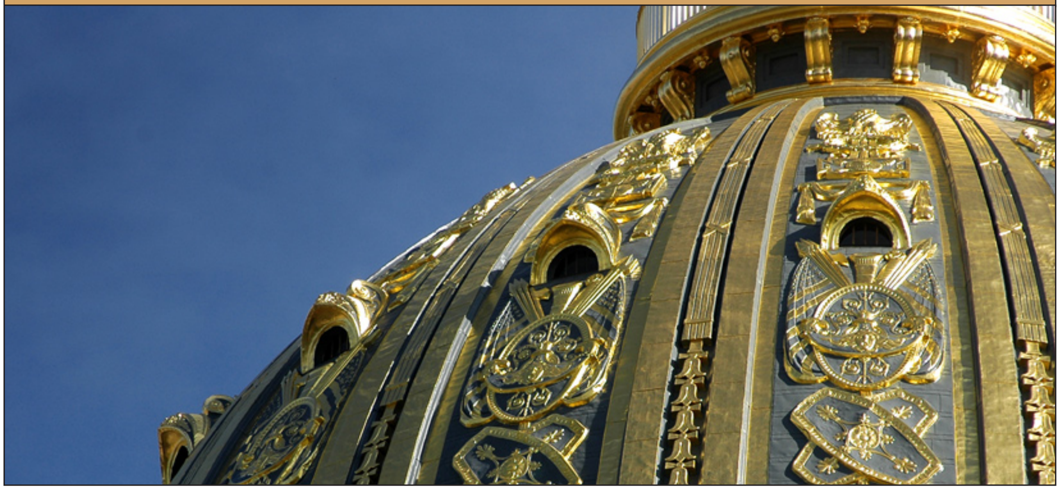


January 2015
PE 14-10-564

SPECIAL REPORT

DEPARTMENT OF VETERANS ASSISTANCE

AUDIT OVERVIEW

The Department of Veterans Assistance Is Not Providing Adequate Oversight of State-Owned Vehicles, and Is Not Complying With Statutory Requirements. As a Result, the State Is Being Exposed to Great Liability.

WEST VIRGINIA LEGISLATIVE AUDITOR
PERFORMANCE EVALUATION & RESEARCH DIVISION

JOINT COMMITTEE ON GOVERNMENT OPERATIONS

Senate

Herb Snyder, Chair
Mike Green, Vice-Chair
Sam Cann
Rocky Fitzsimmons
Craig Blair
Evan H. Jenkins

House of Delegates

Jim Morgan, Chair
Dale Stephens, Vice-Chair
Brent Boggs
Eric Nelson
Ruth Rowan

Agency/ Citizen Members

John A. Canfield
Terry Lively
W. Joseph McCoy
Kenneth Queen
Vacancy

JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

Senate

Herb Snyder, Chair
Ronald F. Miller, Vice-Chair
Sam Cann
Donald Cookman
Rocky Fitzsimmons
Mike Green
Art Kirkendoll
Ronald Stollings
Bob Williams
Jack Yost
Craig Blair
Donna J. Boley
Evan H. Jenkins
Dave Sypolt

House of Delegates

Jim Morgan, Chair
Dale Stephens, Vice-Chair
Gary G. Howell, Minority Chair
Tom Azinger
Joshua J. Barker
Mike Caputo
Phil Diserio
Jeff Eldridge
Ryan Ferns
William G. Hartman
Ronnie D. Jones
Timothy Kinsey
Brady Paxton
Margaret D. Smith
Margaret A. Staggers
Randy Swartzmiller
Karen Arvon
Scott Cadle
Larry Faircloth
Michael Folk
Larry D. Kump
Joshua Nelson
William Romine
Anna Sheppard
Randy Smith

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	John Sylvia	Brandon Burton	Adam Fridley	Elizabeth Belcher
Legislative Auditor	Director	Acting Research Manager	Research Analyst	Referencer

CONTENTS

List of Tables

List of Appendices

EXECUTIVE SUMMARY

The Legislative Auditor conducted a Performance Review of the Department of Veterans Assistance authorized pursuant to West Virginia Code §4-2-5. The objective of this review is to examine the performance and oversight of the Department's involvement in the Disabled American Veterans' Volunteer Transportation Network. The findings of this review are highlighted below.

Frequently Used Acronyms in this Report:

DAV: Disabled American Veterans

VTN: Volunteer Transportation Network

VA: U.S. Department of Veterans Affairs

Report Highlights

Issue 1: The Department of Veterans Assistance Is Not Providing Adequate Oversight of State-Owned Vehicles, and Is Not Complying With Statutory Requirements. As a Result, the State Is Being Exposed to Greater Liability.

- The Department's documentation indicates that it owns and leases 62 passenger vans for use in the Disabled American Veterans' Volunteer Transportation Network at each VA Hospital. However, the Department exercises inadequate oversight and record maintenance. At the time this audit began, the Department could not determine the number of state-owned vans leased into the VTN, the present locations of each van, or provide complete and accurate records for each van.

- A number of states provide financial support for their respective VTNs through grant programs. West Virginia's purchase-and-lease approach is unique and poses a significantly greater risk of liability than a grant program.

- The Legislative Auditor recommends that, beginning on July 1, 2016, the Legislature consider consolidating the two line-item appropriations in the Department's budget that support the VTN into the existing grant program the Department has established with the DAV.

PERD Evaluation of the Department's Written Response

PERD received a written response to the report from the Department of Veterans Assistance on December 29, 2014. The full response is provided in Appendix E. The Department indicates that substantial changes have already been made. The Department commends PERD's efforts in helping it account for all of the state-owned vans used in the VTN. In addition, the Department indicates that it is working to develop a set of policies and procedures for the program, and is currently working with the VA to provide a significantly revised lease for each van.

The Department respectfully disagrees with the audit recommendation that consolidates the two Department line-items supporting the VTN into one grant program. The Department indicates that it is concerned with the DAV's ability to handle the costs associated with the everyday use of the vehicles. The Department further comments that the VA has demonstrated its ability to effectively handle these costs and oversight. The Legislative Auditor understands this concern and agrees that such a cost shift onto the DAV could negatively impact the VTN's ability to serve the state's veteran population. However, the Legislative Auditor does not believe this would be the case. Vehicles purchased by the DAV through the recommended grant would in turn be donated to the VA for use in the VTN. As property of the federal government, the VA Hospitals would still be responsible for all the costs of maintenance and oversight of the vehicles. Therefore, the Legislative Auditor's recommendation does not require any change in the role of the VA, nor will it force any added maintenance and insurance cost onto the DAV. Therefore, it is the Legislative Auditor's opinion that the recommended grant program is the best alternative to the VTN's current format.

Recommendations

1. *The Legislative Auditor recommends that the Department establish a set of formal, written policies and procedures to guide the Department with respect to purchasing, delivering, tracking, reacquiring, or disposing of the state-owned vans, and any other aspect of the VTN.*

2. *The Legislative Auditor recommends that the Department comply with all statutes regarding the maintenance of records and annual inventories.*

3. *The Legislative Auditor recommends that the Legislature should consider amending the Department of Administration rule §148-3-9.1 to allow volunteer drivers to operate state-owned vehicles currently under lease in the VTN.*

4. *The Legislative Auditor recommends that, beginning on July 1, 2015, the Legislature should consider reappropriating funds currently set aside in Act. 342 for the purchase of vans into the Department's existing grant program with the DAV in Activity 485.*

5. *The Legislative Auditor recommends that the Department redraft lease agreements for all state-owned vans currently active in the Disabled American Veterans' Volunteer Transportation Network to acquire signatures and further protect the interests of the state of West Virginia.*

ISSUE1

The Department of Veterans Assistance Is Not Providing Adequate Oversight of State-Owned Vehicles, and Is Not Complying With Statutory Requirements. As a Result, the State Is Being Exposed to Greater Liability.

Issue Summary

The West Virginia Department of Veterans Assistance (Department) supports the Disabled American Veterans' (DAV) Volunteer Transportation Network (VTN), which has operated in West Virginia since 1990, by purchasing passenger vans, leasing them to the Veterans Administration Medical Centers (VA Hospitals), and providing funds to pay volunteer drivers. The Department's lack of policies and procedures for the program contributes to a lack of oversight and control over the state-owned vans. Prior to this audit, the Department could not quantify the number of state-owned vans currently used in the VTN, nor account for their present locations and conditions. The Department is not meeting its statutory obligations with respect to record keeping and fleet inventories, nor is the Department following the terms of its own lease agreements. The Legislative Auditor found:

- The Department currently owns 62 passenger vans that are in use in the VTN, but engages in inadequate oversight of them.
- Vehicle titles for four of the vans cannot be produced by the Department.
- The Department either cannot produce a lease, or can only produce an unsigned lease for 29 (47%) of the vans.
- On January 1, 2015, 36 of the 62 (58%) vans in the program will be operating beyond the 5-year term of the lease agreements.

__The Legislative Auditor recommends that, beginning in fiscal year 2016 the Legislature should consider reappropriating the money budgeted for the purchase of vans into the Department's recently established grant program for the VTN.__

The Legislative Auditor recommends that the Department redraft lease agreements for all vans currently used in the VTN and maintain complete and accurate files for each van. Additionally, the Legislative Auditor recommends that, beginning in fiscal year 2016 the Legislature should consider reappropriating the money budgeted for the purchase of vans into the Department's recently established grant program for the VTN.

The VTN Is a National Program Designed to Provide Transportation to Veterans Seeking Treatment at a VA Facility.

In 1940, Congress established the Veterans Travel Beneficiary Program which mandated that the federal Department of Veterans Affairs (VA) pay actual travel or allowance based on mileage for any veteran traveling to and from a VA facility for medical treatment. Due to rising costs, Congress amended the regulations for the program in 1987, reducing eligibility, and adjusting reimbursement rates and deductibles. Consequently, the VA began to accept alternatives for meeting the transportation needs of veterans. The DAV, a 501(c)4 organization, partnered with the VA Voluntary Service office to create a nationwide VTN.

The VTN is established and administered by local or state chapters of the DAV at VA Hospitals across the country. The DAV funds the position of Hospital Service Coordinator for each federal VA Hospital. The Hospital Service Coordinator works with the Chief of Voluntary Service to coordinate the VTN at the individual VA Hospitals. The VTN recruits volunteer drivers to transport veterans to and from medical appointments at VA Hospitals or other VA facilities. Transportation can be provided using the volunteers' personal vehicles, government-owned vehicles, or vehicles that have been purchased and/or donated to the VA Hospitals for use in the VTN.

The Department supports the VTN by purchasing passenger vans and leasing them to one of the state's four VA Hospitals which are located in Beckley, Clarksburg, Huntington, and Martinsburg. Each VA Hospital uses volunteer drivers to transport veterans to a medical center for treatment.

The West Virginia VTN Operates at Each of the State's Four VA Hospitals.

The Department supports the VTN by purchasing passenger vans and leasing them to one of the state's four VA Hospitals which are located in Beckley, Clarksburg, Huntington, and Martinsburg. Each VA Hospital uses volunteer drivers to transport veterans to a medical center for treatment. The volunteer drivers receive payments from the DAV via grant funds provided to the DAV by the Department.

Using a state-wide contract through the Purchasing Division, the Department purchases passenger vans from the lowest bidding vendor and leases them to the VA for a term of five years or 100,000 miles. The VA agrees to pay a consideration of $1/year for each van. The vehicles are titled to the Department, delivered to one of the VA Hospitals, and given a federal VA license plate. Upon receiving a federal VA license plate, the vehicles are to be housed on VA property.

Per the terms of the lease, the VA agrees to provide for the costs of all fueling and maintenance. In addition, the vehicles and drivers are insured by the VA Hospital. Since the VA Hospital is an executive agency of the federal government, it is covered by the self-insurance coverage of the United States through the U.S. Treasury. Drivers are required to fill out VA Form 10-7055 (Application for Voluntary Service) which designates them as employees Without Compensation, thereby indemnifying them from liability as employees of the VA under the Federal Tort Claims Act (FTCA)[1]. Furthermore, the VA agrees to indemnify the state of West

[1] *The FTCA waives the sovereign immunity of the United States and authorizes certain tort suits to be brought against itself. Under the provisions of the law, the U.S. government is held liable for claims caused by a federal employee, acting within the scope of his or her employment.*

Virginia against any and all claims. At the end of the five year/100,000 mile lease term, the VA agrees to return the van to the Department, to be retired to the Surplus Property Division.

Both the Hospital Service Coordinators and Voluntary Service offices are responsible for ensuring that each volunteer driver meets all of the requirements for participating in the VTN. Volunteer drivers must undergo a DMV background check and regular health physicals. Each driver is required to provide a valid driver's license and proof of valid, private auto insurance, copies of which are kept in the driver's individual file maintained by the Hospital Service Coordinator or the Voluntary Service office at each VA Hospital. Veterans who have no other means by which to travel to and from medical appointments may participate in the VTN by calling the Hospital Service Coordinator 48 hours in advance of their appointment to schedule a ride.

The VTN in West Virginia serves as a means of transportation for thousands of veterans seeking treatment at one of the state's four VA Hospitals (see Table 1). The VTN at the Huntington VA Hospital, which services the Charleston and Huntington metro-areas, is the largest in the state, transporting over 20,000 veterans to medical appointments in 2011 and logging over 36,000 volunteer hours by the volunteer drivers.

The VTN at the Huntington VA Hospital, which services the Charleston and Huntington metro-areas, is the largest in the state, transporting over 20,000 veterans to medical appointments in 2011 and logging over 36,000 volunteer hours by the volunteer drivers.

Table 1
West Virginia VTN 2011 Volunteer Service Statistics

VA Hospital	Veterans Transported	Volunteer Hours	Miles
Beckley	5,641	17,657	321,590
Huntington	20,706	36,042	802,115
Clarksburg	6,617	26,255	438,434
Martinsburg	4506	5,289	197,560
Total	**37,470**	**85,243**	**1,759,699**

Source: VAVS Transportation Comparison Report. Dated December 20, 2012

West Virginia Has Made a Substantial Investment of Financial Resources to the State's VTN.

The DAV began operating the VTN in West Virginia in 1990. In fiscal year 1997, after veterans lobbied for transportation assistance funding, the Legislature began annually appropriating $150,000 out of general revenue into a newly established line-item in the Department's budget—Activity 342-Veterans' Grant Program—for the purpose of purchasing passenger vans for the VTN[2].

[2] *The appropriation was reduced to $50,000 for fiscal years 2014 and 2015.*

In the 2008 regular legislative session, the Legislature passed H.B. 4624 which required the Department to provide volunteer drivers a per diem of $75 per day. A new line-item was established in the Department's budget—Activity 485-Veterans Transportation—with $975,000 being appropriated in fiscal year 2009, and an appropriation of $625,000 each subsequent year. In order to address the growing costs associated with per diem payments out of Veterans Transportation funds, the Legislature relaxed the per diem mandate in the 2014 regular session with the passage of H.B.4268, and authorized the Department to establish a grant program with the DAV using the Veterans Transportation funds to pay volunteer drivers. The Legislature has appropriated $2,750,000 for the Veterans' Grant Program, and $4,725,000 for the Veterans Transportation funding for a grand total of $7,474,500 for the West Virginia VTN since 1997. Table 2 shows the State's investment in the VTN from 2006 through 2015.

The Legislature has appropriated $2,750,000 for the Veterans' Grant Program, and $4,725,000 for the Veterans Transportation funding for a grand total of $7,474,500 for the West Virginia VTN since 1997.

Table 2
State Investment in VTN
Fiscal Years 2006-2015

Fiscal Year	Veterans' Grant Program	Number of Vans Purchased	Veterans Transportation Funds	Total Appropriation
2006	$150,000	10	$0	$150,000
2007	$150,000	8	$0	$150,000
2008	$250,000*	5	$0	$250,000
2009	$150,000	13	$975,000	$1,125,000
2010	$150,000	7	$625,000	$775,000
2011	$150,000	7	$625,000	$775,000
2012	$150,000	7	$625,000	$775,000
2013	$150,000	6	$625,000	$775,000
2014	$50,000	0	$625,000	$675,000
2015	$50,000	--	$625,000	$675,000
Total	**$1,400,000**	**64**	**$4,725,000**	**$6,125,000**

Source: Executive Budgets provided by the Budget and Fiscal Affairs Division, and purchasing contracts from the Purchasing Division.
**A supplemental appropriation of $100,000 was made in fiscal year 2008.*

The Absence of Any Written Policies or Procedures Contributes to a Lack of Controls and Oversight by the Department

The Department's administration of the VTN relies in large part upon prior practice. The Department reported that once a passenger van is delivered to the VA Hospital it has ". . . *no control of the vehicles* *from that point on. All control of the vehicles is under the United States Government.*" The Department's only written policies and procedures for the VTN deal exclusively with payments to volunteer drivers. However, the passage of H.B. 4268 and subsequent establishment of a grant program with the DAV have made these obsolete. The Department does not currently have written procedures. The Legislative Auditor cannot determine whether the Department has ever had any formal structure for oversight and controls over the state-owned vans. **Therefore, the Legislative Auditor recommends that the Department establish a set of formal, written policies and procedures to guide the Department with respect to purchasing, delivering, tracking, reacquiring, and disposing of the state-owned vans, and any other aspect of the VTN.**

The Legislative Auditor cannot determine whether the Department has ever had any formal structure for oversight and controls over the state-owned vans.

Prior to the Current Review, the Department Was Unable to Quantify the Exact Number of State-Owned Vans That Are Active in the VTN.

When the Legislative Auditor asked the Department to provide the exact number of state-owned vans that are active in the VTN, the Department reported that it knew of at least 70 vans, but could not provide an exact number. Therefore, it was necessary for the Legislative Auditor to determine how many state-owned vans are currently in operation with the program.

On July 7, 2014, the Performance Evaluation and Research Division (PERD) staff requested contracts from the Purchasing Division for all Department vehicle purchases since 2003. While the contracts provided the exact number of vehicles purchased for the VTN over this time period, they did not include the unique Vehicle Identification Numbers for the individual vans. However, the purchasing contracts indicated that the Department arranged for all newly purchased vehicles to be delivered to the Surplus Property Division. Therefore, PERD requested delivery reports and surplus reports from the Surplus Property Division for all Department vehicles, which provide the unique Vehicle Identification Numbers for all vehicles purchased by the Department since 2002. The purchasing contracts were used to verify Surplus Property's data.

When the Legislative Auditor asked the Department to provide the exact number of state-owned vans that are active in the VTN, the Department reported that it knew of at least 70 vans, but could not provide an exact number.

PERD became aware of two vehicles suspected to be state-owned assets, which predated 2002, and therefore could not be verified using the information from Surplus Property. A Division of Motor Vehicles title check was run on the vehicles and it was determined that they are state-owned vans. It was determined with reasonable assurance that a total of 62 state-owned vans are currently in operation in the VTN.

The Department Has Not Maintained Complete and Accurate Records for the State-Owned VTN Vans.

When determining the number of state-owned vans in use for the VTN, the Legislative Auditor requested that the Department provide copies of all relevant documents for the vans, including titles, leases, and any inventory lists. However, the Department provided missing, incomplete, and inaccurate records.

According to West Virginia Code §9A-1-10(j), the Secretary shall:

> *Keep a complete and accurate record of all proceedings; record and file all contracts and agreements and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office and the department.*

The Department's inability to produce a complete and accurate file for each van leased into the VTN indicates that the statutory requirements with respect to record keeping have not been met by the Department and its previous secretaries. **Therefore, the Legislative Auditor recommends that the Department comply with all statutes regarding the maintenance of records and annual inventories.**

The Department's inability to produce a complete and accurate file for each van leased into the VTN indicates that the statutory requirements with respect to record keeping have not been met by the Department and its previous secretaries.

Additionally, West Virginia Code §5A-3-35 requires that the head of every spending unit of state government file an annual inventory with the director of the Purchasing Division of all reportable property[3] in its possession. This requires that each spending unit enter all real and personal property, equipment, supplies, and commodities into the WVFIMS Fixed Asset System, and file a certification with the Purchasing Division, on or before July 15th, to verify that all property has been properly entered. All of the state-owned vans used in the VTN remain titled to the Department and therefore are fixed assets of the State. As of October 2014, the Fixed Asset System only accounts for 56 of the 62 state-owned vans that the Department has leased into the VTN.

Table 3 summarizes the Department's records for the state-owned vans. The Department's records indicate that it is unable to produce titles for 6 of the 62 vans. A lease agreement with a VA Hospital cannot be produced for 18 state-owned vans. In addition, 11 of the 44 lease agreements that were produced lacked one or more signatures, and therefore have not been fully executed. In total, the Department cannot produce a fully executed lease agreement for 29 of the 62 (47%) state-owned vans leased into the VTN.

[3] *Reportable Property is defined as having an acquisition cost of at least $1,000 and a useful life of one year or more.*

Table 3
Department Records for VTN Vans

	Lease Agreement Produced	Lease Agreement Signed	Vehicle Title Produced	Vehicle Entered into FIMS
Yes	44	33	58	56
No	18	11*	4	6

Source: Copies of leases and titles produced by the Department of Veterans Assistance.
**Of the 44 lease agreements produced by the Department, 33 were signed by all parties, while 11 were not. A lease was not produced for the remaining 18 state-owned vans.*

Prior to the Current Review, the Exact Location of Each State-Owned Van Was Unknown.

The Department is unable to account for all of the present locations for the 62 individual vans. The Department's only source of information regarding the locations of the state-owned vans is the lease agreements with the VA Hospitals. However, the Department does not have complete and accurate lease information. Furthermore, each VA Hospital establishes outposts throughout its Veterans Integrated Service Network, or service area, where VTN vans are stored overnight[4]. Outpost locations generally include VA-run Community-Based Outpatient Clinics, Veteran Centers, or other veteran service organizations, such as an American Legion or VFW Post. However, some VA Hospital outpost locations include private residences, or even locations outside the state of West Virginia. Since the Department does not engage in any oversight or regularly inquire about the state-owned vans, it has no assurances that these assets of the State are protected against theft, abuse, or misuse.

The Department's records indicate that it is unable to produce titles for 6 of the 62 vans. A lease agreement with a VA Hospital cannot be produced for 18 state-owned vans. In addition, 11 of the 44 lease agreements that were produced lacked one or more signatures, and therefore have not been fully executed.

Since the Department's data regarding the locations of the vans were incomplete and unreliable, the Legislative Auditor attempted to track and verify the locations of each state-owned van entered into the VTN. Having previously determined the number of state-owned vehicles usedin the program, the Legislative Auditor contacted the Chief of Voluntary Service and the Hospital Service Coordinator for each of the four VA Hospitals in the state, and requested that each submit a full inventory list of all VTN vehicles (state-owned or otherwise) in their possession.

PERD staff cross referenced the submitted vehicle inventory lists received from the four VA Hospitals with the previously verified list of all active state-owned vehicles in use in the VTN to ensure that each individual van was accounted for. Fifty-eight (58) of the 62 vans

[4] *Outpost locations make it easier for the VTN to service areas located at a considerable distance from a VA Hospital. For example, the Huntington VA Hospital's outpost in Logan County saves volunteer drivers a considerable amount of gas, time, and wear and tear to their personal vehicles and the VTN vans, since the van is stored in Logan instead of Huntington.*

were accounted for on 1 of the 4 inventory lists. An additional van was accounted for at both the Pittsburgh VA Hospital and in Wheeling. Finally, the Commission on Special Investigations verified that the remaining two vans were located at the Huntington VA Hospital.

Each lease agreement specifies that the lease shall terminate after 5 years or 100,000 miles. The Department reports that it is unaware of how many vans have exceeded this term.

Table 4
Locations of State-Owned Vans

Location	Number of Vans
Beckley VA Hospital	13
Clarksburg VA Hospital	9
Huntington VA Hospital	30
Martinsburg VA Hospital	8
Pittsburgh VA Hospital	1
Wheeling	1
Total	**62**

Source: Vehicle inventories provided by each VA Hospital, compared to the list of state-owned vehicles known to be active in the VTN.

Many Vehicles Used in the VTN Are Operating Beyond the Terms of the Lease Agreement.

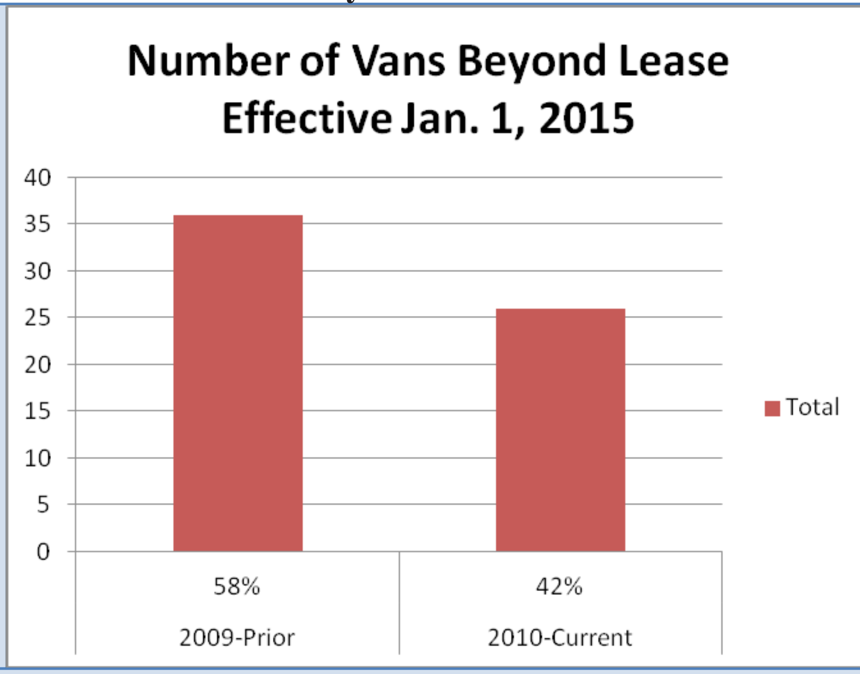
Each lease agreement specifies that the lease **shall** terminate after 5 years or 100,000 miles. The Department reports that it is unaware of how many vans have exceeded this term. Since the Department is unable to produce lease agreements for all 62 vans leased into the VTN, it is difficult to determine exactly how many vehicles are currently operating beyond the terms of the lease agreements. However, since the Department generally purchases vehicles in the current calendar or model year (i.e., all vans purchased in 2009 will either be model year 2009 or 2010), it can be determined that all state-owned vans model year 2009 or prior will be beyond the five-year lease term beginning on January 1, 2015.

At least 24 state-owned vans are currently operating beyond the term of their lease agreements, as all vans with a model year of 2008 or prior are at least 5 years old.

Table 5 shows the number of state-owned vans leased into the VTN by model year. Currently, 36 active vans (58%) have a model year of 2009 or prior. In addition, at least 24 state-owned vans are currently operating beyond the term of their lease agreements, as all vans with a model year of 2008 or prior are at least 5 years old.

Table 5
Number of Vans by Model Year

Model Year	Number of Vans
1996	1
2001	1
2003	2
2005	2
2006	8
2008	10
2009	12
2010	7
2011	7
2013	12
Grand Total	62



Source: Data from a cross-tabulation of: Purchasing Orders from the Purchasing Division; Vehicle Delivery Data provided by the Surplus Property Division; and Lease and Title Information provided by the Department.

West Virginia Assumes Unnecessary Legal Liability Under the VTN's Current Format.

The Department seeks to remove itself from active control and oversight of the state-owned vans by transferring all control to the VA Hospitals via a lease, thus eliminating its potential for liability. However, due to the statutory requirements discussed in this report, the Department cannot fully relinquish its control, and therefore its liability, of the state-owned vans.

PERD requested a legal opinion from the Legislative Services Division within the Office of the Legislative Auditor to gain an understanding of the potential liability to the State under the current operation of the VTN. According to the legal opinion (Appendix C), the Department's inability to produce fully executed, written leases for each state-owned van used in the VTN opens the State up to liability. Since the lease agreements serve as the legal basis by which the federal government assumes all liability and indemnifies the State, the Department cannot expect the VA Hospitals to adhere to an agreement that either does not exist or has not been properly endorsed by all parties. In addition, the liability to the State if the lease for a vehicle has expired is the same as if

Due to the statutory requirements discussed in this report, the Department cannot fully relinquish its control, and therefore its liability, of the state-owned vans.

there were no lease at all, since the federal government cannot be made to adhere to an agreement that has expired. Furthermore, it does not appear that the Department is collecting the $1/year rent for each of the vans leased into the VTN. While this may seem like a minor technicality, the vehicle leases operate as a contract between the Department and the VA. In order for a contract to be valid, there must be an exchange of consideration.

Since the lease agreements serve as the legal basis by which the federal government assumes all liability and indemnifies the State, the Department cannot expect the VA Hospitals to adhere to an agreement that either does not exist or has not been properly endorsed by all parties.

There is also an issue with the current administration of the VTN program regarding the Department of Administration's legislative rule governing state-owned vehicles. The legal opinion states, *"Under the explicit terms of* [Rule §148-3-9.1]*, state vehicles are only to be used in situations where the vehicle is assigned to a specific employee or to a pool of employees."* **Therefore, the Legislative Auditor recommends that the Legislature consider amending the Department of Administration rule §148-3-9.1 to allow volunteer drivers to operate state-owned vehicles currently under lease in the VTN until all state-owned vehicles are retired from the VTN program.**

West Virginia's Administration of the VTN Is Unique Among Other States.

While the VTN is a national program operated by a cooperative partnership between the DAV and the VA's Voluntary Service, the program's specifics vary from state to state. The Legislative Auditor reviewed relevant literature on how 25 other states handle their veteran transportation needs, and reached out to neighboring states for specific information regarding their VTN programs. This review determined that West Virginia is the only state in which general revenue funds are used to directly purchase, and subsequently lease, passenger vans for the VTN program. This retention of state ownership not only makes West Virginia's VTN unique, but also puts unnecessary legal liabilities on the State.

This review determined that West Virginia is the only state in which general revenue funds are used to directly purchase, and subsequently lease, passenger vans for the VTN program.

There are no examples of other states purchasing and leasing vans into the VTN, but there are a number of states that use state funds to provide substantial financial investments into their VTN programs without the added liability of vehicle ownership.

- The state of Kentucky established the Veterans Programs Trust Fund in 1988 to support programs that benefit the state's veteran population. The trust fund is administered by a Board of Directors appointed by the Governor. According to the Board's annual report for 2014, $50,000 was granted to support the DAV's VTN.

- The state of Pennsylvania has established a line item in the state budget, through its Department of Military and Veterans Affairs, to support the DAV's VTN. The Legislative Auditor determined that this line item has been in existence since at least FY 2007, at which time the state of Pennsylvania appropriated $350,000 directly to the DAV. According to the 2014-15 state budget, $336,000 has been appropriated for the current fiscal year.

In addition to the information obtained from neighboring states, the Legislative Auditor found examples of how other states provide financial assistance to the DAV's VTN:

- The state of Colorado has established a Veterans Trust Fund, which is funded by 1 percent of the state's tobacco settlement revenues. Each year, the Colorado Board of Veterans Affairs reviews grant applications and awards grant money to nonprofit veteran service organizations. According to the Board's 2012 annual report, over $56,000 in grant money was awarded to the DAV to support the VTN.
- The state of Minnesota established the Minnesota Veterans 4 Veterans (V4V) trust fund in 2006. The trust fund is used to give grants to new or existing veterans' programs, including the DAV's VTN.
- The state of Missouri, acting through the Missouri Veterans Commission, grants funds to the DAV that are used to buy vans for the VTN.
- The state of Wisconsin appropriates state funds directly to the DAV from its Veterans Trust Fund. Wis. Stat. §45.41[4] makes an annual appropriation of $100,000 to the DAV for the VTN.

The current format of the VTN in West Virginia puts the State at undue risk of legal liability because the State retains ownership of the vehicles it provides to the program.

The Legislature Should Consider a Grant Program, Which Would Absolve the State From Ownership and Liability of the Vans Used in the VTN.

The financial investment by the Department to the VTN has aided the program in serving thousands of West Virginia veterans. However, the current format of the VTN in West Virginia puts the State at undue risk of legal liability because the State retains ownership of the vehicles it provides to the program. A number of other states have found ways to provide financial support for their state's VTN program without adding unnecessary liability to their state. The Legislative Auditor believes that absolving the State of its ownership responsibilities will alleviate the issues associated with liability while allowing the program to sustain its current operation. **Therefore, the Legislative Auditor concludes that beginning on July 1, 2015, the Legislature consider reappropriating**

funds currently set aside in the Veterans' Grant Program for the purchase of vans into the Department's existing grant program with the DAV in Act 485. The recommended grant program would combine the two line-items in the Department's budget that support the VTN by shifting the annual appropriation for purchasing vans ($50,000 in FY 15) into the existing grant program for Veterans Transportation, which grants the DAV $625,000. Since the Cabinet Secretary has broad authority to award grants for veteran's transportation under existing West Virginia Code, this recommendation would not require any substantive change in Code. In addition to providing payments to the volunteer drivers, the grant for Veterans Transportation would authorize the DAV to purchase passenger vans for the VTN.

A number of other states have found ways to provide financial support for their state's VTN program without adding unnecessary liability to their state.

The oversight of state grants is governed by West Virginia Code. According to §12-4-14, the recipient (the DAV) of a state grant in the amount of $50,000 or more for a single fiscal year is required to file with the grantor (the Department) an attestation of disbursements showing that the state grant was spent for the intended purposes. The report must be conducted by an independent certified public accountant at the cost of the grant recipient[5]. Under the Department's existing grant program with the DAV, these requirements are already in place.

According to the legal opinion, there is no statutory authorization that would allow the Department to release ownership of the 62 vans currently under lease, nor is there any precedent for such an action. Furthermore, even if legally viable, such action would release thousands of dollars of state assets with no oversight to ensure that those assets are being used for the intended purpose. **Therefore, the Legislative Auditor recommends that the Department revise the lease agreements for all state-owned vans currently active in the DAV's VTN to acquire signatures and further protect the interests of the state of West Virginia.** The Department should create and maintain a complete and accurate file for each van currently under lease with the VA, until such time that all leased vans are retired from the program.

The Legislative Auditor believes that absolving the State of its ownership responsibilities will alleviate the issues associated with liability while allowing the program to sustain its current operation.

Conclusion

The Legislative Auditor concludes that a grant program is the most appropriate way forward for the West Virginia VTN. The absolution of ownership over the vans used in the program is the best option for reducing the State's potential liability. This option has been discussed with the Cabinet Secretary and he reported that, "*While I am eager to improve the operations of the program where possible, we should proceed with caution to ensure that any changes we make do not come at the expense of our veterans.*"

[5] *State grant funds may be used to pay for the report, provided that the applicable grant provisions allow.*

The Legislative Auditor is confident that the grant program recommended in this report accomplishes this goal. The DAV will have the ability to assess and fill its own needs for the program within the confines of the grant. The role of the VA Hospitals will not be affected, as they already insure and maintain vehicles donated to the VTN by the DAV, and would not be given any additional requirements or responsibilities. Finally, the state of West Virginia would reduce its potential liability, while maintaining oversight of the State's investment. Irrespective of what specific actions are taken by the Legislature, the PERD will update the Joint Committees on the VTN program during the Department's statutorily scheduled agency review in 2016.

Recommendations

1. *The Legislative Auditor recommends that the Department establish a set of formal, written policies and procedures to guide the Department with respect to purchasing, delivering, tracking, reacquiring, or disposing of the state-owned vans, and any other aspect of the VTN.*

2. *The Legislative Auditor recommends that the Department comply with all statutes regarding the maintenance of records and annual inventories.*

3. *The Legislative Auditor recommends that the Legislature consider amending the Department of Administration rule §148-3-9.1 to allow volunteer drivers to operate state-owned vehicles currently under lease in the VTN until all state-owned vehicles are retired from the VTN program.*

4. *The Legislative Auditor recommends that, beginning on July 1, 2015, the Legislature consider reappropriating funds currently set aside in Act. 342 for the purchase of vans into the Department's existing grant program with the DAV in Activity 485.*

5. *The Legislative Auditor recommends that the Department redraft lease agreements for all state-owned vans currently active in the Disabled American Veterans' Volunteer Transportation Network to acquire signatures and further protect the interests of the state of West Virginia.*

The role of the VA Hospitals will not be affected, as they already insure and maintain vehicles donated to the VTN by the DAV, and would not be given any additional requirements or responsibilities.

Appendix A
Transmittal Letter

WEST VIRGINIA LEGISLATURE

Performance Evaluation and Research Division

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

John Sylvia
Director

December 16, 2014

Rick Thompson, Cabinet Secretary
West Virginia Department of Veterans Assistance
1514B Kanawha Blvd., East
Charleston, WV 25305

Dear Secretary Thompson:

This is to transmit a draft copy of the Performance Review of the West Virginia Department of Veterans Assistance. This report is scheduled to be presented during the January 11-13, 2014 interim meeting of the Joint Committee on Government Operations, and 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 orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Tuesday, December 23, 2014. We need your written response by noon on Friday, January 2, 2014 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, January 8, 2014 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

John Sylvia

John Sylvia

Enclosure

Joint Committee on Government and Finance

Appendix B
Objective, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this performance review of the West Virginia Department of Veterans Assistance pursuant to West Virginia Code §4-2-5. The purpose of the Department, as established in West Virginia Code §9A-1-1(b), is to aid, assist, counsel and advise veterans who have served in and been honorably discharged from the Armed Forces of the United States and their widows, widowers and dependents, including populations of veterans who may have special needs as a result of homelessness, incarceration or physical or mental disabilities.

Objectives

The objective of this review is to examine the performance of the Department with respect to its involvement in Disabled American Veterans' Volunteer Transportation Network and to determine if the Department's oversight is adequate.

Scope

The scope of this review consists of all management information pertaining to the passenger vans purchased and leased by the Department into the VTN between 2003 and 2013. This information includes all leases, titles, purchase orders, surplus documents, and the locations of the vans. This audit did not evaluate the use or care of the vans by the VA Hospitals other than to determine if the vans had proper automobile insurance. PERD also did not assess the condition of the vans or determine if the vans were registered by the VA Hospitals.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through interviews with the Department's staff, the Purchasing Division, the Surplus Property Division, the Office of Fleet Management, the Division of Motor Vehicles, the Disabled American Veterans (DAV), and the VA. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence (photographs).

In order to determine the number of state-owned vans currently used in the VTN, PERD obtained all of the titles and lease agreements that the Department had on file. Audit procedures conducted to assess the evidence found that the Department's records were neither sufficient nor appropriate to accurately determine the number of state-owned vans. Therefore, PERD requested copies of all purchasing contracts for vehicle purchases made by the Department from 2003 to 2013, which provided the number of vans purchased over this time period. To account for vehicles that had been properly retired over this time period, PERD obtained a surplus report from the Surplus Property Division. In addition, the Surplus Property Division provided a list of all vehicle deliveries for the Department. PERD became aware of three vans which predated 2003. To verify state ownership, the Division of Motor Vehicles ran a title check. These sources of data and cross-referencing allowed PERD to determine, with reasonable assurance, the number of state-owned vans that are currently active in the VTN.

In order to determine the current location of each state-owned van, PERD requested that each VA Hospital submit an inventory of Vehicle Identification Numbers for every van used in the VTN at their respective hospitals. The submitted inventories were cross-referenced with PERD's list of active vehicles to confirm that each van was accounted for at one of the four VA Hospitals. Two vans that did not appear on a VA Hospital inventory list were located by the Commission of Special Investigations.

In order to gain an understanding of relevant state and federal laws, as well as the State's exposure to legal liabilities, PERD obtained a legal opinion from Legislative Services within the Office of the Legislative Auditor. All of the legal analysis within the report was reviewed by the appropriate legal counsel to verify accuracy and clarity of the legal principles discussed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C
Legal Opinion

INTER LEGISLATIVE SERVICES OFFICE

MEMO

To: John Sylvia

Adam R. Fridley

From: Doren Burrell, Counsel

Subject: WV DVA Vehicle Lease Program

Date: December 8, 2014

This memorandum is offered in response to your request for a legal analysis of potential liabilities of the State of West Virginia that may arise out of the current operations of the Volunteer Transportation Network (VTN), which is supported by the state's Department of Veterans Assistance (the Department).

ANALYSIS

From the start of the Department's participation in the VTN program, the Department has been concerned with potential liability arising out of some type of accident and injury in the course of operating the vehicles used in the program. The Department has sought to reduce this liability in two principal ways: shifting liability through leases with the federal government and minimizing the state's control over the vehicles and their operation. Although these measures may reduce the risk of potential claims against the state, problems with the structure and administration of the leases, and statutory requirements for the Department, result in areas of exposure that could lead to protracted litigation and expensive judgments against the state.

GENERAL THEORY OF LIABILITY

Under the common law, an entity may be financially liable to another person for injuries or damages caused by the entity's negligent acts, or failures to act, in the activities of a person, or through the operation and administration of property, under the entity's control. Thus, if an entity, such as the Department, is negligent in the care or maintenance of some equipment within the entity's care or control, the entity may be found to be liable. Likewise, an entity may be liable for the actions of someone working on the entity's behalf if the entity plays some role in the supervision or oversight of that person. CURRENT MEASURES TO AVOID LIABILITY ARE NOT SUFFICIENT

1. The vehicle leasing arrangements require greater oversight by the Department.

The Department's principal tool for reducing potential liability has been to transfer control of the VTN vehicles to the US Veterans Administration hospitals (VA Hospitals)through leases of the vehicles. The Department has sought to shift the responsibility for the maintenance and operation of the VTN vehicles (and thus shift the liability) to this agency of the US government. Under these leases, VA Hospitals agree to assume all liability. This can be an effective means to remove substantial liability as long as 1) the leases are legally binding and 2) the Department does not act in some way that defeats the purpose of the lease.

According to PERD's review, there have been several deficiencies in the administration of these leases. In many cases, no written document can be found and in other instances, the leases have not been signed by all the parties to the agreement. Because substantial financial liability could arise from an accident with a VTN vehicle, the federal government will not and cannot be bound to assume this liability without a legal basis for doing so. If, in the event of an accident, the lease cannot be found or if the appropriate lease has not been signed by the proper representative of the U.S. government, the Department cannot rely upon the Federal Tort Claims Act to cover the resulting liabilities. The same would be true if, by the terms of the lease itself, the lease for the vehicle had expired.

While I do not suggest that the US government would dishonor a valid agreement shifting liability, the state cannot expect the VA Hospitals to adhere to an agreement that does not actually exist, either because the document was not properly endorsed, or because it had expired.

There is also another issue with the administration of the leases that could also affect the state's liability. Under the terms of the lease agreements, the vehicles are rented for the amount of one dollar ($1) per year. However, PERD's review has shown that the Department has not been diligent in collecting these rents and may never have collected any rent on some of the vehicles. It may seem like a technicality since this dollar-per-year rent is often called "nominal consideration," but the failure to follow through with this could provide an opening to a plaintiff seeking to draw upon the state's insurance. The vehicle leases constitute a contract between the Department and the VA Hospitals. In order for a contract to be valid, there must be an exchange of "consideration": something of value given from one party to the other to substantiate the agreement. If there is no consideration, then the agreement itself is not complete and not valid. An outside party, such as an injured party, might then bring a claim directly against the state on the allegation that the lease agreement has not been executed and is therefore a sham to escape lawful liability. Though the state could argue that there is, in fact, other valuable consideration, it would be better to avoid this situation altogether. Not only does the Secretary of the Department have a statutory duty to collect these rents under W. Va. Code § 9A-1-10(e), the failure to collect these rents gives a potential opening to a claimant seeking an award of damages from the state.

Thus, if the Department intends to continue to use lease agreements to shift legal liability to the VA Hospitals in possession of the VTN vehicles, the Department must be diligent in the execution and management of these leases.

2. Legal requirements prevent the disengagement of the Department from oversight of vehicles in the VTN program.

The Department has specifically sought to remove itself from active oversight and control over the vehicles and the drivers in the VTN program. If there is no control or direction from the Department, then the Department cannot be deemed responsible for the operation of those vehicles in the program. Under general circumstances, this can be an appropriate method to limit liability. However, because of several statutory and regulatory requirements, the Department cannot fully relinquish its control over (and therefore its liability for) these vehicles as intended.

As long as the vehicles are purchased and leased by a state agency, they are property of the state. When purchased, they are placed on the inventory of state property allocated to the Department. Under the provisions of W. Va. Code §9A-1-10(e), the Secretary has a legal duty "to supervise the fiscal affairs and responsibilities of the Department." This duty includes keeping a proper record of the assets of the Department and taking reasonable steps to preserve the value of those assets. **The Secretary, therefore, is obligated to keep aware of the conditions of these vehicles, their whereabouts, and their status.**

According to the provisions of the existing lease agreements,[1] a vehicle lease terminates at the end of five years or when the vehicle has been driven for more than 100,000 miles. At that point the intention is for the vehicle to be returned to the Department's custody and be delivered for sale as surplus property. The Department is therefore required to monitor the status of the vehicles and to seek their return at the conclusion of the lease term. In order to preserve the value of the state's assets, the Secretary has a duty to take possession of these vehicles before they are subjected to additional wear and tear.[2] As a consequence, the Secretary cannot consider these vehicles to be out of sight and out of his or her control.

There is also a troubling conflict between the way the VTN program is set up and the requirements of a legislative rule of the state's Department of Administration. The VTN program relies upon volunteers who are not employees of the state to drive the vehicles.[3] By not having drivers employed by the state and consequently supervised by the state, the acts or failures of the drivers may not be attributed to the state. Again this is a logical and legitimate means of limiting liability. However, the West Virginia Department of Administration has promulgated a rule limiting use of state-owned vehicles to state employees:

> "§148-3-9. Permissible Uses.
>
> 9.1. Generally.
>
> State owned and leased vehicles, including temporarily leased vehicles, may be used under only one of the two (2) categories or conditions:
>
> > 9.1.1. Use by multiple employees; or
> >
> > 9.1 .2. Use by primarily one (1) employee."

Under the explicit terms of this rule, state vehicles are only to be used in situations where the vehicle is assigned to a specific employee or to a pool of employees.

If a state-owned vehicle is operated by a person who is not an employee and some accident then occurs, anyone injured in the accident would have an argument to hold the state liable. This argument relies on the principle of causation-in-fact: if the accident would not have occurred if a state employee had driven the vehicle as required by the rule, then the state's failure to follow the rule is a cause of the accident. This is only one of several elements necessary for liability to attach, but it is an important threshold of responsibility. It would be far preferable that the state not be in this position at all. There are two ways that this could be avoided: the rule could be modified to allow for this situation or the Department could remove the vehicles from state ownership completely. These options will be more thoroughly discussed in the next section.

---

[1] *The Department is currently in the process of redrafting and renegotiating leases with the VA Hospitals to eliminate some of the problems in the lease terms.*

[2] *Like any vehicle owner, the Department could decide there is more value to keeping the vehicles in operation as long as their condition is safe and then sell them for scrap. This decision, though, would have to be reflected in the terms of the lease agreements. The current terms suggest that the Department seeks to sell the vehicles before they lose all operating value.*

[3] *Since the Department grants money that is used to provide per diem stipends for drivers in the program, there is also a risk that these drivers could be considered employees of the state for purposes of assigning liability.*

ALTERNATIVES TO THE CURRENT SYSTEM

In order to minimize the potential liability of the state, there are several options that the Legislature may consider:

- Modifying the current form of the leases and amending the driver rule.
- Changing the program to a complete grant program.
- Providing the vehicles as an outright gift to the VTN program.

Each of these options offers some advantages as well as disadvantages, but providing for the entire program through a grant seems to give the greatest protections and would not require any additional legislation.

1. Modify leases and state rules.

If the Department of Veterans Assistance and the Legislature prefer to keep the VTN vehicle program in its current form, then, at a minimum, the Department must redraft the lease agreements for the vehicles and the Legislature would have to create an exemption to the rule limiting the operation of state vehicles only to state employees. A few of the these steps have already been taken. Since October of this year, the Department has sought to renegotiate the lease agreements to make them clear on the duration of the agreements as well as the conditions for renewal of the leases. These agreements are also being changed to reduce the amount of paperwork to maintain and simplify the process of obtaining all required signatures.

Assuming that all of the issues regarding the form of the lease agreements will be addressed, the legislative rule on operation of state-owned vehicles still presents a problem. The Legislature could address this directly through a bill that specifically allows state-owned vehicles to be driven by non-employee volunteers for designated programs. In due course, the Department of Administration should update its rule to reflect this legislation.

Although these changes would eliminate many of the problems with the current system, some risks would still remain. Since the vehicles would still be owned by the state, there is always the possibility that some of the acts of ownership and monitoring required by the Code would also be deemed acts of control. Despite the desire of the Department to relinquish all control of the vehicles, the Secretary's duty to monitor the status of the vehicles and prevent waste of these assets would still exist. In addition, the drivers of the vehicles, too, could be considered employees or, at the very least, "servants" of the state, though which liability might attach because of alleged failures to supervise or direct these drivers. If an injured party makes a case that the Department has exercised some degree of control over the vehicles or the drivers, then the state is left to litigate the facts of this situation instead of obtaining a quick dismissal of any such claim.

2. Convert the program to run entirely by state grant.

There is an alternative way to continue the benefit of the VTN program that would not require any statutory changes, although it would involve a change to the structure of appropriations for the program. Among the current provisions of the Code, the Secretary of the Department has the power to act as follows:

> "Award grants, in his or her discretion, subject to available appropriations, to provide for the transportation of veterans to veterans' hospitals from the veteran's home or local Veterans' Assistance offices." W. Va. Code §9A-1-10(q)

Under this authority, the Department currently grants funds to the Disabled American Veterans (DAV) organization to cover some program expenses and to provide a stipend to drivers who participate in the program. There is nothing in the Code that limits its application to this current use. Without any change to the Code or to a rule, the Department could make one, large grant to the DAV to cover the costs of purchasing new vehicles as well as the present expenses and driver stipends.

Instead of the Department's buying the vehicles and then leasing them to the VA Hospitals, the Department could take the funds used for the purchase and make a grant to the DAV so that organization would buy and own the vehicles. Under this plan, the state would never own the vehicles and would never have responsibility for either the vehicles or the drivers.

It must be acknowledged, though, that Article X, Section 6, of the West Virginia Constitution commands that the "credit of the state shall not be granted to, or in aid of any county, city, township, corporation or person" and, potentially, a state grant to a private corporation (the DAV) would violate this clause. However, the courts of this state have held that this kind of grant is lawful when it is made to advance a "public purpose." As most all of the entities involved with the VTN program recognize it to be a great benefit to the people who have served our state and country, there is no problem to demonstrate that there is an important public purpose to grants that foster the program.

This is not to say, though, the grant method would have some drawbacks. Since the DAV would have to buy the vehicles at public retail dealers, the DAV will have to pay sales and excise taxes on the vehicles and may be at a comparative disadvantage in price negotiations than if the vehicles had been purchased under a state master contract. In other words, the grant dollars would not go as far in purchases than if the Department were to buy the vehicles. In addition, since the DAV would now be the owners of the vehicles, that organization would be required to obtain insurance coverage for the vehicles in the private market and the insurance costs could take a larger portion out of the money provided through a complete grant.

Also, this change could not occur in one swift move with a change of appropriations. The lease program would remain in effect for the current vehicle inventory until those vehicles reached an appropriate condition for retirement. All new purchases, though, could begin as soon as the Legislature adjusted funds for the grant.

Finally, the DAV would have an additional burden of obtaining an audit or accurate report of its disbursement of state funds as required by W. Va. Code §12-4-14(b). The Department, as the grantor, would also have a duty to notify the DAV annually of this requirement and to verify that the requirement had been met before the Department could grant funds for this purpose in the future. In this way, there would still be some oversight as a check against the waste of state funds and the disappearance of vehicles, but the Department would no longer have any actual control and, thus, legal responsibility for them.

3. Supply the vehicles for the program as gifts of the state.

The last means of providing vehicles for the VTN program would be for the Department to make an outright gift of the vehicles. Under this method, the state would buy the vehicles at a potentially better overall cost and then transfer all ownership of the vehicles to the DAV. In addition to the potential cost savings of this approach, it would also remove the Department from any duty to monitor the status of the vehicles. Since the state would no longer own these vehicles and would not be bound to seek their return, the state would no longer have any dominion or control that could give rise to a legal liability. If the Department intends to continue to grant funds for driver stipends, though, the liability from the theoretical employee relationship would still be a possibility.

A primary disadvantage of this plan is that there could be no oversight at all. This creates a great potential for waste and abuse. We have already seen how a lack of regular oversight has resulted in confusion about the number and locations of active vehicles. If the state were to make outright gifts of the vehicles, there would be no responsibility to verify that these vehicles were being used as intended. Unlike the requirements for a verified statement of expenses that is required of recipients of state funds, there is no law that creates a similar duty for an entity that receives a gift of state property.

Another concern is that there is basically no precedent for such a plan. Although counsel has not been able to find any law specifically prohibiting an agency of the state from making such a gift, neither is there any law that authorizes or facilitates such an act. This leads to a significant uncertainty as to whether such a program, if challenged, would be found to be lawful.

CONCLUSION

Although no method for providing vehicles to the VTN program would be without some degree of potential liability, the current measures present an unnecessary amount of risk. The Department and the Legislature should consider alternative arrangements to decide which method presents an acceptable degree of risk while also serving other objectives of the state such as the prevention of waste.

Appendix D
Agency Response

Earl Ray Tomblin
Governor

Rick Thompson
Cabinet Secretary

West Virginia
Department of Veterans Assistance

1514 B Kanawha Blvd. E.
Charleston, WV 25311
Telephone: (304) 558-3661
Fax: (304) 558-3662
www.veterans.wv.gov

PERFORMANCE EVALUATION
DEC 29 2014
AND RESEARCH DIVISION

December 29, 2014

WV Legislature
Performance Evaluation and Research Division
Mr. Adam Fridley
Building 1, Room W-314
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Mr. Fridley,

As Secretary of the West Virginia Department of Veterans Assistance (WVDVA), I thank you for performing the legislative audit we requested last year. I have reviewed the draft report regarding our van program and assure you that while we continue to make improvements to the program, substantial changes have already been made.

As mentioned in the report, some information was difficult to confirm when we began this process. However, thanks to the assistance provided by your office, the Disabled American Veterans (DAV) and the five VA Medical Centers serving West Virginia, we are now able to account for all of our vans. Additionally, we are working to develop appropriate policies and procedures related to the program and have provided a new van lease to the federal VA for their review. With the completion of these documents and the VA's approval of this significantly revised lease, I'm confident the program will become much more transparent and easier to manage.

That said, I have concerns regarding the recommendation that funds for this program be dispersed as part of a grant to the DAV because of the additional costs associated with everyday use of the vehicles. As a nonprofit, all volunteer organization, I question the DAV's ability to fund insurance, gas, vehicle maintenance and trained personnel to review driver qualifications and ensure the safety of veterans utilizing the program. The federal VA has proven they can provide this necessary funding and oversight, therefore, I do not believe PERD's recommendation to be in the best interest of our veterans.

Again, I appreciate your contributions to the improvement of the van program and welcome other suggestions that might help us better serve our state's veterans.

Regards,

Rick Thompson
Cabinet Secretary, West Virginia Department of Veterans Assistance

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