of State can, upon request, notify an organization that it has been notified that the organization may be operating as a corporation and if so, then to be in compliance they would need to complete appropriate registration forms with the Secretary of State and the State Tax Department. According to the Secretary of State's office:

The Secretary of State currently does not have any enforcement powers in requiring corporations to register.

Without proper registration with the Office of Secretary of State and other State regulatory agencies, citizens may enter into contracts, agreements, etc. with fraudulent organizations thereby not receiving the services that they expected as well as being defrauded out of their money for services not rendered.

Thus, the Legislative Auditor will provide a final list of the organizations that do not have a corporate registration to the Secretary of State's office for it to notify the organizations of the registration requirements. Additionally, the Legislative Auditor recommends that the Legislature consider amending statute to provide the Secretary of State with authority to enforce corporate registrations.

Seventy-one Charitable Organizations Were Not Registered With the Secretary of State's Office

The second objective of this study was to determine whether the non-profit corporations were properly registered as charitable organizations, if necessary. West Virginia Code §29-19-5 requires all charitable organizations which solicit contributions, donations or grants within the State to file an annual registration statement with the Secretary of State. Several types of charitable organizations are exempt such as:

- Educational institutions
- Stated contributions raised for the relief of an individual, whereas all contributions are turned over to that person
- Non-profit hospitals and licensed nursing homes
- Organizations that solicit exclusively within its membership
- Churches, synagogues, and other religious organizations

Additionally, charitable organizations do not have to register with the Secretary of State if it receives less than \$25,000 during a calendar year and does not employ a professional solicitor or fund-raiser. Similar to the review of corporate registration, the Legislative Auditor reviewed the Secretary of State's online database to determine if an organization was properly filing an annual registration statement. The list of charitable organizations that could not be found was provided to the Secretary of State's Office for verification. Upon verification that the organizations were not registered as charities with the Secretary of State, the Legislative Auditor searched two websites (www.guidestar.org and nccs.urban.org) to review IRS 990 forms for each of these organizations. Form 990 is used by tax-exempt organizations and non-profit organizations to provide the Internal Revenue Service with annual financial information. A list of

West Virginia Code §29-19-5 requires all charitable organizations which solicit contributions, donations or grants within the State to file an annual registration statement with the Secretary of State.

organizations reporting income of \$25,000 or more was provided to the Secretary of State’s office. **With the exception of three, the Secretary of State responded that based on the copies of the Form 990’s, all of the organizations or 35 percent of organizations in the sample, should also be registered as a charitable organization.** Thus, the State has given over \$2.2 million to charitable organizations that are not properly registered. A list of the organizations that the Secretary of State has notified of the registration requirements based on the Form 990 is in Table 3. It must be noted that all of the organizations were registered as non-profit corporations.

The State has given over \$2.2 million to organizations that are not properly registered.

Table 3 Charitable Organizations Not Registered With the Secretary of State	
Organization	Amount Received from State
25045 A NEW CLENDENIN INC	\$19,209.00
APPALACHIAN CTR INDEPENDENT LIVING INC	\$198.00
ARTS RESOURCES FOR THE TRI STATE	\$4,500.00
ATHENS VFD	\$1,000.00
BIG OTTER VFD	\$1,666.00
BLENNERHASSETT VFD	\$1,459.00
BLUESTONE HEALTH ASSOCIATION INC	\$5,320.00
BRADSHAW VFD INC	\$11,500.00
BUSINESS DEVELOPMENT CORP OF N PANHANDLE	\$15,846.00
CABIN CREEK HEALTH CENTER	\$24,103.00
CAPITOL MARKET INC	\$22,800.00
CENTRAL CITY MARKET CORP	\$11,875.00
CHARLESTON CONVENTION BUREAU	\$29,781.40
CHEMICAL ALLIANCE ZONE INC	\$12,500.00
CLARKSBURG MISSION	\$8,310.00
COALFIELD COMMUNITY ACTION PARTNERSHIP INC	\$17,000.00
CONVENTION & VISITORS BUREAU OF MARION CO	\$13,086.83
EASTERN WV COMMUNITY ACTION AGENCY INC	\$33,068.00
EDUCATION ALLIANCE BUSINESS & COMMUNITY	\$5,000.00
ELK DISTRICT VFD	\$2,000.00
GILMER CO ECONOMIC DEVELOPMENT ASSOCIATION	\$32,640.00
HANCOCK BROOKE CO CHILD ADVOCACY	\$5,832.50

Table 3
Charitable Organizations Not Registered With the Secretary of State

Organization	Amount Received from State
HARPERS FERRY HISTORIC TOWN FOUNDATION	\$4,302.75
HISTORIC BEVERLY PRESERVATION INC	\$20,544.00
HUNTINGTON SYMPHONY ORCHESTRA ASSOCIATION	\$90,250.00
JACKSON CO COMM ON AGING	\$5,191.53
JANE LEW VFD	\$1,500.00
KINGWOOD MAIN STREET PROGRAM INC	\$4,800.00
LEWIS CO FAIR ASSOCIATION	\$3,325.00
LINCOLN CO FAIR & FESTIVALS INC	\$12,350.00
MAIN STREET FAIRMONT INC	\$44,223.00
MAIN STREET MARTINSBURG INC	\$4,323.48
MARION CO CHILD ADVOCACY CENTER INC	\$3,652.20
MARION REGIONAL DEVELOPMENT CORP	\$32,640.00
MARSHALL UNIV RESEARCH CORP	\$270,114.12
MASON CO ACTION GROUP INC	\$6,568.40
MCARTS FINE ARTS ORGANIZATION INC	\$18,050.00
MCDOWELL CO ECONOMIC DEV AUTHORITY	\$2,375.00
MERCER CO OPPORTUNITY INDUSTRIES	\$5,977.83
MOUNTAINEER FOOD BANK INC	\$15,311.50
N CENTRAL WV RECYCLING CO-OP INC	\$7,500.00
NATL COMMITTEE FOR THE NEW RIVER	\$30,000.00
NEW HAVEN & COMMUNITY VFD INC	\$500.00
NEW RIVER CVB	\$13,695.03
NEW RIVER HEALTH ASSOCIATION INC	\$50,921.00
NICHOLAS COUNTY FAMILY RESOURCE NETWORK	\$2,310.55
NORTHERN GREENBRIER HEALTH CLINIC INC	\$1,520.00
NORTHERN PANHANDLE RESOURCE CONSERVATION & DEV	\$5,000.00
OHIO CO COUNTRY FAIR INC	\$8,550.00
OP SHOP INC	\$9,893.08
PARTNERSHIP OF AFRICAN AM CHURCHES	\$3,766.04
PINCH VFD	\$1,749.00
RANDOLPH CO CONVENTION & VISITORS BUREAU	\$4,021.07

Table 3 Charitable Organizations Not Registered With the Secretary of State	
Organization	Amount Received from State
REACH FAMILY RESOURCE CENTER INC	\$12,265.31
REGIONAL CONTRACTING ASSIST CENTER	\$200,000.00
ROANE CO FAMILY HEALTH CARE	\$8,087.00
RONCEVERTE DEVELOPMENT CORP	\$14,230.00
ROWLESBURG REVITALIZATION COMMITTEE INC	\$1,900.00
SOUTH CHARLESTON VISITORS & CONVENTION BUREAU	\$9,500.00
SUMMERSVILLE CVB	\$16,497.00
TOP OF WV CVB	\$17,555.58
TRI CO HEALTH CLINIC INC	\$130,870.00
TRI RIVER TRANSIT AUTHORITY INC	\$25,492.18
TUCKER COUNTY CVB	\$14,730.26
UNLIMITED FUTURE INC	\$500.00
UPSHUR CO SR CITIZEN OPP CTR INC	\$7,868.00
WEIRTON TRANSIT CORP	\$495.96
WETZEL CO COMMITTEE ON AGING	\$7,545.60
WV CHILD ADVOCACY NETWORK	\$3,615.88
WVSU METRO AREA AGENCY ON AGING INC	\$482,506.40
WVU RESEARCH CORP	\$342,668.42
<i>Source: WV Budget Office and Secretary of State's Office</i>	

As with the review of corporate registrations, some charitable organizations had expired registrations. The Secretary of State identified seven organizations that at one time were registered as a charitable organization but let their registration expire. Table 4 lists these entities.

**Table 4
Charitable Organization Grantees Without a Current Annual Registration Statement***

Grantee	Year Expired
Business Development Corporation of Northern Panhandle	2009
Capitol Market, Inc.	2010
Main Street Martinsburg, Inc.	2007
Marion County Child Advocacy Center, Inc.	2009
Mountaineer Food Bank, Inc.	2010
Ronceverte Development Corporation	2009
Unlimited Future, Inc.	2005
<i>Source: WV Budget Office and Secretary of State's Office *At time of review – November 9, 2010</i>	

West Virginia Code §29-19-15 authorizes the Secretary of State to investigate any charitable organization that has not registered as required. As a result of this study, the Secretary of State's office informed the Legislative Auditor that the:

...(Secretary of State) will notify each organization of their need to register since their (contributions) exceeds the \$25,000 threshold that the Code allows.

The Legislative Auditor will follow up at a later date to determine the outcome of the Secretary of State's notifications. Additionally, the Legislative Auditor could not find the Form 990's of 29 organizations. Three of these organizations received over \$25,000 from the State alone. Thus, the Legislative Auditor will also follow-up on the 29 organizations from which Form 990 documents could not be found.

Statute states that the Solicitation of Charitable Funds Act was created to protect the citizens of West Virginia by requiring full public disclosure. This type of information is important to the public to determine the credibility and worthiness of contributing to a charitable organization.

Annual Registration Statements Filed With the Secretary of State's Office Protects Citizens of the State

Statute states that the Solicitation of Charitable Funds Act was created to protect the citizens of West Virginia by requiring full public disclosure. This type of information is important to the public to determine the credibility and worthiness of contributing to a charitable

organization. The Secretary of State's office outlined as follows the harm to the State and its citizens by a charitable organization not filing an annual statement:

Organizations failing to file proper registration and meet filing requirements may mean that it is an organization that defrauds unsuspecting individuals out of their money. After filing their registration with the Secretary of State's Office their financial information is available on the Secretary of State's website indicating how much money goes toward the actual cause, administrative costs, or fundraising costs.

The State should ensure that it is not granting monies to organizations that are not legally registered as corporations to do business in the state, and/or organizations that are not legally registered as charitable organizations.

Possible Solutions to Improve the Registration of Organizations

At a minimum, the State should ensure that it is not granting monies to organizations that are not legally registered as corporations to do business in the state, and/or organizations that are not legally registered as charitable organizations. Thus, the Legislative Auditor recommends that the Legislature consider requiring state agencies to verify whether grantees are properly registered with the Secretary of State's office. This can be done by checking the Secretary of State's online database or directly contacting the Secretary of State's office.

The Legislature could also consider increasing the enforcement powers of the Secretary of State's office to include granting authority to enforce corporate registration. Furthermore, the Legislature could consider the power to serve "cease and desist" orders to organizations that the Secretary of State determines should be registered either as corporations or as charitable organizations. This power could be similar to the authority given to the West Virginia Tax Department for businesses that are operating without an active business license. Additionally, the Secretary of State should follow up on organizations whose registrations are revoked or expired to determine whether they are still conducting business or raising funds. The Legislative Auditor recommends that the Secretary of State determine whether organizations are still in operation one year following revocation or expiration.

Conclusion

West Virginia Code requires organizations operating as a corporation to register as either a for-profit or non-profit with the Secretary of State. Additionally, statute requires all organizations organized for charitable purposes that solicit donations, contributions, or grants, and is not eligible for an exemption to be registered. The Legislative Auditor has identified that corporations and charitable organizations are not properly registering with the Secretary of State. While the severity of this issue is not known, the Legislative Auditor found that the State granted monies to a notable number of organizations that are not properly registered. Thirty (30) percent of the 358 organizations granted money by the State from July 1, 2010 to August 25, 2010 were not registered as corporations. Thirty-five (35) percent of the 203 non-profit organizations were not registered as charitable organizations, and the Secretary of State's office determined that they should have been. The Legislature requires registration with the Secretary of State as a measure to protect citizens from fraudulent activity from corporations and charitable organizations. Thus, the Legislature and Secretary of State should take action to correct this problem.

Thirty (30) percent of the 358 organizations granted money by the State from July 1, 2010 to August 25, 2010 were not registered as corporations. Thirty-five (35) percent of the 203 non-profit organizations were not registered as charitable organizations, and the Secretary of State's office determined that they should have been.

Recommendations

1. *The Legislative Auditor recommends that the Legislature consider requiring state agencies to verify whether grantees are properly registered with the Secretary of State.*
2. *The Legislative Auditor recommends that the Legislature consider amending statute to provide the Secretary of State with authority to enforce corporate registrations, and increased authority to enforce charitable registration.*
3. *The Legislative Auditor recommends that on the one year anniversary of an organization's registration being revoked or expiring, the Secretary of State should determine whether that organization is still in operation or fund-raising.*



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

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

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