

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

Records Management and Preservation Board

**The Records Management and
Preservation Board Has Not Had
Time to Provide Function For
Which It Was Created**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

December 2001

PE 01-26-225

JOINT COMMITTEE ON GOVERNMENT OPERATIONS

House of Delegates

Vicki V. Douglas, Chair
Earnest (Earnie) H. Kuhn, Vice Chair
Scott G. Varner
Larry Border
Otis Leggett

Senate

Edwin J. Bowman, Chair
Billy Wayne Bailey Jr., Vice Chair
Oshel B. Craigo
Sarah M. Minear
Vic Sprouse

Citizen Members

Dwight Calhoun
John A. Canfield
James Willison
W. Joseph McCoy
(Vacancy)

Aaron Allred, Legislative Auditor
Office of the Legislative Auditor

John Sylvia, Director
Performance Evaluation and Research Division

Denny Rhodes, Senior Research Analyst
Jill Mooney, Research Analyst

December 2001

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

Records Management and Preservation Board

**The Records Management and
Preservation Board Has Not Had
Time to Provide Function For
Which It Was Created**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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



John Sylvia
Director

December 9, 2001

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

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

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Records Management and Preservation Board*, which will be presented to the Joint Committee on Government Operations on Sunday, December 9, 2001. The issue covered herein are: "*The Records Management and Preservation Board has not had time to provide function for which it was created.*"

A draft copy of the report was provided to the agency on November 30, 2001. An exit conference was held on December 4, 2001. We received the agency response on December 5, 2001. Let me know if you have any questions.

Sincerely,

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

John Sylvia

JS/aml

Joint Committee on Government and Finance

TABLE OF CONTENT

Executive Summary	3
Objective, Scope and Methodology	5
Issue 1: The Records Management and Preservation Board Has Not Had Time to Provide Function For Which It Was Created	7
APPENDIX A: Transmittal Letter to Agency	11
APPENDIX B: Agency Response	15

Executive Summary

The Records Management and Preservation Board was created within the Division of Culture and History by the Legislature in the 2000 legislative session. This is the first review of the Board.

Issue 1: The Records Management and Preservation Board Has Not Had Time to Provide Function For Which It Was Created.

The Records Management and Preservation Board was established to advise and assist in establishing county level record management and preservation. The manner in which some public records are kept threatens their continued existence and in many counties in the State there is a lack of space to keep records. With Board member appointments being confirmed in April 2001 and the Board meeting once, in June 2001, there has been limited time to begin the process of analyzing the current status of all counties to make an informed decision on how and in what forms counties should maintain records. Rules for a system for records management and preservation for county governments were to have been proposed by July 1, 2001. These rules have not been submitted. Rules establishing the grants program for counties to manage and preserve records were proposed timely. The Board is also required to conduct a study of state executive agency records management and preservation needs of by April 1, 2002. This study has not been initiated, and may not be completed by the deadline.

Review Objective, Scope and Methodology

This preliminary performance review of the Records Management and Preservation Board was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10, Section 5 of the West Virginia Code. A preliminary performance review is to determine the goals and objectives of an agency and to determine the extent to which the agency is meeting those goals and objectives.

The preliminary performance review of the Board covers a period from its creation during the 2000 legislative session through November 2001. Information compiled in this report has been acquired from the West Virginia Code, interviews with the Board chairman and staff, minutes and correspondence, and expenditure schedules.

Issue 1: The Records Management and Preservation Board Has Not Had Time to Provide Function For Which It Was Created.

During the regular 2000 legislative session, the Legislature created the Records Management and Preservation Board (§5A-8-15) within the Division of Culture and History. The Board was established to advise and assist in establishing county level record management and preservation. The manner in which some public records are kept threatens their continued existence and in many counties in the state there is a lack of space to keep records. The creation of this Board was the first step in recognizing these concerns and the role this Board was created to fill is necessary before records become so deteriorated that they are unusable or before counties begin to take steps, such as destroying records, to resolve their problems without any unified or compatible plan with other counties or the state. With the first Board members not being appointed until December 2000 by an outgoing Governor, and not being confirmed by the Senate until April 2001, **the Board has had little time to begin the process of analyzing the current status of all the counties to make an informed decision on how and in what forms counties should maintain records.** The Board did not meet until June 8, 2001, and has not met since.

The Board is comprised of nine members, including three ex officio members: the Commissioner of Culture and History, who serves as Chairman; the Administrator of the Supreme Court of Appeals; and the Administrator of the Governor's Office of Technology. The other six members are appointed by the Governor, with Senate consent: three are to be county elected officials: one clerk of a county commission, one circuit clerk and one county commissioner; the final three members are a county prosecuting attorney, an attorney with experience in real estate and mineral title examination, and a representative of a local historical or genealogical society. The staff consists of the Director of the Archives and History section of the Division of Culture and History.

County clerks are authorized to charge and collect a one dollar fee for every document containing less than ten pages filed for recording and an additional one dollar fee for each additional ten pages. Each month the clerk is to deposit all fees collected into the "Public Records and Preservation Revenue Account". The budget for the fund includes Board member expenses and county grants for records management, access, and preservation purposes. Beginning in fiscal year 2002 expenditures are to come from collections rather than any appropriations from the Legislature. Previously, Board expenditure's could only be used from Legislative appropriations. The fund's revenues for fiscal year 2001 were \$393,761.

Board Statutory Mandates

In pursuit of its mission to *advise and assist in establishing local level record management and preservation*, the Board was required to propose rules by July 1, 2001, that would establish a system of records management and preservation for county governments with provisions for establishing a program of grants to county governments for making records management and preservation uniform.

The Board complied with part of this statutory requirement on June 25, 2001. Rules were proposed and filed with the Secretary of State's Office, and the Legislative Rule-Making Review Committee that established a grants program. The rules did not contain provisions for establishing a system of records management and preservation for county governments. According to a letter written to the Legislative Auditor's Office by the Board's staff, the Board did not fully comply because:

SB 592 as passed failed to include the time required by the board to study the numerous records issues and needs and draft rules for a uniform comprehensive program to address these. It failed to provide the time necessary for this board to build consensus among its peers... The board at its meeting on 8 June discussed its options and very responsibly stated it could not develop a comprehensive uniform records management program for county governments without a full understanding of the county records management needs.

Statute also requires the Board to conduct a study of the records management and preservation needs of state executive agencies by April 1, 2002. Concerning this mandate the Board's staff states:

The board's focus has been on the county records mandate and it has not demonstrated any interest in taking away from this with work on its second mandate, a study of the state record needs.

Further the Board chairman states:

The Board members, as county level officials, may not have the experience to fulfill the second mandate of the Board, conducting a study of state executive agency record preservation needs by April 1, 2002.

From these statements the Legislative Auditor concludes that the Board is not yet prepared to begin work on the study that would fulfill its second mandate timely and that the Board members may not have the background to determine if a need for uniform records management exists for state agencies. The Legislative Auditor is unable to currently conclude whether or not state executive agencies have needs that would be unique from those of county level records needs. When the Board causes the study of the records management and preservation needs of state executive agencies to occur, the study results may indicate a need for Board members to be added who may have more particular knowledge of state needs.

Conclusion

The Board was created to advise and assist in establishing county level records management so that records could be preserved in a usable form, since space for records could become problematic for counties and the state. With the Board members not being confirmed until April

2001, the Board has had little time to begin the process of analyzing the current status of all the counties to make an informed decision on how and in what forms counties should maintain records. The Legislative Auditor feels that the Board could use more time to complete its statutory mandates. **In addition, the Legislative Auditor feels that the Board should make every effort to complete and propose rules for the preservation of county records and to study the need for the promulgation of rules for state agencies as required by §5A-8-15(h).**

Recommendation 1:

The Legislature should consider continuing the Records Management and Preservation Board in order to complete implementation of the Board's statutory mandates.

Recommendation 2:

The Board should consider proposing amendments to its governing statute to the Legislature regarding any concerns it may have about the Board composition or time frames.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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



John Sylvia
Director

November 30, 2001

Kay Goodwin, Cabinet Secretary
Department of Education and the Arts
Building 5, Room 205
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Ms. Goodwin:

This is to transmit a draft copy of a Preliminary Performance Review of the Records Management and Preservation Board. This report is scheduled to be presented at the Sunday, December 9, 2001 interim meeting of the Joint Committee on Government Operations. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have. We would like to schedule an exit conference on Tuesday, December 4, 2001 at 10 a.m. to discuss the report with you if that is convenient. Please contact us if this time is not convenient. We would appreciate your written response by noon on Friday, December 7, 2001 in order for it to be included in the final report.

Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/aml

Enclosure

c: Nancy Herholdt, Commissioner
Division of Culture and History

_____ *Joint Committee on Government and Finance* _____

APPENDIX B
Agency Response



WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY

Memo

To: John Sylvia

From: Nancy Herholdt
Commissioner *Nancy Herholdt*

Date: 5 December, 2001

Subject: Draft Report on Records Management & Preservation Board

The Preliminary Performance Review of the Records Management and Preservation Board draft addresses and reiterates points of discussion raised during our briefing with staff and in our written comments regarding efforts of the board in complying with its legislative mandate.

As the draft report arrives at our general conclusion that more time is necessary to conduct a study of the needs of county records and propose solutions, and that the board's expertise may require the addition of appropriate and qualified expertise to address state records needs and solutions, we would have to state that we were in agreement with its findings and recommendations.

R E C E I V E D
DEC 05 2001

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

THE CULTURAL CENTER • 1900 KANAWHA BOULEVARD, EAST • CHARLESTON, WEST VIRGINIA 25305-0300
TELEPHONE 304-558-0220 • FAX 304-558-2779 • TDD 304-558-3562
EEO/AA EMPLOYER

