

**Full Performance Evaluation**

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**Division of Culture and History**

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**The Division of Culture and History,  
and the Commission on the Arts  
Dispute Respective Entitlement to  
Capital Resources Matching Grant  
Program Fund Moneys**

**While the Division of Culture and  
History Plans to Complete the  
Renovation of the State Museum,  
Specific Details Remain Unknown**



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John Sylvia  
Director

November 14, 2006

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

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation on the Division of Culture and History, which will be presented to the Joint Committee on Government Operations on Tuesday, November 14, 2006. The issue covered herein is "The Division of Culture and History, and the Commission on the Arts Dispute Respective Entitlement to Capital Resources Matching Grant Program Fund Moneys," and "While the Division of Culture and History Plans to Complete the Renovation of the State Museum, Specific Details Remain Unknown."

We transmitted a draft copy of the report to the Division of Culture and History, and the Commission on the Arts on November 3, 2006. An exit conference was held with the Division of Culture and History on October 31, 2006. An exit conference was not held with the Commission on the Arts. We received the agency response from the Division of Culture and History on November 1, 2006 and a response from the Commission on the Arts on November 2, 2006.

Let me know if you have any questions.

Sincerely,

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

John Sylvia

JS/ja

*Joint Committee on Government and Finance*



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# Executive Summary

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## **Issue 1: The Division of Culture and History, and the Commission on the Arts Dispute Respective Entitlement to Capital Resources Matching Grant Program Fund Moneys**

*Since the time of the effective date of the amendment, each agency has made expenditures using inconsistent interpretations of the code. The effect of this conflicting expenditure practice is that either the Division or the Commission has overextended itself based on perceived entitlement to moneys in the fund. The overall fund balance is solvent. However, this could change if either agency continues to commit funds to which it is not entitled.*

The West Virginia Legislature passed Senate Bill 508 during the 2004 Regular Session to allow the Division of Culture and History to receive 50% of the deposits made to the Cultural Facilities and Capital Resources Matching Grant Program Fund. However, since the time of the effective date of the amendment, each agency has made expenditures using inconsistent interpretations of the code. The effect of this conflicting expenditure practice is that either the Division or the Commission has overextended itself based on perceived entitlement to moneys in the fund. The overall fund balance is solvent. However, this could change if either agency continues to commit funds to which it is not entitled. In addition to the conflicting interpretations of the code, the Division of Culture and History has expended moneys from the fund to which it was not entitled. During FY 2003 and FY 2004, the Division of Culture and History expended \$216,673.60 on capital improvements to cultural facilities managed by the Division of Culture and History. The Legislative Auditor has made several recommendations to resolve future fund disputes to ensure that outstanding Commission grant commitments are honored, and that the Commission be reimbursed for moneys improperly spent by the Division.

## **Issue 2: While the Division of Culture and History Plans to Complete the Renovation of the State Museum, Specific Details Remain Unknown**

*The Division recently reported that it had \$6.5 million in its accounts dedicated to the project.*

The overall cost of the museum renovation project, so far, has risen to \$3,314,256. Since the release of the January 2005 Performance Update and Further Inquiry, the Division of Culture and History has spent \$574,707. The Division recently reported that it had \$6.5 million in its accounts dedicated to the project. However, it stated that it would need more funding to complete the project. The Legislative Auditor recommends that the Division of Culture and History report to the Joint Committee on Government Operations during its December 2006 interim meeting as to firm cost estimates for the completion of the museum renovation project. Further, the Legislative Auditor recommends that the Division of Culture and History involve the Attorney General and Capitol Building Commission in any future capital renovations made by contractors for a proposed museum gift shop and café/coffee shop.

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## Recommendations

1. *The Legislative Auditor recommends that the Commission on the Arts immediately cease the issuance of any future grants until such time where sufficient funding can be determined and all current, outstanding commitments are honored or otherwise resolved.*
2. *The Legislative Auditor recommends that the Legislature divide the Capital Resources Matching Grant Program Funds into two distinct, non-commingling accounts for each entity.*
3. *The Legislative Auditor recommends that the Legislature consider transferring any moneys necessary from the Division of Culture and History's surplus share of the fund to the Commission on the Arts to ensure that grant commitments are honored.*
4. *The Legislative Auditor recommends that the Division of Culture and History reimburse the Commission on the Arts in the amount of \$216,673.60, which was improperly spent during FY 2003 and FY 2004.*
5. *The Legislative Auditor recommends that the Division of Culture and History report to the Joint Committee on Government Operations during its December 2006 interim meeting as to firm cost estimates for the completion of the museum renovation project. At that time, the Division of Culture and History should also provide the Legislature with an update of the museum renovation's funding as well as a projected completion date for the project.*
6. *The Legislative Auditor recommends that the Division of Culture and History consult the Division of Purchasing, the Attorney General, and Capitol Building Commission for any planned museum gift shop and café/coffee shop at the Cultural Center.*



# Review Objective, Scope and Methodology

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The West Virginia Sunset Law, Chapter 4, Article 10, requires and authorizes the Legislative Auditor to conduct a Full Performance Evaluation on the Division of Culture and History. The mission of the Division is, in general, to do all things necessary or convenient to preserve and advance the culture of the State.

## **Objective**

The objective of this review was to determine the respective entitlement to moneys deposited in the Capital Resources Matching Grant Program fund, which has shared utilization between the Division of Culture and History, and the Commission on the Arts. The review also serves as an update on the current status of the state museum renovation project.

## **Scope**

This review includes historical data from 1998 to the present.

## **Methodology**

Information contained in this report was compiled from responses to direct inquiry of the agencies involved, review of previous reports issued by the Legislative Auditor, analysis of reconciliation audit data that was conducted by the Department of Administration's Finance Division, two legal opinions provided by Legislative Services legal counsel, and communications with current and former legislative finance committee staff. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).



# Issue 1

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## **The Division of Culture and History, and the Commission on the Arts Dispute Respective Entitlement to Capital Resources Matching Grant Program Fund Moneys**

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*The West Virginia Legislature passed Senate Bill 508 during the 2004 Regular Session to allow the Division of Culture and History to receive 50% of the deposits made to the Cultural Facilities and Capital Resources Matching Grant Program Fund.*

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### **Issue Summary**

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The West Virginia Legislature passed Senate Bill 508 during the 2004 Regular Session to allow the Division of Culture and History to receive 50% of the deposits made to the Cultural Facilities and Capital Resources Matching Grant Program Fund. However, since the time of the effective date of the amendment, each agency has made expenditures using inconsistent interpretations of the code. The effect of this conflicting expenditure practice is that either the Division or the Commission has overextended itself based on perceived entitlement to moneys in the fund. The overall fund balance is solvent. However, this could change if either agency continues to commit funds to which it is not entitled. In addition to the conflicting interpretations of the code, the Division of Culture and History has expended moneys from the fund to which it was not entitled. During FY 2003 and FY 2004, the Division of Culture and History expended \$216,673.60 on capital improvements to cultural facilities managed by the Division of Culture and History. The Legislative Auditor has made several recommendations to resolve future fund disputes, to ensure that outstanding Commission grant commitments are honored, and that the Commission be reimbursed for moneys improperly spent by the Division.

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*The Capital Resources Matching Grant Program Fund is a special revenue fund that was created by the Legislature in 1999.*

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### **During the 2004 Regular Session, the Legislature Amended the Code to Give the Division of Culture and History Access to Funds that Were Controlled Exclusively By the Commission on the Arts**

The Capital Resources Matching Grant Program Fund is a special revenue fund that was created by the Legislature in 1999. The Fund was originally created under the §29-1-3 provisions for the Commission on the Arts to fund a matching grant program for cultural facilities and capital resources, which is governed by rules. During the 2004 Regular Session, the Legislature amended the code to allow the Division of Culture and History to have access to moneys deposited into the fund directly. Access to moneys in the fund could therefore occur without the consent of the Commission. However, the intent for the expenditure of these moneys remained largely the same. Since the time of the amendment, the Commission on the Arts, and the Division of Culture and History have disputed their respective entitlement to moneys in the fund. The Fund's revenues and disbursements for FY 1999 through FY 2006, as well as a portion of FY 2007, are shown by Table 1. In addition to budget data provided in the table, the Fund's balance as of September 7, 2006 was \$4,685,164.

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*Upon the effective date of S.B. 508, which was July 1, 2004, deposits made into the Cultural Facilities and Capital Resources Matching Grant Program Fund were to be split between the Commission on the Arts and the Division of Culture, and History.*

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<b>Table 1            Cultural Facilities and Capital Resources Matching            Grant Program Fund            §29-1-3(d)</b>		
<b>Fiscal Year</b>	<b>Actual Revenue</b>	<b>Actual Disbursements</b>
1999	\$48,361	—
2000	\$1,060,640	—
2001	\$1,811,222	\$747,420
2002	\$2,531,759	\$714,719
2003	\$2,981,221	\$1,627,747
2004	\$3,573,677	\$1,631,720
2005	\$1,612,483	\$3,361,980
2006	\$1,500,000	\$2,211,408
2007	\$620,079*	—
<i>Source: West Virginia Legislature's Budget Division            *Actual revenue as of September 7, 2006.</i>		

### **The Division of Culture and History and the Commission on the Arts Dispute Respective Entitlement to Moneys in the Capital Resources Matching Grant Program Fund**

The West Virginia Legislature passed Senate Bill 508 during the 2004 Regular Session. This legislation amended §29-1-3 of the code to allow, among other things, the Division of Culture and History to receive 50% of the deposits made to the Cultural Facilities and Capital Resources Matching Grant Program Fund. Previously, the Commission on the Arts used this fund entirely and for the purpose of issuing grants to various arts initiatives in the state. At the time of the effective date of the amendment, the Commission on the Arts maintained a surplus balance of approximately \$7.5 million. The commission typically expended each year's budget during the following year. Therefore, the surplus balance did not reflect prior or future year commitments. Because of this, the appearance of a surplus balance is misleading.

Upon the effective date of S.B. 508, which was July 1, 2004, deposits made into the Cultural Facilities and Capital Resources Matching Grant Program Fund were to be split between the Commission on the Arts, and the Division of Culture and History. Table 2 illustrates the manner in which these funds were to be used.

**Table 2**  
**Interpretation of Statutory Language**  
**Spending Authorizations Amended by 2004 Regular**  
**Session Senate Bill 508**

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*First, deposited could refer to moneys deposited into the fund after the effective date of the legislation.*

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*Second, deposited could refer to all moneys in the fund before the effective date of the legislation as well as those moneys deposited after the effective date.*

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§29-1-3-(d)(1) 50% of the moneys deposited shall be spent by the Commission on the Arts on:	29-1-3(d)(2) 50% of the moneys deposited shall be spent by the Division of Culture and History on:
<ul style="list-style-type: none"> <li>• Capital improvements to cultural facilities in general</li> <li>• Preservation of cultural facilities in general</li> <li>• Operations of cultural facilities in general</li> <li>• No more than 25% of the funding can be spent on operations</li> </ul>	<ul style="list-style-type: none"> <li>• Capital improvements of facilities managed by the Division</li> <li>• Preservation of facilities managed by the Division</li> <li>• Operations of facilities managed by the Division</li> <li>• Capital improvements of facilities <b>not</b> managed by the Division</li> <li>• Preservation of facilities <b>not</b> managed by the Division</li> <li>• Operations of facilities <b>not</b> managed by the Division</li> </ul>
Source: West Virginia Code §29-1-3(d).	

Senate Bill 508 mandates that moneys **deposited** into the fund shall be expended by both the Commission and Division in a manner consistent with Table 2. Emphasis has been added to the word deposited due to its importance in the confusion that has occurred while attempting to interpret the legislative intent of the amendment. First, **deposited** could refer to moneys deposited into the fund **after the effective date** of the legislation. Second, **deposited** could refer to all **moneys in the fund before the effective date** of the legislation as well as those **moneys deposited after the effective date**. Table 3 illustrates the financial implications of both scenarios.

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Upon review of analysis conducted by the Department of Administration's Finance Division, it has been determined that the Division of Culture and History and the Commission on the Arts have conflicting interpretations of the language in the code. The Commission on the Arts has claimed 100% of the moneys present in the fund prior to the effective date of the legislation. It has also claimed and expended 50% of the moneys deposited into the fund after the effective date of the bill. This is illustrated by Scenario 1 in Table 3. Concurrently, the Division of Culture and History has expended over \$216,000 from the fund that existed prior to the effective date, and claimed 50% of all moneys that were in the fund on the effective date of the legislation as well as 50% of the deposits made after the effective date. This is illustrated by Scenario 2 in Table 3. **Both agencies are in conflict as to their respective entitlement to moneys in the fund prior to the effective date of the legislation.**

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*The Commission on the Arts has claimed 100% of the moneys present in the fund prior to the effective date of the legislation.*

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Expenditures consistent with both state entities' interpretation of the code have occurred for the last two years. **The effect of this unharmonious expenditure practice is that either the Division or the Commission has overextended itself based on perceived entitlement to moneys in the fund.** Dependent on each agencies respective interpretation of the code, are varying extremes of debt. The Department of Administration's Finance Division has reconciled the account according to both interpretation scenarios. If Scenario 1 were correct, the Commission would be left with a surplus balance of \$2,214,858 while the Division would be left with a negative balance of (-\$480,212). However, if Scenario 2 were correct the Commission would be left with a negative balance of (-\$1,536,115) while the Division would be left with a surplus balance of \$3,270,761. Table 3 outlines the implications of each scenario. **The overall fund balance is solvent. However, this could change if either agency continues to commits funds to which it is not entitled.**

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*Both agencies are in conflict as to their respective entitlement to moneys in the fund prior to the effective date of the legislation.*

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*Expenditures consistent with both state entities' interpretation of the code have occurred for the last two years.*

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<b>Table 3 Cultural Facilities and Capital Resources Matching Grant Program Fund Balance Based on Conflicting Interpretation of the Code As of May 26, 2006</b>				
	<b>Scenario 1 7/1/04 Cash Balance Re- mains with the Commission</b>		<b>Scenario 2 7/1/04 Cash Balance is Split Equally Between the Com- mission &amp; the Division</b>	
	<b>Commission</b>	<b>Division</b>	<b>Commission</b>	<b>Division</b>
<b>FY 2006 Revenue</b>	\$750,000	\$750,000	\$750,000	\$750,000
<b>FY 2006 Disbursements</b>	\$1,587,626	\$623,782	\$1,587,626	\$623,782
<b>Cash Balance May 2006*</b>	\$5,300,583	-\$478,882	\$1,549,610	\$3,272,091
<b>Pending Commitments</b>	-\$3,086,507	-\$1,330	-\$3,086,507	-\$1,330
<b>Balance Less Commitments</b>	<b>\$2,214,858</b>	<b>-\$480,212</b>	<b>-\$1,536,115</b>	<b>\$3,270,761</b>

*\*The Finance Division concluded its fund reconciliation in May 2006.  
Source: The Department of Administration's Finance Division*

### **A Legislative Services Legal Opinion Indicates That the Division of Culture and History Was Entitled to Fifty Percent of the Unencumbered Fund Balance as of July 1, 2004**

The Legislative Auditor requested a legal opinion from Legislative Services as to whether the Division of Culture and History was entitled to half of all deposits made into the Cultural Facilities and Capital Resources Matching Grant Program Fund **prior** to the July 1, 2004 effective date of the 2004 Regular Session Senate Bill 508. The legal opinion states that:

*The unencumbered balance in the Fund on July 1, 2004, was to be split 50/50 for the uses specified in the statute.*

*The statute does not expressly differentiate between money that was deposited into the fund before July 1, 2004, and the money that was deposited into the Fund on and after that date. Had the Legislature intended to only require the 50% sharing of funds newly deposited on and after July 1, 2004, it could have easily included language to that effect. **In the absence of express language providing for that limitation it is my opinion that the unencumbered balance in the Fund on July 1, 2004, was to be split 50/50 for the uses specified in the statute** [emphasis added].*

This legal opinion is consistent with the Finance Division's Scenario 2. The implication of this opinion is that, as of May 2006, the Commission on the Arts has a **negative balance of \$1,536,115** after all outstanding commitments. On the other hand, the Division of Culture and History has a **surplus balance of \$3,270,761** after all outstanding commitments.



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The resulting negative balance for the Commission does consider all outstanding commitments to arts organizations that have been granted awards through the grant program. Therefore, if the Commission is unable to honor its promised awards, an arts organization would not only lose the Commission's award money, but also the matching share provided by a federal, foundation, corporate, or local private contribution. It should be noted that the Commission does not consider any other state moneys towards the match requirement.

### **Both Agencies Would Benefit from the Separation of Deposits Made Into the Capital Resources Matching Grant Program Fund**

While there should not be any dispute as to each agency's entitled share to moneys deposited into the fund in the future, the fund should be formally divided into two distinct, non-commingling accounts. Each agency will then have its own account. This will ensure that disputes do not occur in the future. In the meantime, the Commission on the Arts should immediately cease the issuance of any future grants until such time where sufficient funds can be determined and all current, outstanding commitments are honored or otherwise resolved. Given the legal opinion that the Division has a surplus, the Legislature should consider transferring any moneys necessary from the Division's surplus share of the fund to the Commission to ensure that grant commitments are honored. The Legislative Auditor realizes that this may be the only solution to preserve the moral obligation of the State. The Legislative Auditor considers the over expenditure of moneys in the fund by the Commission to be an honest mistake based on interpretation of unclear statute. Therefore the Commission, as well as the organizations to which the Commission has granted funding, should not be penalized. It is important that the Commission be able to issue grants that it has committed to various arts entities through its matching grant program. If the Commission is not able to follow through with grant commitments, it could result in undesirable complications for the State, especially if non-state funds have already been provided by any federal, foundation, corporate, or local private organization as a condition of the Commission's pending grant award.

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### **The Division of Culture and History Expended Moneys in the Capital Resources Matching Grant Program Fund to Which It Was Not Entitled**

In addition to the conflicting interpretations of the code, the Division of Culture and History has expended moneys from the fund to which it was not entitled. During FY 2003 and FY 2004, the Division of Culture and History expended \$216,674 on capital improvements to cultural facilities managed by the Division of Culture and History. Specifically, this included capital improvements to cul-



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tural facilities at the Museum in the Park, the Grave Creek Mound Archaeological Complex, Camp Washington-Carver, the Jenkins Plantation Museum, and the Cultural Center. The Commission on the Arts did not sponsor these expenditures. At the time of the expenditures, which would have taken place prior to the effective date of 2004 Regular Session Senate Bill 508, the code did not expressly grant authority to the Division of Culture and History to make such expenditures from the Fund.

The Division of Culture and History stated that these expenditures were permitted through statute that was in effect prior to the 2004 amendment. Specifically, the Division cited §29-1-3(d) as providing that authority by the Department of Education and the Arts. The code, §29-1-3(d), at that time stated:

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*The Division of Culture and History stated that these expenditures were permitted through statute that was in effect prior to the 2004 amendment.*

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*There is created in the state treasury a special revenue account created by the amendment to this section in one thousand nine hundred ninety-nine and hereby continued and redesignated as the "cultural facilities and capital resources matching grant program fund". The fund shall consist of moneys received under section ten, article twenty-two-a of this chapter and funds from any other source. Moneys in the fund shall be expended for capital improvements: Provided, That the commission shall make a women's veterans memorial statue a priority when expending the funds: Provided, however, That the commission shall submit the plans for the statue to the secretary of administration for his or her approval. The commission on the arts shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to create a matching grant program for cultural facilities and capital resources.*

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*The Division also cites a September 9, 2003 letter from an official at the Department of Education and the Arts to the former chairman of the Commission on the Arts.*

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The Division also cites a September 9, 2003 letter from an official at the Department of Education and the Arts to the former chairman of the Commission on the Arts. This letter stated that the code, as of 2003, allowed for the Division to use a portion of the funds for capital projects. The letter stated:

*West Virginia law clearly places ultimate responsibility for all expenditures within the Division of Culture and History in the hands of the Commissioner [of the Division of Culture and History].*

The Department of Education and the Arts further substantiates this by quoting §29-1-2, which states:

*No contract, agreement or undertaking may be entered into by any section of the division which involves the expenditure of funds without the express written approval of the commissioner as to fiscal responsibility.*

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*Legislative Services counsel found no statutory authority for the Division to take money out of the Fund without being awarded the money from the Commission prior to the effective date of SB 508 passed in 2004.*

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*A careful reading of the quoted portion of this section, as well as W.Va. Code §29-1-1, does not support the conclusion that the Commissioner has the ultimate authority for all expenditures within the Division.*

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*For this reason, the Division of Culture and History should reimburse the Commission on the Arts in the amount of \$216,673.60, which was spent during FY 2003 and FY 2004.*

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The Legislative Auditor requested a legal opinion regarding the Division's expenditure and the Department of Education and the Arts' explanation of authority. In the legal opinion, Legislative Services counsel stated that:

*I have found no statutory authority for the Division to take money out of the Fund, without being awarded the money from the Commission, prior to the effective date of SB 508 passed in 2004.*

However, as stated before, these expenditures took place prior to the amendment of the code. Further, the Division stated that these expenditures were made without any involvement of the Commission on the Arts. Concerning the Department of Education and the Arts' substantiation for the expenditures vis-a-vis §29-1-2, legal counsel stated:

*A careful reading of the quoted portion of this section, as well as W.Va. Code §29-1-1, does not support the conclusion that the Commissioner has the ultimate authority for all expenditures within the Division. The quoted portion of W.Va. Code §29-1-2 gives the Commissioner authority only over **sections** of the Division. W.Va. Code §29-1-1, subsections (b) and (c), clearly differentiate between **sections** of the Division and **commissions** contained in the Division. Additionally, in describing the authority of the Commissioner W.Va. Code §29-1-2, includes some authority in regard to both the Division's commissions and sections. Clearly, the portion of W.Va. Code §29-1-2 cited above did not give the Commissioner authority or responsibility for the money contained in the Fund during Fiscal Year 2004.*

In the legal opinion's conclusion, counsel stated that:

*In light of the provisions discussed above and the lack of any other statutory provision giving the Commissioner authority over the Fund, it is my conclusion that the Division did not have statutory authority to take money out of the Fund, without being awarded the money from the Commission, prior to the effective date of SB 508 passed in 2004.*

The opinion clearly indicates that the Division of Culture and History expended moneys from the fund, to which it was not entitled. **For this reason, the Division of Culture and History should reimburse the Commission on the Arts in the amount of \$216,673.60, which was spent during FY 2003 and FY 2004.**

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## Conclusion

It is the opinion of the Legislative Auditor that both the Division of Culture and History, and the Commission on the Arts unnecessarily delayed in seeking clarification as to the intent of the 2004 amendment to the code brought forth by Senate Bill 508. While discussion may have occurred since the amendment, it appears that any findings by either agency have been non-concrete and both agencies are still unsure as to their entitled share of the moneys in the fund. To resolve the Commission's negative balance the Legislative Auditor recommends that the Commission on the Arts immediately cease the issuance of any future grants until such time where sufficient funding can be determined and all current, outstanding commitments are honored or otherwise resolved. Further, it is recommended that the Legislature divide the Capital Resources Matching Grant Program Funds into two distinct, non-commingling accounts and consider transferring any moneys necessary from the Division of Culture and History's surplus share of the fund to the Commission on the Arts to ensure that grant commitments are honored.

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*It is the opinion of the Legislative Auditor that both the Division of Culture and History, and the Commission on the Arts unnecessarily delayed in seeking clarification as to the intent of the 2004 amendment to the code brought forth by Senate Bill 508.*

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## Recommendations

1. *The Legislative Auditor recommends that the Commission on the Arts immediately cease the issuance of any future grants until such time where sufficient funding can be determined and all current, outstanding commitments are honored or otherwise resolved.*
2. *The Legislative Auditor recommends that the Legislature divide the Capital Resources Matching Grant Program Funds into two distinct, non-commingling accounts for each entity.*
3. *The Legislative Auditor recommends that the Legislature consider transferring any moneys necessary from the Division of Culture and History's surplus share of the fund to the Commission on the Arts to ensure that grant commitments are honored.*
4. *The Legislative Auditor recommends that the Division of Culture and History reimburse the Commission on the Arts in the amount of \$216,673.60, which was improperly spent during FY2003 and FY2004.*



## **While the Division of Culture and History Plans to Complete the Renovation of the State Museum, Specific Details Remain Unknown**

### **Issue Summary**

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The overall cost of the museum renovation project, so far, has risen to \$3,314,256. Since the release of the January 2005 Performance Update and Further Inquiry, the Division of Culture and History has spent \$574,707. The Division recently reported that it had \$6.5 million in its accounts dedicated to the project. However, it stated that it would need more funding to complete the project. The Legislative Auditor recommends that the Division of Culture and History report to the Joint Committee on Government Operations during its December 2006 interim meeting as to firm cost estimates for the completion of the museum renovation project. Further, the Legislative Auditor recommends that the Division of Culture and History involve the Attorney General and Capitol Building Commission in any future capital renovations made by contractors for a proposed museum gift shop and café/coffee shop.

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*The overall cost of the museum renovation project, so far, has risen to \$3,314,256. Since the release of the January 2005 Performance Update and Further Inquiry, the Division of Culture and History has spent \$574,707.*

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## **The State Museum Renovation Remains Incomplete After Eight Years**

According to the June 2002 Full Performance Evaluation of the Division of Culture and History, the Division began the renovation of the state museum in 1998. Following an appropriation request to the Legislature, the project was awarded \$4,500,000. An additional \$2,000,000 was sought by the Division from private pledges. Christopher Chadbourne Associates was selected by the Division to “*plan, design, and provide fabrication oversight of renovations to the state museum*” at an initial cost of \$1,058,139. Chadbourne developed a “Master Plan” document of state history that would be used in the new exhibits. However, according to the June 2002 report, West Virginia historians gave both positive and negative reviews of the content of Chadbourne’s Master Plan. The June 2002 report also stated that in February 2002 the commissioner at that time stopped the museum project, even though the museum had been slated to open in August 2002. At that time, over \$1 million had been spent on the project. Between the project stoppage and the release of the June 2002 report, Division officials assessed their dissatisfaction of the museum renovation. Additionally, the Division contracted with a consultant to review its dissatisfaction with the renovation design and to recommend alternatives to the original design. The Division identified the possibility that additional costs could be as high as \$1.5 million. Therefore, in June 2002, the Legislative Auditor recommended that a new project manager be hired to determine improvements and additional costs to the Chadbourne design. Additionally, the Legislative Auditor recommended that the improvements and additional costs be presented to the Legislature for its review.

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*The Division recently reported that it had \$6.5 million in its accounts dedicated to the project.*

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In December 2003, the Legislative Auditor issued a Performance Update of the Division of Culture and History on the previous June 2002 report. The Division was in compliance with the recommendation concerning the hire of a new project manager for the museum. Additionally, the Division was in planned compliance with the recommendation concerning the presentation of project changes to the Legislature. According to the December 2003 report, the commissioner stated that:

*The Division entered into a contractual agreement with Matthew Martin Design Works in July 2003 for an adaptive re-design of the Chadbourne plan. The design for the State Museum will be presented to a committee of combined legislative leaders on January 11, 2004. The current fabrication budget is 4.2 million compared to a 4,077,754 budget in 2000.*

---

***In January 2005, the Legislative Auditor issued another Performance Update and Further Inquiry on the Division of Culture and History. That report found the Division to be in non-compliance, where it had previously been in planned compliance, because it had failed to inform the Legislature of the additional costs that were incurred by contracting with Matthew Martin Design Works. While the Division had already committed to the contractor, the Division only presented the Legislature with installation and fabrication, omitting details about the total cost of the renovation.***

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In January 2005, the Legislative Auditor issued another Performance Update and Further Inquiry on the Division of Culture and History. That report found the Division to be in non-compliance, where it had previously been in planned compliance, because it had failed to inform the Legislature of the additional costs that were incurred by contracting with Matthew Martin Design Works. While the Division had already committed to the contractor, the Division only presented the Legislature with installation and fabrication, omitting details about the total cost of the renovation. The January 2005 audit stated that the costs of the new museum escalators, which were necessary for the new design, were not reported to the Legislature.

As for the Further Inquiry section of the January 2005 report, the Legislative Auditor took exception with the fact that the Division spent almost \$1 million on the second design firm. That report also stated that changes in leadership contributed to shortcomings of the project. The Division is now under the leadership of its third commissioner since the beginning of the museum renovation, not including two interim/acting commissioners. Additionally, depleting funds and cost underestimation were cited as problems. The report outlined three phases for the project:

- Phase I            Demolition
- Phase II          Reconstruction
- Phase III        Fabrication and installation of the actual exhibits

While the estimate for Phase II was anticipated at \$1.6 million, the Division received two construction bids of over \$4 million. The museum had only set aside \$1.6 million for Phase II. Actual Phase III costs were stated as unknown in the January 2005 report. However, they were believed to be between \$4.2 and \$4.7 million. At that time, the total renovation costs were recognized to be as high as \$8 million.



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## **The Museum Project Has Stalled Due to the Lack of Funding and Changing Leadership That Has Occurred**

The Legislative Auditor recently requested that the Governor comment on the administration's strategy for resuming and completing the museum renovation project. In a letter dated July 13, 2006, the Governor wrote:

*This Administration is committed to completing the renovation of the West Virginia State Museum in a thoughtful, cost-effective manner. The design is innovative and interactive, and the museum will offer invaluable learning opportunities to young people, tourists and educators. In addition, the new museum will be a vital addition to our state's list of tourist attractions and an important part of the infrastructure we need to attract new business to the state.*

---

*This Administration is committed to completing the renovation of the West Virginia State Museum in a thoughtful, cost-effective manner.*

The same letter informed the Legislative Auditor of the recent appointment of the position of Commissioner, which had been vacant for approximately six months.

Soon after the appointment of the new Commissioner in July 2006, the Division hired a consultant with museum construction experience. This individual will act as a project manager for the construction of the museum. The consultant will be responsible for the following:

- Developing scopes of work
- Coordinating the work of contractors and agency staff
- Assisting with preparing bid documents and negotiating contracts for the project
- Assisting with value engineering the museum design

---

*Soon after the appointment of the new Commissioner in July 2006, the Division hired a consultant with museum construction experience. This individual will act as a project manager for the construction of the museum.*

According to the Division, the search for a consultant/project manager was slowed due to the vacancies in the commissioner and museum director positions. The consultant has prepared an Expression of Interest to hire a firm to complete the architectural/engineering, audiovisual/special effects systems design, lighting design, and other work that must be done before the facility build-out and exhibit/fabrication/installation contracts can be bid. The Division hopes to have a contract for this work awarded in January 2007.

## **Additional Funding will be Necessary to Complete the Museum Renovation Project**

According to the Division, members of the Legislature as well as the Governor's Office have instructed the Division to obtain firm cost estimates for the completion of the renovation project. However, the Division holds that obtaining a firm estimate would require the contracting of a museum exhibit estimating service. Before entering into this contract, however, the Division must complete the plans for the facility build-out and exhibit fabrication/installation.

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The overall cost of the museum renovation project, so far, has risen to \$3,314,256. Since the release of the January 2005 Performance Update and Further Inquiry, the Division has spent an additional \$574,707. These figures include all invoices that were paid through June 30, 2006. They do not include personnel costs (salaries and benefits) that have been charged to the museum project. The Division reported that as of October 30, 2006, it had \$6.5 million in its accounts dedicated to the project. However, it stated that it would need more funding to complete the project. The Division currently has no plans to hire a fund-raising specialist. However, the Division did predict that a separate non-profit organization would lead fund-raising efforts. The Legislative Auditor recommends that the Division of Culture and History report to the Joint Committee on Government Operations during its December 2006 interim meeting as to firm cost estimates for the completion of the museum renovation project.

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*In addition to the already planned museum renovation, the Division is considering the installation of a museum gift shop and a café/coffee shop, which would be located on the main floor of the Cultural Center.*

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### **The Division Should Use Caution When Contracting Concession Vendors To Perform Capital Improvements**

In addition to the already planned museum renovation, the Division is considering the installation of a museum gift shop and a café/coffee shop, which would be located on the main floor of the Cultural Center. Recently, it has been reported that a new vendor contracted to run the Capitol cafeteria could also include the café/coffee shop at the Cultural Center. The Division has also reported that it may contract with a vendor that would be responsible for the renovation of the needed space. Although plans have not been finalized, the Legislative Auditor must emphasize the importance of involving the Division of Purchasing and the Attorney General's Office in the development of any vendor contracts. Specifically, the Attorney General should be involved early on the process of contracts involving renovation.

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*Although plans have not been finalized, the Legislative Auditor must emphasize the importance of involving the Division of Purchasing and the Attorney General's Office in the development of any vendor contracts.*

---

The Division should also consult the Capitol Building Commission for approval. According to §4-8-4 of the code:

*The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract...[including]...the state science and cultural center...*

This detail is especially important since the vendor could make substantive design decisions without the Division's consent. Therefore, the Legislative Auditor recommends that the Division of Purchasing, the Attorney General, and Capitol Building Commission should all be consulted for any planned museum gift shop and café/coffee shop at the Cultural Center.



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## Conclusion

Multiple factors have contributed to the ongoing, yet low result-yielding, museum renovation project over the last eight years. However, current Division administration has apparently identified the need to hire an experienced project manager to complete the museum renovation project. As well, the Division realizes that additional funding will be necessary to complete the project. Therefore, the Legislative Auditor recommends that the Division of Culture and History report to the Joint Committee on Government Operations during its December 2006 interim meeting as to firm cost estimates for the completion of the museum renovation project. At that time, the Division of Culture and History should also provide the Legislature with an update of the museum renovation's funding as well as a projected completion date for the project.

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*Multiple factors have contributed to the ongoing, yet low result-yielding, museum renovation project over the last eight years.*

---

## Recommendations

5. *The Legislative Auditor recommends that the Division of Culture and History report to the Joint Committee on Government Operations during its December 2006 interim meeting as to firm cost estimates for the completion of the museum renovation project. At that time, the Division of Culture and History should also provide the Legislature with an update of the museum renovation's funding as well as a projected completion date for the project.*
6. *The Legislative Auditor recommends that the Division of Culture and History consult the Division of Purchasing, the Attorney General, and Capitol Building Commission for any planned museum gift shop and café/coffee shop at the Cultural Center.*



# Appendix A: Transmittal Letters

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## 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

October 24, 2006

Mr. Randall Reid-Smith, Commissioner  
West Virginia Division of Culture and History  
1900 Kanawha Blvd. East  
Charleston, WV 25305

Dear Commissioner Reid-Smith:

This is to transmit a draft copy of the Full Performance Evaluation on the Division of Culture and History. This report is scheduled to be presented during the November 13-15, 2006 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting between October 25, 2006 and October 31, 2006. Please notify us to schedule an exact time. In addition, we need your written response by noon on November 1, 2006 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, November 9, 2006 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,

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

John Sylvia

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*Joint Committee on Government and Finance*

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**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

October 24, 2006

Susan Landis, Chairperson  
West Virginia Commission on the Arts  
1221 Lake Drive  
Daniels, WV 25832

Dear Chairperson Landis:

This is to transmit a draft copy of Issue 1 of the Full Performance Evaluation on the Division of Culture and History. This issue makes several references to the Commission on the Arts. This report is scheduled to be presented during the November 13-15, 2006 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. A representative from your agency may be present at the meeting to orally respond to the report and answer any questions the committee may have, if you desire.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting between October 25, 2006 and October 31, 2006. Please notify us to schedule an exact time. In addition, if you would like to respond to the issue in writing, we would need your written response by noon on November 1, 2006 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, November 9, 2006 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,

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

John Sylvia

---

*Joint Committee on Government and Finance*

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## Appendix B: Division of Culture and History Response

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WEST VIRGINIA  
DIVISION OF  
CULTURE & HISTORY

1900 Kanawha Blvd., E.  
Charleston, WV  
25305-0300

Phone 304.558.0220  
Fax 304.558.2779  
TDD 304.558.3562  
www.wvculture.org

EEO/AA Employer

October 31, 2006

Mr. John Silva  
Director  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610

RECEIVED  
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PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

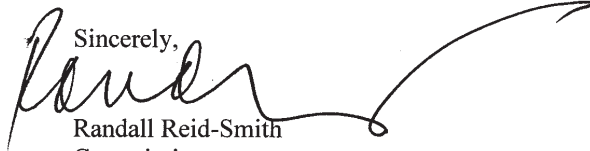
Dear Mr. Silva:

Enclosed, please find our written response to the draft copy of the Full Performance Evaluation for the Division of Culture and History. You may include this response and the supporting attachments in the final bound report.

Please don't hesitate to let me know if I can provide further information.

Thank you.

Sincerely,



Randall Reid-Smith  
Commissioner

cc: Kay Goodwin, Cabinet Secretary, Department of Education and the Arts  
Denny Rhodes, Research Manager, Performance Evaluation and Research Division  
Michael Keeney, Research Analyst, Performance Evaluation and Research Division  
Ginny Painter, Deputy Commissioner, Division of Culture and History

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### Agency Response to Recommendations

1. *The Legislative Auditor recommends that the Commission on the Arts immediately cease the issuance of any future grants until such time where sufficient funding can be determined and all current, outstanding commitments are honored or otherwise resolved.*

**Response:** The actions suggested in this recommendation have already been done. The Division agreed on two previous occasions to cover a major portion of the outstanding grant commitments, and the Commission covered the remaining balance with its FY2007 monies.

2. *The Legislative Auditor recommends that the Legislature divide the Capital Resources Matching Grant Program Funds into two distinct, non-commingling accounts for each entity.*

**Response:** The Division agrees with this recommendation.

3. *The Legislative Auditor recommends that the Legislature consider transferring any moneys necessary for the Division of Culture and History's surplus share of the fund to the Commission on the Arts to ensure that grant commitments are honored.*

**Response:** The actions suggested in this recommendation have also already been done. Please see the attached correspondence from Cabinet Secretary Kay Goodwin to Commission Chairman Susan Landis, stating that outstanding grant commitments would be covered by the Division's share of the money. In an effort to ensure that no grants have to be rescinded, the Division, on two separate occasions, has been willing to use large portions of its share of the surplus to cover the Commission's grant over-commitments. As noted in the response to Recommendation No. 1, to date, the Division already has covered most of the grants awarded by the Commission in excess of their available funds, and the Commission has covered the remaining balance.

4. *The Legislative Auditor recommends that the Division of Culture and History reimburse the Commission on the Arts in the amount of \$216,673.60 which was improperly spent during FY 2003 and FY 2004.*

**Response:** We respectfully disagree with this recommendation. The Division stands by the legal reasoning explained more fully in Dennis Taylor's letter of September 9, 2003, which has been attached along with the minutes from the June 3, 2003, Commission meeting. Mr. Taylor recalls that during meetings with legislative finance committee staff members Hallie Mason and Evelyn Moore, then-Commissioner Body was assured the Cultural Facilities monies could indeed be legitimately used for Division properties. As a result, Mr. Taylor and Commissioner Body felt confident in notifying the Commission of

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the Division's intent to proceed. The attached correspondence from Mr. Taylor indicates this intention and the Commission minutes reflect its members' agreement. In addition, please note, as stated above in the response to Recommendation No. 3, that the Division has already used a large portion of its share of the fund to cover the Commission's grants—an amount well in excess of \$216,673.60.

5. *The Legislative Auditor recommends that the Division of Culture and History report to the Joint Committee on Government Operations during its December 2006 interim meeting as to firm cost estimates for the completion of the museum renovation project. At that time, the Division of Culture and History should also provide the Legislature with an update of the museum renovation's funding as well as a projected completion date for the project.*

**Response:** The Division will be pleased to present a museum project update to the Joint Committee on Government Operations during its December 2006 interim meeting.

6. *The Legislative Auditor recommends that the Division of Culture and History consult the Division of Purchasing, the Attorney General, and Capitol Building Commission for any planned museum gift shop and café/coffee shop at the Cultural Center.*

**Response:** The Division agrees with this recommendation and will comply.

**Respectfully submitted October 30, 2006  
West Virginia Division of Culture and History  
Randall Reid-Smith, Commissioner**

**Attachments:**

Letter from Cabinet Secretary Kay Goodwin to Arts Commission Chairman Susan Landis, dated June 27, 2006

Letter from Dennis Taylor, Chief of Staff, Cabinet Secretary for Education and the Arts, to Arts Commission Chairman William Davis, dated September 9, 2003

Minutes of the June 3, 2006, meeting of the West Virginia Commission on the Arts, with attached notes by Richard H. Ressimyer



JOE MANCHIN III  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF EDUCATION AND THE ARTS  
OFFICE OF THE CABINET SECRETARY  
STATE CAPITOL BUILDING 5, ROOM 205  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305

KAY GOODWIN  
CABINET SECRETARY

June 27, 2006

Ms. Susan Landis  
Chairperson of the West Virginia Commission on the Arts  
1221 Lake Drive  
Daniels, West Virginia 25832

Dear Madam Chairperson and Commission Members:

I have and thank you for your letter of June 14, 2006 addressing what you perceive to be unresolved issues concerning your authority to expend monies in the CFCRG Fund. As you will recall, it has been my official position since 2004 that the authority to expend "moneys" in the CFCRG Fund is allocated so that your Commission has authority to expend fifty percent of "moneys in the fund" and the Division of Culture and History has authority to expend the other fifty percent of "moneys in the fund." The statute could not be plainer. It provides in pertinent part:

(d) A special revenue account in the state treasury, known as the "cultural facilities and capital resources matching grant program fund", is continued. The fund shall consist of moneys received under section ten, article twenty-two-a of this chapter and funds from any other source. The *moneys in the fund* shall be expended in accordance with the following:

(1) Fifty percent of the moneys deposited in the fund shall be expended by the commission on the arts for capital improvements, preservation and operations of cultural facilities: *Provided*, That the commission on the arts may use no more than twenty-five percent of the funding for operations of cultural facilities pursuant to the rule required by this subdivision: *Provided, however*, That the commission shall make a women's veterans memorial statue a priority when expending the funds: *Provided further*, That the commission shall submit the plans for the statue to the secretary of administration for his or her approval. The commission on the arts shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to create

PHONE: (304) 558-2440

FAX: (304) 558-1311



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a matching grant program for cultural facilities and capital resources: and

- (2) Fifty percent of the moneys deposited in the fund shall be expended by the division of culture and history for:
- (A) Capital improvements, preservation and operation of cultural facilities that are managed by the division; and
  - (B) Capital improvements, preservation and operation of cultural facilities that are not managed by the division.

W.Va. Code 29-1-3(d). (Emphasis added).

Notwithstanding my advice to you on this matter, it appears from the recent audit that the Arts Commission has continued to award monetary grants greatly in excess of the amounts available to you. You will recall from the letter I sent your Chairperson on April 7, 2006, that at her request, I permitted, and then directed, the Division of Culture and History to expend a very large portion of their share of the CFCRG Fund to cover your overspending in 2005. I did so by virtue of the statutory authority granted in W.Va. Code § 29-1-3.

Specifically, in July of 2005, when Acting Commissioner Troy Body informed me that your CFCRG Fund monies had been over committed, I agreed to cover that overspending, which totaled \$1,374,998.50 (One Million Three Hundred Seventy-Four Thousand Nine Hundred Ninety-Eight Dollars and Fifty Cents) with monies from Culture and History's portion of the account. That offer came with a caveat to which your Chairperson agreed: this would be the last time that the Commission on the Arts would use any of the excess monies then remaining in the account. From then on, as stated in the Code, the Commission on the Arts would be limited to the \$750,000 per fiscal year as directed by the language of W.V. Code § 29-22A-10(c)(10)(B)(ii). However, in 2006 Commission staff indicated that most of the remaining funds from that account have been committed by The Commission in direct opposition to our agreement. Due to this, I felt it necessary to request an audit of the funds in the CFCRG Program Fund account. We engaged auditors from the Department of Finance and Administration to perform this task.

The recently completed audit reveals there is currently \$4,760,041.64 (Four Million Seven Hundred Sixty Thousand Forty-one Dollars and Sixty-four Cents) in the CFCRG account, of which \$1,549,610.02 (One Million Five Hundred Forty-nine Thousand Six Hundred Ten Dollars and Two Cents) has already been granted by the Commission on the Arts. The remaining \$3,210,431.62 (Three Million, Two Hundred Ten Thousand, Four Hundred Thirty-one Dollars and Sixty-two Cents) belongs to the Division of Culture and History.

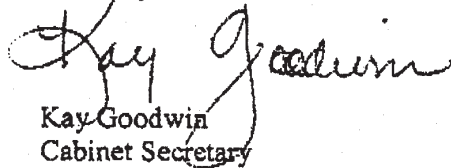
The Commission on the Arts has outstanding grant commitments in the amount of \$3,086,506.96 (Three Million Eighty-six Thousand Five Hundred Six Dollars and Ninety-six Cents) and lacks the money to fund a substantial portion of those grants. At my request and direction, Culture and History will allot \$1, 210, 431.62 (One Million,

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Two Hundred Ten Thousand Four Hundred Thirty-one Dollars and Sixty-Two Cents) of the shared funds to cover the majority of your outstanding grant commitments. This will leave \$326,465.22 (Three Hundred Twenty-six Thousand Four Hundred Sixty-five Dollars and Twenty-two Cents) in outstanding Arts Commission grant commitments which may be covered by the Commission's \$750,000, monies due The Commission as per W.Va. Code §29-22A-10(c)(10)(B)(ii) for fiscal year 2007. I digress to point out that the calculations appearing as "Scenario I" in the audit report are not relevant.

While we are addressing difficult matters, I think it important to share with you my concern over the allocation of your grant funds. While I have every reason to respect and admire this Commission's commitment to the arts, I fear that some may see an appearance of favoritism in the allocation of moneys. Specifically, my concerns relate to the demonstrable fact that more moneys go to projects in the counties of some Commission members than to others in the State.

Sincerely,



Kay Goodwin  
Cabinet Secretary

cc: Sally Rowe, Vice-Chair  
Jennifer Francis Alkire  
Arthur "Pete" Ballard  
Carolyn Cavendish  
Marilyn Cooper  
Elaine D'Alessandri  
Walker Peterson Holloway  
Stephen M. Hopta  
Callen J. McJunkin  
Selina Midkiff  
Jeanne Mozier  
Addie M. Ours  
Carol Templeton  
Penny Watkins  
Richard H. Ressmeyer, Arts Director  
Ginny Painter, Deputy Commissioner of Culture and History  
Chief of Staff Puccio



**FILE COPY**

**BOB WISE  
GOVERNOR**

STATE OF WEST VIRGINIA  
DEPARTMENT OF EDUCATION AND THE ARTS  
OFFICE OF THE CABINET SECRETARY  
STATE CAPITOL BUILDING 5, ROOM 205  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305

**KAY GOODWIN  
CABINET SECRETARY**

September 9, 2003

William Davis, Chairman  
West Virginia Commission on the Arts  
145 Abney Circle  
Charleston, WV 25314

RE: Cultural Facilities and Capital Resources Fund

Dear Chairman Davis:

At the June 3, 2003 meeting of the West Virginia Commission on the Arts, you requested a letter from the West Virginia Department of Education and the Arts summarizing our conversations with legislative staff about the cultural facilities and capital resources matching grant program fund and our understanding of the law.

At the outset, I must apologize for not providing you with this letter in a timely manner. I intended to prepare this letter immediately after the June 3 meeting, but other matters kept arising, and I kept pushing this project back. While I do not intend to attempt to excuse my failure, I do apologize for it.

As I explained during the June 3, 2003 meeting, we requested that the statutory language governing the fund be amended to give the Division of Culture and History greater flexibility in using moneys from this fund. First, we requested that the Division of Culture and History be allowed to use a portion of this fund for capital improvements, preservation, and operation of cultural facilities managed by the Division. Second, we requested that the Commission on the Arts be allowed to provide non-capital grants from this fund as a way of increasing "traditional" arts grants funding.

Near the end of the 2003 legislative session, legislative staff informed us that the current statutory language allowed the Division of Culture and History to use a portion of this fund for capital projects for cultural facilities managed by the Division, but not for operational costs. On March 20, 2003, we met with legislative staff, who reiterated that the Division of Culture and History could use a portion of this fund for capital projects for cultural facilities managed by the Division.

The legal basis for this interpretation can be found in W. Va. Code § 29-1-3(d).<sup>1</sup> First, subsection (d) provides that "[m]oneys in the fund shall be expended for capital improvements." Second, subsection (d) fails to limit use of moneys from the fund to capital projects outside the

<sup>1</sup> When interpreting a statute, one starts with statutory language then goes to legislative intent then to policy objectives. Unfortunately, there is no evidence of legislative intent.

control of the Division of Culture and History. To the contrary, subsection (d) specifically provides for priority funding for one such capital project: the women's veterans memorial statue.

During the June 3, 2003 meeting of the Commission on the Arts, several members sought clarification concerning the respective roles of the Commissioner of the Division of Culture and History and the Commission on the Arts in allocating these moneys for expenditure. West Virginia law clearly places ultimate responsibility for all expenditures within the Division of Culture and History in the hands of the Commissioner.<sup>2</sup> According to W. Va. Code § 29-1-2 (Supp. 2001): "No contract, agreement or undertaking may be entered into by any section of the division which involves the expenditure of funds without the express written approval of the commissioner as to fiscal responsibility." W. Va. Code § 29-1-2 (Supp. 2001).

At the same time, W. Va. Code § 29-1-3(c) gives the Commission on the Arts the following relevant powers: "(1) To advise the commissioner and the director of the arts section concerning the accomplishment of the purposes of [the arts] section . . . ; (2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts section[.] . . ." W. Va. Code § 29-1-4 goes on to provide:

The purposes and duties of the arts section are to stimulate, encourage, assist, promote, foster and develop the performing and creative arts and crafts in the state; and in furtherance thereof to make awards, prizes and grants to individual performers, artists or craftsmen and to public and private corporations or associations in the field of either the performing or creative arts and crafts that would tend to encourage and foster the advancement of such arts and crafts; to support cultural, artistic or craft exhibits or performances at the division's facilities or on tour; and to perform such other duties as may be assigned to said section by the commissioner. . . .

W. Va. Code § 29-1-3(c)(2), read in conjunction with W. Va. Code § 29-1-4, gives the Commission on the Arts authority to approve grants to "individual performers, artists and craftsmen and to public and private corporations and associations." These statutes, however, do not give the Commission authority to approve grants to the Division itself. If they did so, these statutes would conflict directly with W. Va. Code § 29-1-2, which places ultimate responsibility over Division expenditures in the hands of the Commissioner.

Having said that, Secretary Kay Goodwin, Commissioner Nancy Herholdt, and I strongly believe that the Commission on the Arts should play an important role in our efforts to promote the arts, both for capital and non-capital projects, consistent with W. Va. Code § 29-1-3(c)(1).

Consistent with this premise, we propose that funds be allocated only after consultation between the Commissioner, the Director of the Arts Section, and the Chairman of the Commission on the Arts. While there clearly are sufficient funds at this time to satisfy everyone's needs, this may not always be the case. Periodic reviews of the status of this fund will ensure that all interests can be fairly served.

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<sup>2</sup> The West Virginia Legislature, of course, has ultimate authority over expenditures, and the Commissioner of the Division of Culture and History has no authority to approve expenditures that are inconsistent with state law.

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Letter to Chairman William Davis  
September 7, 2003  
Page 3 of 3

We also believe that we need to do a better job of keeping both the Commission on the Arts and the Archives and History Commission informed of our efforts and to give both Commissions a greater opportunity to fulfill their statutory advisory roles.

Both the Commission on the Arts and the Archives and History Commission were created to provide the Division of Culture and History with expertise, and we would be foolish not to take greater advantage of it – especially as we undertake major projects like the renovation of the state museum and development of sites like the Grave Creek Mound Historic Site, Jenkins Plantation, and Camp Washington-Carver.

In the future, we propose to report on and solicit your advice about one or more projects and/or ideas at each meeting. If this proposal meets with your approval, we would like to discuss our efforts to renovate of the state museum at the Commission on the Arts' next meeting. While the state museum will be primarily historical, the arts will play a significant role in both the story that we tell and in our method of story telling. We hope that our excitement about this project is contagious, and that the Commission for the Arts will support us in our efforts to create a museum in which all West Virginians will be proud.

Should you have any questions or concerns, please always feel free to contact Secretary Goodwin, Commissioner Herholdt, Director Ressmeyer, or me.

---

Sincerely yours,

*Dennis C. Taylor*

Dennis C. Taylor  
Chief of Staff

cc: Kay Goodwin, Cabinet Secretary, Department of Education and the Arts  
Nancy Herholdt, Commissioner, Division of Culture and History  
Richard Ressmeyer, Director, Arts Section, Division of Culture and History  
Harold Michael, Chairman, House Finance Committee  
Walt Helmick, Chairman, Senate Finance Committee  
Robert Plymale, Chairman, Senate Education Committee

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June 3, 2003

West Virginia Commission on the Arts  
Commission Meeting  
June 3, 2003—Minutes  
Green Room  
Cultural Center

**PRESENT:**

William Davis  
Jeanne Mozier  
Joan Stamp  
Susan Landis  
Sally Rowe  
Addie Ours  
Helen Lodge  
Bobbie Hill  
Callen McJunkin  
Miriam Knight

**COMMISSIONER:**

Nancy Herholdt

**GUESTS:**

Secretary Kay Goodwin  
Chief of Staff, Dennis Taylor

**STAFF:**

Richard Ressmeyer  
Kelley French  
Barbie Anderson  
Gordon Simmons  
Rose McDonough  
Martha Collins  
Debbie Haught



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The meeting was called to order at 9:10 a.m. by Chairman Davis.

- I. Approval of Minutes from November Commission meeting were presented by Chairman Davis. Joan Stamp moved to accept as written. Motion was seconded and carried.

- II. Presentation of Financial Report.

Presentation of the financial report by Barbie Anderson, followed by motion by Susan Landis to accept as presented. Motion was seconded by Bobbie Hill and carried.

- II. Chief of Staff Report:

Dennis Taylor discussed the budget cuts for FY04. There is clarification from the Legislature that funds can be used by the division for facilities that the division operates. He stated that balances are not accurate. He also informed the Commission not to be surprised if there is another 8-10% budget cut in FY05. William Davis requested a letter from Dennis Taylor spelling out that the division can use \$500,000.00 of the CFCRG, that it is legal not just hear say, and to avoid any confusion on the part of the Legislature. Secretary Goodwin will approve the letter. N.B. Please see additional notes taken by R.Ressmeyer attached.

- VI. Presentation of AIE Panel Report:

Martha Collins presented the report on the AIE Panel. William Davis commended Martha Collins and Joan Stamp for their work on the panel. Joan Stamp states that the panel was prepared and efficient. Panel members suggested workshops should be offered. Joan Stamp moved to accept as presented. It was seconded by Bobbie Hill and carried.

- VII. Presentation of Professional Development Panel Report:

Gordon Simmons presented the report on the Professional Development Panel. There were a record number of applications. Gordon Simmons stated that the panel was efficient and fair with a small amount of funds. Helen Lodge moved to accept as presented, it was seconded and carried.

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**VIII. Presentation of General Grants Review:**

Richard Ressmeyer and the Arts staff presented the report on the General Grants. Debbie Haught explained special circumstances. The Commission compared Panel One and Two grant recommendations, along with Arts Staff suggestions. William Davis moved to approve with special circumstances and stipulations, it was seconded and carried.

**IX. Director of Arts Report on Budget Digest:**

Richard Ressmeyer gave a report on Budget Digest. Applicants cannot receive funds from more than one grant source. Richard Ressmeyer will draft a letter to Budget Digest and WVCA grant recipients. Stating that they must choose which funds they will accept, or give written declaration that the Budget Digest funds are being used for Capital purposes.

**X. Director of Arts gave up-date on Website:**

Richard Ressmeyer gave the Commission and staff a progress report on the Web-site. All progress and ideas will be signed off on by Commissioner Herholdt.

**MEETING ADJOURNED AT 2:00 p.m. BY CHAIRMAN DAVIS**



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Additional Notes by R. Ressimeyer from D. Taylor's Presentation  
at June 3, 2003 WVCA Meeting

Chairman Davis explained that he had invited Secretary Kay Goodwin from the WV Department of Education and the Arts to the meeting to inform the Commission of the process by which the WV Division of Culture and History would receive \$500,000 from funds accumulated for the Cultural Facilities and Capital Resources Grant Program in the fiscal periods prior to July 1, 2002.

Secretary Goodwin introduced Dennis Taylor, Chief of Staff at the department.

Mr. Taylor described the legislative budget preparation process of spring and fall 2002 and the Governor's requirement that all state agencies find reductions for the FY 2004 year of 14%. Program reviews for agencies reporting to Education and the Arts started in September 2002 followed by appropriation requests to the legislative process in October. This resulted in "horrific budget cuts" to many agencies and programs.

Taylor stated that there is a "unique situation at Culture and History" due to:

Line items for Fairs & Festivals—Public Theatre, CATF, Mountain State Arts and Crafts Fair, etc.

Need to fund day-to-day operations [unclassified \$470,000 for operations in "not enough to keep the lights on"]

WVDCH also has capital costs at six sites

Arts and Historic Preservation grants

In WV capital projects for state agencies are not made from state budget, but rather go to legislature each year as special requests. They are often not funded.

WVDCH also has had a number of requirements for improvements to The Cultural Center ordered by the Fire Marshall. The State Museum renovation is in the "getting ready" stage. Grave Creek site in Moundsville needs maintenance to roof.

The choice was made to avoid staff layoffs at WVDCH, including keeping the Arts Staff at the current level of seven.

To do this the competitive arts grants line was reduced to \$810,000 from the \$1 million that had been available for nine years. Sen. Craigo changed the source of these funds in 2001 from annually appropriated regular revenue to special revenue from "education lottery" funds assigned to the Division.

Commissioner Herholdt made the decision to recommend cuts to the line items, e.g. Mountain Forest Festival reduced to \$50,000 from \$75,000, Theatre WV reduced to \$350,000 from \$440,000.

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Taylor was asked to draft legislation relating the CFCRG program that would provide flexibility for the Division and Commission and serve both programmatic and capital funding needs. The video lottery yield for capital grants has grown each year. The funds available that have accumulated must take into account "committed" grants that have been approved but not paid on current projects. Taylor stated that as of June 3, 2003, the same day as this meeting, \$5,326,467.42 was shown in the financial information system, but more than half of this amount was already slated for approved grants.

Taylor developed language to provide more discretion for the Arts Commission for program grants with funds from video lottery and increases in funds for the Division for capital and operating expenses. He approached legislative leaders in House and Senate Finance Committees with the suggestion that, "there is this money—do you think we could get changes to the S.B. 657 (2000) legislation?"

The response was that the legislature was reluctant to "open" video lottery legislation and expose it to use by other purposes.

Taylor stated that it was "the consensus of counsel in Senate and House that WVDCH already had prerogative to use funds for capital projects related to the Division."

Dennis Taylor indicated that another reduction in budgets could be anticipated for FY 2005.

A discussion continued between Commissioner Herholdt, Secretary Goodwin, Chairman Davis, and Commission members. Topics included suggestions to educate the legislators about the important of arts to their constituents and the need to balance funds available to programs and capital purposes.

Chairman Davis asked that a letter be prepared from the Department of Education and the Arts to the West Virginia Commission on the Arts to make it possible to describe a "clear pathway" in the Commission's minutes and files that will be available to a legislative audit of how the \$500,000 was made available to the Division for capital projects. The letter will be approved by Secretary Goodwin.

# Appendix C: Commission on the Arts Response

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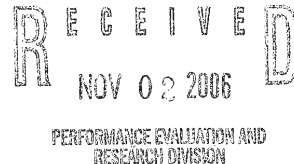
Roslyn Clark-Payne, President  
Larry Ford, Vice-President  
Nancy Klesinger, Secretary  
Dan R. Collee, Treasurer  
Linda Eckley  
Ned B. Miller

William H. Fife III  
Judy Harrah  
Patsy Haslam  
James C. Higgins  
Charles S. Hauck  
Judson D. A. Undley, M.D.

Sandra Palen  
J. W. Word III  
Paula Wykie  
Susan Landis, Executive Director  
Randal Shrewsbury, Financial Officer  
Dena K. Cushman, Office Manager

**FROM:** Susan S. Landis  
Chair, West Virginia Commission on the Arts

Work Address:  
Beckley Area Foundation, Inc.  
129 Main St., suite 203  
Beckley, WV 25801



**DATE:** Nov. 1, 2006

**RE: Written Response from the WV Commission on the Arts to the Full Performance Evaluation on the Division of Culture and History**

I must begin with a disclaimer. I do not have authority to speak for either the staff of the Arts Section or the members of the Commission on the Arts. The following comments represent my best estimate of the general opinions of the members of the West Virginia Commission on the Arts as expressed in our meetings and in telephone conversations over the past two years. Furthermore, I am relying on the fact that this review process utilized data obtained from Barbie Anderson of the Arts Section staff. We do maintain the financial records.

- There is mention in the report that we delayed making a request for an official ruling regarding the difference in interpretation as to how much money was available for the Capital Resources Matching Grant Program. Secretary Goodwin told us at a meeting of the commission two years ago that the matter was to be put before the state auditor. We welcomed that review. It did not happen. A year later, in the Secretary's presence, the commission voted unanimously in favor of such a review. It did not happen. Finally, Steve Hopta, one of our members with some experience in the workings of state government, indicated our concern to the appropriate office. We welcomed the review. The staff of the Arts Section has indicated that the review process was thorough and efficient.
- The Issue summary fails to address one significant point. Since this grant program's inception, the Arts Section has based awards on the amount of "excess lottery money" made available *on the trailing fiscal year's figures*. This seemed logical for two reasons: the grant opportunity could not be marketed and the application process designed quickly enough to complete the grant process within the fiscal year when the legislation was passed. Secondly, it did not seem reasonable to request proposals, and then make award decisions based on an estimate of what we thought might be available. We were not dealing with a fixed amount of money; it seemed logical to first determine how much money was available and then make the award decisions. This meant we were always

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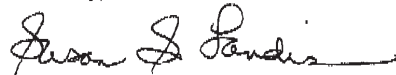
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giving money away from the trailing year. No one questioned this practice and the grants were approved by the appropriate officials. Unfortunately, in my personal conversation with Secretary Goodwin, I never clarified this practice, but simply assumed that we were both working "on the same page" regarding our practice of using the trailing year's figures. I did not communicate well!

- The members of the WV Commission on the Arts are very serious about their responsibility of being good stewards of available arts resources. Dealing with capital improvement projects meant we were awarding money to building projects. We could have easily sent checks for approved projects and utilized the available funds . . . and carried very little forward. However, it was our decision to hold the money until the construction had occurred. There were legitimate delays as frequently occur in building projects. Arts organizations in isolated areas even had difficulty getting sub-contractors; the Ice House couldn't get sheet metal after Katrina; etc. etc. Should we have immediately issued the grants? Should we have allowed arts organizations extensions for legitimate reasons beyond their control?
- We agree that statute does not expressly differentiate between money that was deposited into the fund before July 1, 2004, and the money that was deposited into the Fund on and after that date. However, we do not think that simply because the language is not specific, that the statute should be retro-active.
- The current professional leadership of the Division of Culture and History and the Arts Section were not employed when the varying interpretations as to entitlement issues developed. I feel it is important to state that all concerned, both current and former staff as well as current and former members of the WV Commission on the Arts, have acted out of an interest in promoting the arts in West Virginia. I feel everyone involved was trying to do the right thing.
- While I have had no opportunity to discuss the matter with the commission or staff, I personally agree with the suggestion that both agencies would benefit from the separation of deposits made into the capital resources matching grant program fund.

I am sorry that this response lacks polish. I had a short time to prepare the document, and I have full-time employment without a clerical staff. It has been a very busy week. However, this matter is of importance, and I am anxious to assist in way I can. Thank you for the opportunity to reply. I realize that time is short for an exit interview, but if that is desirable, I will make arrangement to attend, or I will send another member of the commission.

Sincerely,



Susan S. Landis