

Special Report

Statewide Addressing and Mapping Board

The Statewide Addressing and Mapping Board's Mapping and Database Is a Unique GIS Resource Already in Government Use

Problems With Board Operations Indicate That the Addressing and Mapping Project Should Become the Responsibility of an Agency, and the Board Should Become an Advisory Board

The Statewide Addressing and Mapping Board's Change in Direction to Shift Contracted Addressing Work to the Counties Has Raised Questions and Concerns About the Statewide Addressing and Mapping Project

Changes to the Statewide Addressing and Mapping Board's Project Management Contract Were Made According to Purchasing Division Requirements



JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

Senate

Edwin J. Bowman
Chair

Billy Wayne Bailey, Jr.
Vice Chair

Walt Helmick

Donna J. Boley

Sarah M. Minear

Citizen Members

Dwight Calhoun

John Canfield

James Willison

W. Joseph McCoy
(Vacancy)

House Of Delegates

J.D. Beane
Chair

Timothy R. Ennis
Vice Chair

Joe Talbott

Craig P. Blair

Otis Leggett

**Scott G. Varner, Ex
Officio Non-Voting
Member**



OFFICE OF THE LEGISLATIVE AUDITOR

Aaron Allred
Legislative Auditor

John Sylvia
Director

Michael Midkiff
Research Manager

Gail Higgins, MPA
Senior Research Analyst

Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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



John Sylvia
Director

January 7, 2007

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 Special Report of the West Virginia Statewide Addressing and Mapping Board, which will be presented to the Joint Committee on Government Operations on Sunday, January 7, 2007. The issues covered herein are "The Statewide Addressing and Mapping Board's Mapping and Database Is a Unique GIS Resource Already in Government Use;" "Problems With Board Operations Indicate That the Addressing and Mapping Project Should Become the Responsibility of an Agency, and the Board Should Become an Advisory Board;" "The Stateside Addressing and Mapping Board's Change in Direction to Shift Contracted Addressing Work to the Counties Has Raised Questions and Concerns About the Statewide Addressing and Mapping Project;" and "Changes to the Statewide Addressing and Mapping Board's Project Management Contract Were Made According to Purchasing Division Requirements."

We transmitted a draft copy of the report to the West Virginia Statewide Addressing and Mapping Board on December 20, 2006. We held an exit conference with the West Virginia Statewide Addressing and Mapping Board on December 22, 2006. We received the agency response from the West Virginia Statewide Addressing and Mapping Board on December 28, 2006 and a response from the Department of Administration Purchasing Division on January 4, 2007.

Let me know if you have any questions.

Sincerely,

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

John Sylvia

JS/tlc

Joint Committee on Government and Finance

Contents

Executive Summary	5
Review Objective, Scope and Methodology	11
Issue 1: The Statewide Addressing and Mapping Board’s Mapping and Database Is a Unique GIS Resource Already in Government Use.....	13
Issue 2: Problems With Board Operations Indicate That the Addressing and Mapping Project Should Become the Responsibility of an Agency, and the Board Should Become an Advisory Board.....	23
Issue 3: The Statewide Addressing and Mapping Board’s Change in Direction to Shift Contracted Addressing Work to the Counties Has Raised Questions and Concerns About the Statewide Addressing and Mapping Project.....	37
Issue 4: Changes to the Statewide Addressing and Mapping Board’s Project Management Contract Were Made According to Purchasing Division Requirements.....	51
 List Of Tables	
Table 1: West Virginia Statewide Addressing and Mapping Board Estimates to Complete Addressing and Mapping Project Within Existing Budget.....	43
Table 2: Statewide Addressing and Mapping Board Expenditures FY 2001-FY 2007 (November, 2006).....	44
Table 3: Comparison of Cost Estimates Submitted By Vendors for Project Manager Contract.....	52
 List Of Appendices	
Appendix A: Transmittal Letter to Agency.....	57
Appendix B: Legislative Services Legal Opinion.....	59
Appendix C: Agency Response from WV Statewide Addressing and Mapping Board.....	67
Appendix D: Agency Response from Division of Purchasing.....	75

Executive Summary

Issue 1: The Statewide Addressing and Mapping Board’s Mapping and Database Is a Unique GIS Resource Already in Government Use.

Some benefits will be direct in that emergency responders will be able to locate citizens and provide assistance quickly in an emergency. Other benefits will be indirect, resulting in reduced costs for a variety of government projects.

The West Virginia Statewide Addressing and Mapping Board (WVSAMB), created in 2001, is charged with supporting the 55 counties to address and map the entire state so that Enhanced 9-1-1 service will be available to all areas of the state. The project created by the Board incorporates the effort to address the entire state with a new statewide aerial map database that allows other types of Geographic Information System (GIS) information to be entered into the map database. Few states have created a unified 9-1-1 statewide mapping and addressing system and West Virginia is the first state to create the capability to enter other types of GIS data into the 9-1-1 database. **The project developed by the Statewide Addressing and Mapping Board creates a unique resource for all agencies in West Virginia.** To date, no general revenue funds have been used to support this project. The project has used \$15 million in funds provided by Verizon as the result of a regulatory action by the Public Service Commission.

The database will also reduce the collection of redundant information and improve the efficiency of state and local government.

The implications for use of this database by the state are far-reaching. **Every person in the state will benefit from this project.** Some benefits will be direct in that emergency responders will be able to locate citizens and provide assistance quickly in an emergency. Other benefits will be indirect, resulting in reduced costs for a variety of government projects. The aerial map database that already exists is providing a structure where all types of “locator” information, from tax assessor files to telephone numbers, can be placed and then rapidly accessed. It is possible that the applications for this data will extend from the anticipated emergency responses of disaster recovery and evacuation planning, to less obvious uses such as mapping an outbreak of infectious disease or rabies, or improved tax revenues through more accurate maps. The database will also reduce the collection of redundant information and improve the efficiency of state and local government. Geographic information in the map is already being used by four federal agencies, the state’s Division of Homeland Security and Emergency Management, the state Department of Highways, the state Department of Environmental Protection and the state Department of Agriculture. **The Legislature should explore permanent sources of funding for the addressing and mapping project so that the State will be able to complete, continue and maintain the comprehensive GIS information system originally conceived by this project.**

Issue 2: Problems With Board Operations Indicate That the Addressing and Mapping Project Should Become the Responsibility of an Agency, and the Board Should Become an Advisory Board.

The Board has held numerous committee meetings, teleconferences and pre- and post-board meetings without public notice and in possible violation of the Open Governmental Proceedings Act.

The Board has overlooked some procedural steps in voting and therefore documenting the decisions that it has taken.

The West Virginia Statewide Addressing and Mapping Board will terminate April 1, 2007. The volunteer board has been charged with the creation of a highly complex, GIS based public safety addressing and mapping project. The Board has worked diligently to create the project, but despite holding over 90 board meetings in six years, the Board has not been able to complete the project. In addition, the nature of the work has required ongoing communications among board members and strained board operations. The Board has held numerous committee meetings, teleconferences and pre- and post-board meetings without public notice and in possible violation of the Open Governmental Proceedings Act. Decisions of the Board have not always followed accepted procedures. Due to the necessity of assembling and appointing board members, the Board has actually had a working time span of about five years. **Much has been accomplished by the Board; however, the Board as it presently exists has not been able to bring the project to completion, and it has not conducted all of the business relating to the project in open public meetings.** In addition, the Board has overlooked some procedural steps in voting and therefore documenting the decisions that it has taken. Further, the Board has allowed committees and individual committee members to make numerous decisions as if they were full-time employees instead of volunteer members of a board. These decisions have not been made by the entire board, and they have been made outside of public view. **It is possible that the requirement to have an appointed volunteer Board rather than an agency create this project, has led to these operational problems.** Consequently, the Legislative Auditor recommends that the Board's functions be legislatively changed, and that the Board continue after April 1, 2007 as an advisory board. The Legislative Auditor also recommends that the addressing and mapping project be continued and the responsibility for completion of the project be relocated to an appropriate state agency.

Issue 3: The Statewide Addressing and Mapping Board’s Change in Direction to Shift Contracted Addressing Work to the Counties Has Raised Questions and Concerns About the Statewide Addressing and Mapping Project.

The criticism centers on the amount of money spent by the Board, and the amount to be allocated to the counties to complete the addressing project.

In June 2006, the Board terminated the contract with its addressing contractor because the contractor did not deliver information to the Board in a timely fashion. The termination caused the Board to create a plan relying upon the counties to finish the work started by the addressing contractor. As a result, the Board has come under criticism following the release of the plan in July, 2006. The criticism centers on the amount of money spent by the Board, and the amount to be allocated to the counties to complete the addressing project. The \$5.8 million remaining from the original \$15 million fund is being dispersed between the Board’s contracted project manager, the operation of the Board, and the purchase of hardware and software for data storage and upgrades to allow the counties to complete and update addresses in the GIS mapping database. The Board is reserving an amount of money to effect an intergovernmental transfer establishing a permanent location for storage of the statewide addressing and mapping data, and to provide reimbursement to the counties. The completion plan shifts the addressing work to the counties but does not propose to pay for the total cost of the work to be completed by the counties.

The completion plan shifts the addressing work to the counties but does not propose to pay for the total cost of the work to be completed by the counties.

Counties and other stakeholders expressed their disappointment in the project’s status following the July, 2006 meeting. When the Legislative Auditor surveyed counties to determine their addressing status and concerns, 31 counties responded with information about their individual addressing projects, their understanding of the Board’s initial project requirements and the Board’s new direction. The Legislative Auditor is concerned that three months before the Board’s termination, the amount of addressing work left to complete is still not defined by county, the amount of work remaining to be completed is significant, and some counties may be unable to complete the project. **The Legislative Auditor recommends that the Board review the status of addressing completion in each county and issue a detailed report to the Legislature prior to its termination in order to assist the Legislature and the counties in future planning to complete the project.**

Issue 4: Changes to the Statewide Addressing and Mapping Board's Project Management Contract Were Made According to Purchasing Division Requirements.

Change orders were approved by the Purchasing Division although change orders that go above a 10 percent cost limit are discouraged in the Purchasing Division's policy handbook.

The Purchasing Division has a written policy that is not clear regarding the types of contracts to which the 10 percent criterion applies. The lack of clarity may cause confusion and the appearance of impropriety.

Following the termination of its addressing contractor, the West Virginia Statewide Addressing and Mapping Board proposed that the counties finish the remaining addressing work in order to complete the statewide 9-1-1 addressing and mapping project. The Board proposed that the contracted project manager, Michael Baker, Jr. Inc., train and assist the counties. The remaining money budgeted for the statewide addressing project and the proposed allocation of money between the counties and the project manager caused a potential vendor to question whether state Purchasing Division actions allowed the cost of the project manager's contract to increase, reducing the amount of money now available to complete the project. Prior to the Board's actions in July 2006, the Board had submitted change orders in excess of 10 percent of the project manager's contract. These change orders were approved by the Purchasing Division although change orders that go above a 10 percent cost limit are discouraged in the Purchasing Division's policy handbook.

The Board's five-year project management contract with Michael Baker, Jr., Inc. is open-ended, and was awarded to the low bidder. **The original total bid amount of the contract was estimated to be \$989,326. It is now estimated to be \$3.5 million.** The Legislative Auditor reviewed the contract, the Statewide Addressing and Mapping Board's actions and the Purchasing Division's review and approval of the project manager's contract change orders. **While the change orders for this contract exceeded the Purchasing Division policy threshold, the Legislative Auditor concludes that the Purchasing Division acted appropriately in this situation. The Legislative Auditor further concludes that although the 10 percent criterion is not in statute, it is prudent for this requirement to remain an *administrative decision* because there are many unforeseen situations that arise once a contract is awarded. It would be difficult and disruptive to a project to dismantle a contract and require that it be rebid if its cost exceeded a mandated limit.** However, the Purchasing Division has a written policy that is not clear regarding the types of contracts to which the 10 percent criterion applies. The lack of clarity may cause confusion and the appearance of impropriety. **Therefore, the Legislative Auditor recommends that the Purchasing Division clarify its 10 percent policy to specify the types of contracts to which the policy applies, and develop additional rules and criteria in regard to evaluating contract change orders.**

Recommendations

1. *The Legislature should consider providing permanent funding for the completion, continuation and maintenance of the statewide addressing and mapping project.*
2. *The Legislature should consider relocating the responsibility for completing the public safety statewide addressing and mapping project to an appropriate agency.*
3. *The Legislature should consider legislative change so that when the West Virginia Addressing and Mapping Board terminates on April 1, 2007, it will become an advisory board to the agency responsible for the addressing and mapping project.*
4. *The Legislature should consider making any other revisions to the Code and rules necessary to allow the relocated project to move forward to completion.*
5. *The West Virginia Statewide Addressing and Mapping Board should review the status of addressing completion for each county, and issue a detailed report to the Legislature to assist the Legislature and the counties in future planning to complete the project.*
6. *The Purchasing Division should explain that the 10 percent policy for change orders cannot be applied in all types of contracts. In addition, the Purchasing Division should consider developing additional types of rules and criteria in regards to evaluating contract change orders instead of relying solely on the 10 percent policy. The Purchasing Division should report back to the Joint Committee on Government Operations by July of 2007 in regards to rule and policy changes.*

Review Objective, Scope and Methodology

The Legislative Auditor, in accordance with West Virginia Code Chapter 4, Article 2, Section 5, has been reviewing the actions of the West Virginia Statewide Addressing and Mapping Board as the result of concerns about the Board's performance that were raised following the termination of its contract with its addressing contractor in June, 2006.

Objective

Since the Board is scheduled to terminate on April 1, 2007, this special report was conducted to examine the actions and accomplishments of the Board in order to inform the Legislature and to make recommendations regarding the future of the Board and the project that it was mandated to create.

Scope

This review covers the period of time from the Board's first organizational meeting in October, 2001 through December, 2006.

Methodology

This report was developed between August and December, 2006 from interviews with the Board's part-time executive assistant and the chair, vice-chair and legal counsel for the Board, in addition to two current members and one past Board member; the contracted deputy project manager; the president and two former employees of the addressing contractor; the president of the Kanawha County Commission; the financial officer of the Geological and Economic Survey; the director of the Maine Emergency Services Communication Bureau; the director of the state Purchasing Division; a representative of the West Virginia Association of Counties; the controller for the Attorney General's Office; a representative from the Auditor's Office; a concerned vendor and an electronic mail survey of the emergency services directors for the 55 counties. Four of the board members had been associated with the Board since its inception. Two of the active board members are also employed by stakeholders, Verizon, and the Public Service Commission. The former board member was employed by Verizon while serving on the Board, and is now employed by the project manager. The audit team also met with the president of Verizon. In addition, the Legislative Auditor reviewed the purchasing documents on file for the program manager, the mapping contractor and the addressing contractor; the minutes of all board meetings; the reports of the addressing contractor and the program manager; the proposed completion plan; correspondence with state and federal agencies, and the Board's interagency agreements. The Legislative Auditor requested an opinion from counsel in the Legislative Services Office which is contained in Appendix B.

Issue 1

The Statewide Addressing and Mapping Board's Mapping and Database Is a Unique GIS Resource Already in Government Use.

The project created by the Board incorporates the effort to address the entire state with a new statewide aerial map database that allows other types of Geographic Information System (GIS) information to be entered into the map database.

Issue Summary

The West Virginia Statewide Addressing and Mapping Board (WVSAMB) created in 2001, is charged with supporting the 55 counties to address and map the entire state so that Enhanced 9-1-1 service will be available to all areas of the state. The project created by the Board incorporates the effort to address the entire state with a new statewide aerial map database that allows other types of Geographic Information System (GIS) information to be entered into the map database. Few states have created a unified 9-1-1 statewide mapping and addressing system. West Virginia is the first state to create the capability to enter other types of GIS data into the 9-1-1 database. **The project developed by the Statewide Addressing and Mapping Board creates a unique resource for all agencies in West Virginia.** To date, no general revenue funds have been used to support this project. The project has used \$15 million in funds provided by Verizon as the result of a regulatory action by the Public Service Commission. Most state and county governmental entities will be able to use information in the map database for a variety of other applications in addition to the planned emergency response and disaster recovery operations. The completed aerial map has already benefitted several governmental agencies for applications as varied as road construction, soil surveys and mine rescue.

Most state and county governmental entities will be able to use information in the map database for a variety of other applications in addition to the planned emergency response and disaster recovery operations.

The Board has created the aerial map database using the photographic imagery necessary to support the 9-1-1 addressing portion of the project and has worked to assist the counties in the other requirements of the addressing portion of the project. **The Legislative Auditor recommends that the Legislature explore permanent sources of funding for the addressing and mapping project so that the state will have a comprehensive and complete information system to benefit all of the agencies of the state.**

The Statewide Addressing and Mapping Board Is Charged With Using GIS Technology in the Statewide Project

In 2001 the Legislature created the West Virginia Statewide Addressing and Mapping Board to map and address the entire state. The Board was given a brief six year term and charged with the task of

Prior legislation required counties across the state to adopt city-style (number and road name) addresses, but in the preceding 15 years, most counties had been unsuccessful.

Enhanced 9-1-1

Enhanced 9-1-1 is an emergency communication system that automatically displays the address of a caller at a public-safety answering point. This is important if the caller is hysterical, loses consciousness, is forced to hang up, or is unfamiliar with the location.

The completed project will consist of a GIS database with a number of practical applications for the state that extend beyond the primary public safety purpose of emergency response.

creating a uniform statewide addressing and mapping system. Since the Board was created as a temporary Board, it was given a sunset date of April 1, 2007 that does not allow for the usual “wind-up” period when a board or commission is terminated. Appointed by the Governor, the Board is composed of 11 members from state agencies and counties. It includes a member each from the Public Service Commission (PSC), the State Geological and Economic Survey (GES), the Department of Military Affairs and Public Safety, the Division of Highways (DOH), the county commissioners, the county assessors, the 9-1-1 directors, the local exchange telephone companies and the public at large. The legislation also provides that any amount remaining in its special revenue fund will be disbursed to the counties upon termination of the Board.

The enabling legislation reflects the urgency felt by legislators and emergency services professionals to speedily create an addressing and mapping system to conform to Enhanced 9-1-1 standards, and provide standardized information to 9-1-1 centers across the state. Prior legislation required counties across the state to adopt city-style (number and road name) addresses, but in the preceding 15 years, most counties had been unsuccessful in naming roads, changing addresses from rural route numbers to street addresses and completing addressing to conform to Enhanced 9-1-1 requirements. In addition, the state had not established standards for the counties to follow in addressing and it was felt that the addressing needed to be as uniform as possible in all cities and counties.

The legislation also incorporates state-of-the-art technology by requiring that the statewide public safety mapping and addressing project use digital mapping and integrate geographic and related information so that global positioning systems, and any other similar systems, can quickly determine the location of a person needing emergency assistance. The completed project will consist of a GIS database with a number of practical applications for the state that extend beyond the primary public safety purpose of emergency response. The GIS database is designed to interface not only with county Enhanced 9-1-1 services, but also with state and local government agencies, telephone companies, the United States Postal Service and utility systems. The database will be a resource for state and county departments such as the tax assessor, the highways department or the department of health and human resources.

Verizon Committed \$15 Million to the Project Following a Regulatory Action by the Public Service Commission

General revenue funds have not been used to fund the statewide addressing and mapping project to date. Instead, the public safety project has been funded by special revenue derived from Verizon Incentive Regulation Plan (IRP) moneys. The Incentive Regulation Plan is the method by which intrastate telecommunication products and services offered by Verizon in West Virginia are regulated. In 2001, Verizon and the State entered into a joint stipulation as the result of several proceedings, including a petition by the Consumer Advocate Division of the PSC regarding the rates being charged by Verizon to its customers. The joint stipulation required Verizon to take the following actions:

West Virginia is the first state to integrate GIS map addresses with the 9-1-1 database.

- change its intrastate access rates by 2002;
- reduce its rates by \$3.3 million annually by 2005;
- modify its calling areas; and
- expand the amount of monies that it commits to public benefits between 2001 and 2005.

Consequently, Verizon committed \$15 million to the Statewide Addressing and Mapping Board to be placed in a special revenue fund (the Statewide Addressing and Mapping Fund) to pay for the Enhanced 9-1-1 mapping and addressing project. The executive director of the regulatory group for Verizon noted that emergency response systems are a fundamental responsibility of the telecom provider industry. She also explained that standardizing and mapping rural addresses and associating them with the 9-1-1 database is a dramatic and unprecedented way to improve the efficiency and functionality of emergency response networks and that West Virginia is the first state to integrate GIS map addresses with the 9-1-1 database.

Information from the mapping phase of the project is already in use by four federal agencies in addition to state agencies and counties.

The New \$4.7 Million State Map Required by the Project Has Already Benefitted State and Federal Agencies

The creation of a new state map to replace outdated map information was the first phase of the project. The new map was completed in 2004 at a cost of \$4.7 million. Information from the mapping phase of the project is already in use by four federal agencies in addition to state agencies and counties. The creation of the map required photographing the state from the air and converting the aerial photographs into information layers (digital orthoimagery) which included streams and elevation data. The new state map is the basis for

associated information to be entered into the database such as newly assigned street addresses, and updated information on structures and roads. Access to the basic map database is freely available to the counties and municipalities, state and federal agencies. The state was also able to obtain a small amount of funding from federal agencies through grants for data generated during the mapping phase of the project. The two federal agencies that provided a combined total \$669,000 in funding for the mapping phase were:

Access to the basic map database is freely available to the counties and municipalities, state and federal agencies.

- **United States Department of Agriculture (USDA).** The Farm Service Agency of USDA entered into an agreement in 2003 to pay the Board \$375,000 to acquire the original aerial film, and digital orthoimagery of West Virginia for digital soil surveys and other hydrographic data. The agency estimated that the cost to USDA to develop this information independently would have been over \$1.5 million.
- **United States Geological Survey (USGS).** In 2004, the USGS provided \$65,000 for information to be included in the National Map project. USGS subsequently provided \$229,000 for additional information, some of which was provided to the National Geospatial Intelligence Agency for Homeland Security applications.

The mapping system already created by the Board allowed the development of the Division of Homeland Security and Emergency Management's Mine Rescue hotline function within seven days.

In addition, the state's Department of Highways has contributed funding to the Board for enhanced data:

- **Department of Highways of the West Virginia Department of Transportation.** The Department of Highways provided \$850,000 in 2003 for the translation of the mapping data into a computer aided drafting and design standard and enhancements of elevation data to a form more suitable for DOH's purposes.

The state has already utilized the database structure to create a mine rescue application:

- **Division of Homeland Security and Emergency Management Mine Rescue Hotline.** Following the Sago mine disaster in January 2006, the Legislature created the Mine and Industrial Accident Rapid Response System which consists of an emergency operations center and hotline. The mapping system already created by the Board allowed the development of the Division of Homeland Security and Emergency Management's Mine Rescue hotline function within seven days. The hotline database

contains data from state and federal agencies, and private mining companies, which is available to mine rescue teams on a 24-hour basis.

The West Virginia Soil Conservation agency finds that the aerial maps have cut the cost and time that it takes the agency to create emergency action plans. The information services manager noted that:

The West Virginia Soil Conservation agency finds that the aerial maps have cut the cost and time that it takes the agency to create emergency action plans.

travel for fairly mundane tasks such as plotting points with a GPS unit has decreased drastically. Through the use of our in-house map viewer ... we can locate items such as flood control structures (dams), mitigation sites, stream restoration areas or project sites by simply being familiar with the areas. From there we can develop ... Emergency Action Plans for evacuation ... for dam breaches, simulate flash flooding and impacted households/businesses, field dimensions for determining such items as lime coverage, multiflora rose eradication application, etc. The site itself can be located, and plotted, in under a minute whereas in the past (for a site in Morgantown and a technician traveling from Charleston) it would require a minimum of five hours driving and possibly a long hike to the site. This costs the state travel reimbursement, lost employee hours, liability possibilities involved with all work-related travel and contributing to environmental issues such as pollution. (Emphasis added.)

The data provided to the Census Bureau will be important in the 2010 census and in legislative redistricting, while the FEMA information will be used in updating FEMA maps for disaster response.

The Board has provided mapping information to the United States Census Bureau and the Federal Emergency Management Agency (FEMA). The data provided to the Census Bureau will be important in the 2010 census and in legislative redistricting, while the FEMA information will be used in updating FEMA maps for disaster response. Camp Dawson has also requested and received the mapping information for all of Preston County. Both the West Virginia Department of Environmental Protection and the Department of Agriculture have requested and received mapping data. The Board has also licensed about \$20,000 worth of data to businesses, engineering firms, a regional airport authority, and a regional planning and development council. Samples of information for Morgantown and the New River Gorge area have been provided to Google.

The Board chair noted that “Since the bulk of our data is ... free and in the public domain, there are many “intangible” benefits that other

state and county agencies have been able to utilize... such as tax parcel mapping improvements, environmental analysis, planning, trial expert testimony, and research.” Any state or county department that needs a geographic locator for records will be able to utilize the completed system as a resource.

Although counties have been charged with creating city-style addresses since 1986, only a few counties had undertaken addressing projects when the Statewide Addressing and Mapping Board was created.

West Virginia’s progressive statewide mapping initiative serves as a model for other states while providing critical services to the citizens of West Virginia.

The Completed Project Will Save Lives In Emergencies

In the past, receiving emergency services quickly enough to save a life has been largely dependent on where a person lives in the state. West Virginia is a rural state with a highly dispersed population. Many addresses are rural routes and post office boxes, making the rapid location of these residents in an emergency extremely difficult. It is estimated that in 2001, over 400,000 structures (homes and other buildings) did not have a city-style address. Although counties have been charged with creating city-style addresses since 1986, only a few counties had undertaken addressing projects when the Statewide Addressing and Mapping Board was created. Emergency responders and 9-1-1 directors from around the state had raised concerns about the need for standardized, consistent city-style addresses and accurate maps. Any emergency (flood, accident, or health) will not have a positive outcome if the site of the emergency cannot be located quickly. One of the Board members noted:

The Project is important...because it will provide accurate location and driving directions to (primarily) rural addresses from people who call 9-1-1, thereby reducing time for first responders to react. Without question, the system will save lives.

The Board chair also noted that utility accident prevention will be enhanced since the utilities’ “Call Before You Dig”(Miss Utility) program will benefit from the project’s updated maps to avoid construction accidents from people digging into buried electrical and gas lines. Utility service will also improve since improved maps will also improve the efficiency of dispatch for utility crews.

The Project Serves As A Model For Other States

According to the deputy regional director of the eastern region of the US Geological Survey, “West Virginia’s progressive statewide mapping initiative serves as a model for other states while providing critical services to the citizens of West Virginia and support for national programs of agencies such as USGS.” The director also noted that the vision of the Board

“to provide the highest level of emergency response” is being realized in part due to the extensive geospatial information being developed by the project.

The US Geological Survey also recognized West Virginia as the first state in the nation to create statewide elevation data for the National Elevation Database.

The US Geological Survey also recognized West Virginia as the first state in the nation to create statewide elevation data for the National Elevation Database. The deputy director explained that this data, in combination with other digital data, will improve analysis and monitoring of mountaintop mining activity and its impacts. The data will also be used for remapping the state’s streams, watershed and other hydrologic resources critical for environmental monitoring and stream restoration as well as improved flood plain mapping. Finally, the deputy director noted that the high resolution aerial imagery has been used for Homeland Security applications covering the Charleston urban area, and the highly developed I-64 corridor.

Few States Have Attempted Statewide Addressing and Mapping

Maine’s addressing effort has taken 11 years, and the state is now 98.6% street addressed according to the director of the Maine Emergency Services Communication Bureau.

The Board chair notes that there have been only a few statewide initiatives for 911 addressing and mapping projects. He listed four states as having a statewide project. They are: Maine, Vermont, Rhode Island and New Mexico. These states have created addressing and mapping projects in order to provide Enhanced 9-1-1 services statewide. The Legislative Auditor contacted Maine since this state served as a model for West Virginia’s project. Maine’s addressing effort has taken 11 years, and the state is now 98.6% street addressed according to the director of the Maine Emergency Services Communication Bureau. The Bureau is responsible for operating, designing, maintaining and funding the Enhanced 9-1-1 system in the state. The Bureau is funded through a 50 cent surcharge on all telephone lines and telephone numbers, and spends about \$10 million annually on the statewide emergency system. Training is a major component of the Bureau’s activities, together with compliance to federal 9-1-1 requirements. The Maine bureau has a staff of five, and contracts with other state agencies for GIS services and an emergency medical dispatch coordinator. The Bureau is located within the Maine Public Utilities Commission, and has a 17 member advisory council. Unlike West Virginia, Maine does not use an aerial map to serve as the database for its addressing project and Enhanced 9-1-1 system. Maine’s emergency services bureau director noted that Maine uses aerial photos to assist with addressing and mapping problems, but does not use this photography to locate callers to 9-1-1 because of the need for routine updates due to construction and changes in population.

Ohio has approved \$3.25 million of a \$7.5 million capital fund request to assist counties in creating compatible systems. This effort is not as complete as West Virginia's project since only 13 Ohio counties have completed the requirements for the LBRS in 5 years.

West Virginia has created a geographic database which may be more comprehensive than the Ohio project because of the statewide aerial map.

The Legislative Auditor also reviewed a statewide initiative under way in Ohio since this project incorporates Enhanced 9-1-1 emergency response with the addition of other types of information in a GIS format. The project is named the Ohio Location Based Response System (LBRS), and is sponsored by the Ohio Department of Transportation and administered by Ohio's Geographically Referenced Information Program. This is a partnership between state and local governments, designed to reduce the inefficiency of redundant data collection and the duplication of effort as many agencies map the same geographic area for different purposes. **This allows for a collaborative sharing and maintenance of data, similar to the West Virginia project initiated by the Statewide Addressing and Mapping Board.** Ohio has approved \$3.25 million of a \$7.5 million capital fund request to assist counties in creating compatible systems. This effort is not as complete as West Virginia's project since only 13 Ohio counties have completed the requirements for the LBRS in 5 years. **Improvements to the operations of government are the reason for this initiative.** One example cited by the Ohio Department of Transportation shows an unforeseen application. The DOT initially thought that the LBRS would be used to expand the scope of its inventory of the state roadway system to include municipal roads. However, the quality of the data improved the department's ability to locate vehicle crashes both on and off the state system, and has supported requests for transportation safety dollars from the federal government. Ohio lists the following benefits:

- improved communications between state and local law enforcement and emergency management agencies;
- improved crash analysis reporting and transportation studies;
- E-9-1-1 emergency response and reverse geocoding for cell phone calls;
- improved collection and allocation of tax dollars through accurately locating addresses;
- improved census geography.

These benefits of the Ohio project appear similar to benefits projected for West Virginia.

West Virginia has created a geographic database which may be more comprehensive than the Ohio project because of the statewide aerial map. In addition, the applications of the statewide addressing and mapping project GIS information appear to be more extensive than the project envisioned in Ohio. The West Virginia project has already benefitted the state through the rapid ability to create a Mine Safety Hotline, and database with information from a variety of sources.

The State Needs to Finish and to Fund the Public Safety Project

Despite a consistent effort on the part of the Board to employ contractors, and move the project forward, the deadlines for the completion of the statewide public safety addressing project proved to be too short.

Once the project is completed, the GIS database will have an ongoing need for permanent funding since it will require updating and maintenance in order to retain its usefulness to the state.

Currently, the Statewide Addressing and Mapping public safety project is incomplete. Despite a consistent effort on the part of the Board to employ contractors, and move the project forward, the deadlines for the completion of the statewide public safety addressing project proved to be too short. The addressing contractor failed to perform adequately and the Board terminated this contractor 10 months before the Board's sunset date (see Issue 3). The Board is presently using the contracted project manager to provide intensive assistance to the counties to complete addressing, but the project may not be finished. **One major barrier to completion is that this project was given an amount of money by Verizon from the Incentive Regulation Plan that may not be sufficient for the size and scope of the project. Since the project is unique, no criteria existed to estimate the costs attendant to developing the addressing and mapping system.** The benefit to the state will range far beyond the Enhanced 9-1-1 response system since the information contained in the system will also be used by the postal service, telephone and utility companies and a wide array of governmental agencies. Although the Board has generated small amounts of additional income through the licensure of raw data to several organizations and businesses, the initial \$15 million is now \$5.8 million. **It is possible that the initial budget for this project was too small, given the comprehensive nature of the information to be developed and amount of work required to generate the large number of city-style addresses still needed in the state.** Once the project is completed, the GIS database will have an ongoing need for permanent funding since it will require updating and maintenance in order to retain its usefulness to the state.

The present utilization of the existing data in the statewide aerial map shows that this project has positive implications for the state's future. Federal and state agencies are already using the GIS structure of the map in a variety of ways. West Virginia's project appears to be more comprehensive than the locator response project underway in Ohio. This type of project, while unique at the present time, is clearly the way that information will be collected, stored and accessed in the future. **The Legislative Auditor believes that the existing data with the developed database structure is now worth more to the state than the original cost of \$4.7 million.** The creation of this database has been accomplished to date without the use of state funds. However, at this juncture in the project's development, the Legislature should seriously consider creating permanent funding for the completion and ongoing maintenance needs of this project.

Conclusion

West Virginia has created a unique and ambitious public safety project incorporating the use of the 9-1-1 GIS database with an updated statewide map featuring elevation data of a scale and accuracy that no other state has yet developed. The implications for use of this database by the state are far-reaching. **Every person in the state will benefit from this project.** Some benefits will be direct. Emergency responders will be able to locate citizens and provide assistance quickly in an emergency as the result of the GIS maps and city-style addressing. Other benefits will be indirect as reduced costs for a variety of government projects, such as highway road construction. The aerial map database which already exists is providing a structure where all types of “locator” information, from tax assessor files to telephone numbers, can be placed and then rapidly accessed. The database will reduce the collection of redundant information and improve the efficiency of state and local government. It is possible that the applications for this data will extend from the anticipated emergency responses of disaster recovery and evacuation planning, to less obvious uses such as mapping an outbreak of infectious disease or rabies, or improved tax revenues through more accurate maps. The Board, while experiencing difficulty in the completion of the addressing, has already created geographic information in the map that is being used by four federal agencies, the state’s Division of Homeland Security and Emergency Management, the state Department of Highways, the state Department of Environmental Protection and the state Department of Agriculture. **The Legislature should explore permanent sources of funding for the addressing and mapping project so that the state will be able to complete, continue and maintain the comprehensive GIS information system originally conceived as this project.**

It is possible that the applications for this data will extend from the anticipated emergency responses of disaster recovery and evacuation planning, to less obvious uses such as mapping an outbreak of infectious disease or rabies, or improved tax revenues through more accurate maps.

Recommendation

1. *The Legislature should consider providing permanent funding for the completion, continuation and maintenance of the statewide addressing and mapping project.*

Problems With Board Operations Indicate That the Addressing and Mapping Project Should Become the Responsibility of an Agency, and the Board Should Become an Advisory Board.

The Board has held numerous committee meetings, teleconferences and pre- and post-board meetings without public notice and in possible violation of the Open Governmental Proceedings Act.

Issue Summary

The West Virginia Statewide Addressing and Mapping Board will terminate April 1, 2007. The volunteer board has been charged with the creation of a highly complex, GIS based public safety addressing and mapping project. The Board has worked diligently to create the project, but despite holding over 90 board meetings in six years, the Board has not been able to complete the project. In addition, the nature of the work has required ongoing communications among board members and strained board operations. The Board has held numerous committee meetings, teleconferences and pre- and post-board meetings without public notice and in possible violation of the Open Governmental Proceedings Act. Decisions of the Board have not always followed accepted procedures. Consequently, the Legislative Auditor recommends that the Board's functions be legislatively changed, and that the Board continue after April 1, 2007 as an advisory board. The Legislative Auditor also recommends that the addressing and mapping project be continued and the responsibility for completion of the project be relocated to an appropriate state agency.

The Legislative Auditor recommends that the public safety project which the Board is responsible for creating be continued, but that the project be transferred to a state agency and that the mandate of the Board be changed, so that the Board functions strictly as an advisory board to the project.

The West Virginia Statewide Addressing and Mapping Board Should Continue Only as an Advisory Board

The Legislative Auditor reviewed the operations of the West Virginia Statewide Addressing and Mapping Board for a special report. However, recognizing that the Board is facing termination in 2007, the Legislative Auditor also considered whether the Board should be terminated or continued. Following this review, the Legislative Auditor has concluded that the Statewide Addressing and Mapping Board should be continued as an advisory board only. The Legislative Auditor recommends that the public safety project which the Board is responsible for creating be continued, but that the project be transferred to a state agency and that the mandate of the Board be changed, so that the Board functions strictly as an advisory board to the project. The Legislative Auditor bases these conclusions on operational problems of the Board, the lack of completion of the project and the awkward organizational structure of an essentially volunteer organization responsible for the creation of a highly technical project.

One barrier to the project's completion has been the unsatisfactory performance, and subsequent termination of the Board's addressing contractor.

The Board's public safety mission to create a statewide addressing and mapping system within a six-year time frame is very different from the regulatory function of most boards.

The West Virginia Statewide Addressing and Mapping Board, unlike a regulatory board, has a specific termination date of April 1, 2007. While completing the first phase of the project and producing a new, aerial map to serve as a GIS database, the Board has not finished the statewide public safety project that it is mandated to complete. One barrier to the project's completion has been the unsatisfactory performance, and subsequent termination of the Board's addressing contractor (see Issue 3). Also, the design of this statewide effort is unique, and the 55 counties that are included in the project have wide variation by each county in the amount of work needed to complete addressing. Therefore, in addition to an unusual organizational structure for such a project, the Board may not have been given enough time in its enabling legislation to complete the project. In order to assure continuation past the termination date, the Board will propose legislation during the 2007 Regular Session of the Legislature. The proposed legislation grants two additional years to the existence of the Board, extending the termination date until April 1, 2009. Upon the new termination date, the Board proposes transfers of its maps and other works to the county commissions, and charges them with maintaining and updating the addressing and mapping systems at the county level. The legislation also anticipates transfer of the GIS system to the Division of Homeland Security and Emergency Management.

The Legislative Auditor supports the continuation of the project but does not support the Board's proposal to be continued for two years as the organization to complete the project and then to become an advisory board. Instead, the Legislative Auditor supports the Board becoming an advisory board on or before the Board's April 1, 2007 termination date, and the legislative relocation of the responsibility for the public safety project to an appropriate state agency. The Legislature should also consider affording an extended amount of time to the advisory board to allow for the completion of the project.

Creating a Statewide Public Safety System Strained Board Operations

Although the Statewide Addressing and Mapping Board is not required to meet the general provisions of WVC Chapter 30, the Legislative Auditor reviewed the procedural operating requirements that apply to administrative and legislative units of state government, and the requirements for purchasing that are specific in the Board's enabling legislation (see Issue 4). The Board's public safety mission to create a statewide addressing and mapping system within a six-year time frame is very different from the regulatory function of most boards. The nature of

creating and completing a complex, statewide project with requirements ranging from assisting in the enactment of city and county ordinances to setting addressing standards and deciding how to design the system demanded a “hands-on” approach by the volunteer Board members.

The project demands have caused the volunteer Board members to take on full time responsibilities as if they were paid staff members of a state agency.

The project demands have caused the volunteer Board members to take on full time responsibilities as if they were paid staff members of a state agency. The Board employs only one person, an executive assistant, and shares payment for that person’s salary and other expenses with the state’s Geological and Economic Survey (GES). The Board pays GES for use of office space and utilities shared with the Office of the Statewide GIS Coordinator. Outside of board meetings, board members have participated in numerous telephone calls, teleconference calls, pre- and post-board meetings and committee meetings that were all held without public notice. The Board has also delegated work to committees to discuss and make recommendations to the Board. In addition, the board minutes, which should form a complete record of the disposition of all motions, orders, resolutions, measures and ordinances proposed by the Board, do not reflect many actions taken by the Board, and it is possible that the entire board did not formally approve all actions taken on behalf of the Board.

Outside of board meetings, board members have participated in numerous telephone calls, teleconference calls, pre- and post-board meetings and committee meetings that were all held without public notice.

The Board is Required to Follow the Open Governmental Proceedings Act

The Board was created in 2001, and held its first board meetings in October and November of that year. During the third Board meeting, held November 29, 2001, the executive director of the Ethics Commission presented information to the Board members regarding compliance with the Open Governmental Proceedings Act (also known as the “Sunshine Law” or the “Open Meetings Law”). Ten Board members present at the meeting, including the current Board chair and vice-chair, received a copy of the Ethics Commission pamphlet titled “A Guide to the Open Governmental Proceedings Act.” The pamphlet explains the provisions of WVC §6-9A-1 through 12 and clearly states that:

The Act covers any administrative or legislative unit of state, county or municipal government including any subunit authorized by law to exercise some portion of executive or legislative power.

The pamphlet also indicates that **WVC §6-9A-1 requires that meetings of an agency’s governing body be open to the public and WVC §6-9A-2 defines a governing body as two or more members of a public agency who have the authority to make decisions for or recommendations to**

the public agency on policy or administration.

The Ethics Commission director also informed the Board of the proper procedures to provide notice of the meetings to the Secretary of State's Office. Board members discussed the publication of the meeting agendas, the content of the meeting minutes and the rule of order for conducting board meetings. The appropriate use of the "executive session" was also discussed so that board members understood that discussions of certain types of information could take place in executive or closed sessions, although the sessions must be held as part of the public meeting, and decisions flowing from the discussions must be voted on in the public meeting.

The Board has filed only about 92% of its meetings in accordance with the Open Governmental Proceedings Act.

The Legislative Auditor reviewed the board meeting notices filed with the Secretary of State's Office, and determined that since November, 2001 the Board scheduled 92 board meetings in the State Register, and cancelled 12 of these scheduled meetings. However, during the board's existence, the board has actually held 90 meetings. **Seven of the 90 meetings, held between 2001 and 2005, were not recorded in the State Register.**¹ Consequently, the Board has filed only about 92% of its meetings in accordance with the Open Governmental Proceedings Act. The Board has minutes of these meetings, but there was no notice in the State Register that these meetings would be held.

The Board chair, who is also the State GIS Coordinator, noted that during the past five years, a substantial amount of his time has been spent on the activities of the Board.

Ongoing Board Communication May Have Created Sunshine Law Violations

Despite conducting 90 meetings since its inception, the Board's mission to create a statewide addressing and mapping database required more work to be done by the volunteer board members than could be accomplished within the confines of open board meetings. The Board chair, who is also the State GIS Coordinator, noted that during the past five years, a substantial amount of his time has been spent on the activities of the Board. The Board hired three contractors, and worked out agreements with several agencies. The first contractor to be hired was the project manager. The project manager was given broad authority to be the "architect" of the project by designing the statewide project and creating statewide addressing standards. The Board was initially involved in managing the project manager, and has continued in close communication overseeing and managing the project manager. The

¹Board minutes reflect that these meetings were held on the following dates: 10/30/01*; 8/8/02; 10/10/02; 4/1/04; 5/6/04; 7/21/05; and 12/8/05. Decisions in the organizational 10/30/01 meeting were affirmed through a second vote in later meetings.

Board has also employed a consensus style of decision-making with frequent communication among board members taking place. **This style of frequent communication has led the Board to have numerous meetings which have taken place outside of the public board meetings.**

The Legislative Auditor noted that the project manager listed teleconference calls with the Board on weeks when the Board was not meeting.

Private Teleconference Calls

In a review of reports made to the Board by the project manager, the Legislative Auditor noted that the project manager listed teleconference calls with the Board on weeks when the Board was not meeting. The Legislative Auditor asked the Board's executive secretary about the teleconferences. The executive secretary stated that the current teleconference calls:

are weekly project status/updates held to keep the Chairman and any interested Board members apprised of any significant developments from the...PM [project management] Team. Any issues that come up that require Board action are put on the Board agenda for the next Board meeting. I notify Board members of these calls by email. Sometimes we have an agenda, and sometimes we do not. These teleconferences are intended for internal use only ...and not described in the State Register. ... I keep general notes. These notes are mainly [for] my personal use for [Board chair] so that we can go back and refer to them in case any follow-up is necessary.

The project manager noted that "There were few if any impromptu teleconferences involving more than one Board member at a time. There were however numerous phone conversations between myself and other Board members... ."

One project management report stated "Participated in a WVSAMB Sunset Committee conference call on September 5, 2006" that was two days prior to the Board meeting. When asked, the project manager noted that the Board scheduled some teleconferences. The project manager noted that "There were few if any impromptu teleconferences involving more than one Board member at a time. There were however numerous phone conversations between myself and other Board members... ."

Private Project Manager Direction by Executive Committee

In addition, a board committee advised the project manager on a regular basis. The Executive Committee (comprised of the four officers of the Board: chair; vice-chair; secretary; treasurer and the Board's legal counsel) advised the project manager for a period of 10 months in 2005 and 2006. When problems developed with one of the contractors, the project manager reported Executive Committee assistance:

Worked with the WVSAMB Executive Committee to resolve potential problems within the addressing project including: customer record data availability, old-to-new address match rates, scheduling, TEAM2 (data, functionality and training requirements), and facilitating a number of related teleconferences, project memoranda and meetings. (Emphasis added.)

In December, 2005 one member of the Executive Committee is reported as “expressing his and the Board’s displeasure with [the addressing contractor’s] performance on the addressing portion of this project.”

Project management reports indicate that the Executive Committee continued assisting the project manager with this problem from April, 2005 through February, 2006. Board minutes for this period reflect that members of the Executive Committee made individual reports to the Board. However, during this period of time there are no reports in the board minutes that indicate which members of the Executive Committee were involved in the addressing project problems, or reports of the extent of the Executive Committee’s assistance to the project manager. In December, 2005 one member of the Executive Committee is reported as “expressing his and the Board’s displeasure with [the addressing contractor’s] performance on the addressing portion of this project.”

Private Extra Meetings

The project manager listed meetings with the Board on the same day as board meetings and on dates other than board meeting dates.

Board minutes for 12/20/01 document that the Board voted to hold committee meetings in the mornings on the date of scheduled Board meetings. These meetings were not noticed in the State Register. The project manager listed meetings with the Board on the same day as board meetings and on dates other than board meeting dates. Here are a few examples:

- A Board meeting was scheduled for March 18, 2004 and then cancelled. The project manager notes that on the same day, a meeting was held with the Board chair, the Board’s legal counsel and the addressing contractor to develop strategy for a meeting to be held the following day.
- A Board meeting was held April 1, 2004 that was not listed in the State Register. The project manager also noted meetings with “the Board” on April 5, 2004 and April 15, 2004; and a conference call with “the Board and the Department of Highways” on April 19, 2004.
- A Board meeting was held May 6, 2004 that was not listed in the State Register. The project manager listed two prior meetings with

“the Board” on May 4, 2004 and May 5, 2004.

Similar extra meetings are also listed in 2005 and 2006 with some of the meetings being listed as pre-, or post-board meetings. It is not possible to determine whether the project manager met with a quorum of the Board, or a few members of a committee. It is likely that these meetings actually refer to meetings with a few members of the Board or a committee.

It is not possible to determine whether the project manager met with a quorum of the Board, or a few members of a committee. It is likely that these meetings actually refer to meetings with a few members of the Board or a committee.

The Legislative Auditor was also interested in how the board committees functioned. The board chair informed the Legislative Auditor that committees do not keep minutes. The board chair also stated:

...individual committees never had any authority to make independent decisions. However, at times the Board delegated certain authority to the committees to work on specific tasks and to make recommendations back to the board.” He also noted that the Executive Committee (board officers) met frequently during the past two years [2005 and 2006], “as I believe was our responsible duty, as a necessity to keep the project in line. ...over much of this time period we also had two Board meetings per month. Those morning meetings [apparent reference to pre-board meetings] were the only real opportunity we had to have frank face-to-face discussions with both the [project management] team and the [addressing contractor] in the same room and to work out contractual and delivery issues... . At no time ... did the ExCom [executive committee] make any unilateral decision without first bringing [it] to the attention of the entire board and up for a vote at the regular board meeting. (Emphasis added.)

Business of the Board has also been conducted via electronic mail to the Board members.

Board Decisions Using Electronic Mail

Business of the Board has also been conducted via electronic mail to the Board members. The Ethics Commission noted in an advisory opinion ruling in 2006² that:

This State’s Open Meetings Act does not directly address electronic mail communications. In interpreting and applying the Act, this Committee will follow the express intent of the Legislature, which, with limited exceptions, requires governing bodies of public agencies to accomplish the collective process of decision making on matters within their

²Advisory Opinion 2006-09

official purview during a public meeting. Generally, written communications, including electronic mail or "E-mail," should not be used to avoid public discussions that would ordinarily take place in the context of an open public meeting. Therefore, an exchange of E-mail communications among a quorum of a governing body which involves deliberating toward a decision on a matter requiring official action is not permitted by the Act.

In the board minutes of February 5, 2004, it is noted that the Board's chair "sent out by email requesting the Board's concurrence [about] what we discussed at the last Board meeting to go ahead with proposed changes...as deliverables from [mapping contractor]."

The opinion continued, noting that a series of E-mail exchanges could virtually eliminate any need for discussion at an open public meeting and stating that communications regarding matters requiring official action should be limited to the staff or individual members sending out drafts (but not draft corrections) of matters such as by-laws, budgets, policies, correspondence and meeting minutes so the voting members of the governing body will have an opportunity to review these documents in advance of the meeting. The Ethics Commission issued an advisory opinion in 2000³ that members of a city planning commission could receive copies of proposed plans in advance of a meeting in order to review the plans to prepare for the meeting.

It appears that at least some of the business conducted by email and some of the extra meetings should have been open to the public.

In the board minutes of February 5, 2004, it is noted that the Board's chair "sent out by email requesting the Board's concurrence [about] what we discussed at the last Board meeting to go ahead with proposed changes...as deliverables from [mapping contractor]. ... [The chair] heard no opposition to this and instructed [legal counsel] to go ahead and inform [the mapping contractor] to proceed with the change. We will have to draft a formal change order request to the contract." The board minutes frequently refer to email communication among board members, and some of the email content and resulting actions taken by the Board chair may be in violation of the Open Governmental Proceedings Act.

The Legislative Auditor is unable to determine whether the content of all of the Board's e-mails, extra meetings, teleconferences and committee meetings fell within the requirement of the Open Governmental Proceedings Act, but it appears that at least some of the business conducted by email and some of the extra meetings should have been open to the public, since two members of the Board often conferred to either make decisions for the Board or recommendations to the Board on policy or the administration of the project. **The Legislative Auditor concludes that in conducting**

³Advisory Opinion 2000-07

numerous telephone calls, teleconferences, pre- and post-board meetings and e-mail queries for decisions, the Board violated the Open Governmental Proceedings Act.

The Board Failed To Vote On Some Decisions

The minutes do not reflect votes on a variety of important decisions.

The content of committee meetings may have been brought to the attention of the Board as the board chair suggests, but the actions of the Board, documented in the board minutes, do not always reflect decisions to approve committee recommendations. The minutes do not reflect votes on a variety of important decisions. Despite instruction by the Board's attorney that the approval of the Board was necessary, the Board failed to hold a vote of the members on many decisions that were made. Some important decisions that were not voted upon include the hiring of contractors and the later modification of some contracts. **In reviewing the board's minutes for 2002, the Legislative Auditor was unable to find a specific vote to approve hiring the present project manager at the proposed hourly rate, although the Board was clearly involved in the selection process.** Two engineering firms responded in June, 2002 to the Board's Request For Proposal for a project manager. In order to conform with the state's Purchasing requirements, the Board designated an Evaluation Committee composed of two Board officers, two Board members and the Board's legal counsel. The following time-line shows the actions taken by the Board:

The Board failed to hold a vote of the members on many decisions that were made.

- All board members were invited to review the vendor's written responses and write down any questions.
- All board members were invited to the vendor's oral presentations, although only Evaluation Committee members were allowed to ask questions in order to follow the Purchasing Division requirements.
- The Evaluation Committee sent a memo on July 23, 2002 to Purchasing with the scores for the technical portion of the RFP.
- **A Board meeting was held on August 8, 2002 but no full Board action on the award could have been taken since the award process was not complete.** The minutes do not reflect any board action.
- The Evaluation committee sent a final memo to the Purchasing Division on **August 19, 2002** recommending that the present

project manager be hired since this engineering firm submitted the lowest bid and had the highest technical score. **The Evaluation Committee acted three days prior to the Board meeting. This action was taken without a vote by the Board.**

The Legislative Auditor was also unable to find any discussion or vote by the Board accepting the recommendations of the Evaluation Committee to enter into contracts with the recommended mapping and addressing vendors hired by the Board in February, 2003 and November, 2003.

The press of business apparently caused the Board to delegate authority in addition to overlooking procedural steps such as voting.

- A Board meeting was held on August 22, 2002. There is no mention of the contract award and the name of the vendor selected as project manager in the August 22 board meeting minutes. The Board did not document the hiring of the project manager until the September 5 meeting.

The Legislative Auditor was also unable to find any discussion or vote by the Board accepting the recommendations of the Evaluation Committee to enter into contracts with the recommended mapping and addressing vendors hired by the Board in February, 2003 and November, 2003. In addition, the Board took other actions that were never approved by a vote. For example, in April, 2003 the Board chair participated in a “fact-finding” trip to New Hampshire, Vermont and Maine to observe other statewide addressing projects. Board minutes document the April, 2003 trip to New England States but do not document a prior vote to approve the expenditure of funds for the New England trip.

The Board Delegated Authority to Committees and Counsel

The press of business apparently caused the Board to delegate authority in addition to overlooking procedural steps such as voting. For example, during the second year of the project manager’s contract, modifications developed by a few board members added over \$450,000 to the existing contract. However, there is no record in the board minutes of a Board discussion to move forward with increasing the amount of the contract. Instead, the Board’s Executive Committee met with a few board members in a non-public meeting to discuss this with the Board’s legal counsel. The following actions are documented in the board minutes and Purchasing Division documents:

- July 10, 2003 board meeting. Legal counsel reports that the project manager approached him with additional work that needs to be done but is not included in the original contract. He states “**I met with the Executive Committee and a few Board members this morning to discuss it.**” (This meeting was held prior to the 1:10 p.m. Board meeting when the legal counsel made his report to the Board.) Legal counsel states that “the members would like to negotiate a change for year two of the contract. The anniversary

The Board discussed initiating changes and modifying the project manager contract during a non-public meeting prior to the July 10, 2003 board meeting.

There is no indication in the minutes of the two Board meetings held prior to the modifications being submitted to Purchasing that the Finance Committee made any report (such as the amount that the modifications would increase the contract), or that the Executive Committee made any report to the Board membership.

date would be in September.” Legal counsel recommended that the Board authorize the Executive Committee and the Finance Committee to look at a contract modification and then authorize a proposed change order for final approval by the Board for a contract change. The Board accepted the legal counsel’s report. **No full board discussion regarding adding more work to the project manager contract took place in the board meeting.**

- August 7, 2003 board meeting. **The Board passed a motion to have the Executive Committee finalize the project manager modification of the contract for Year Two.** This would include a review by the Board Finance Committee and that the **Board Counsel draft a change order to the contract and forward the agreement to Purchasing once approved.**
- September 4, 2003 board meeting. **No vote was taken to approve the contract modifications.** Board minutes reflect the Board accepted the report of its legal counsel. This report did not mention the draft of the contract modifications.
- September 10, 2003. The Purchasing Division received the contract modification document. The effective date of the contract modification on the change order is 9/16/2003.

The Board discussed initiating changes and modifying the project manager contract during a non-public meeting prior to the July 10, 2003 board meeting. A decision to move forward on this expansion of the contract was not voted upon during the July 10 board meeting. However, the contract modification involved two committees and the Board’s legal counsel. There is no indication in the minutes of the two Board meetings⁴ held prior to the modifications being submitted to Purchasing that the Finance Committee made any report (such as the amount that the modifications would increase the contract), or that the Executive Committee made any report to the Board membership. **Legal counsel recommended that the Board approve the final draft of the contract modification.** However, the Board also overlooked this step in the process and **the final draft of the change order that was sent to the Purchasing Division was never formally voted on and approved by the Board** during a public board meeting.

⁴August 7, 2003; August 21, 2003.

Conclusion

The West Virginia Statewide Addressing and Mapping Board is mandated to create a statewide public safety addressing and mapping project within six years. Due to the necessity of assembling and appointing board members, the Board has actually had a working time span of about five years. **Much has been accomplished by the Board; however, the Board as it presently exists has not been able to bring the project to completion, and it has not conducted all of the business relating to the project in open public meetings.** In addition, the Board has overlooked some procedural steps in voting and therefore documenting the decisions that it has taken. Further, the Board has allowed committees and individual committee members to make numerous decisions as if they were full-time employees instead of volunteer members of a board. These decisions have not been made by the entire board, and they have been made outside of public view. **It is possible that the requirement to have an appointed volunteer Board rather than an agency create this project, has led to these operational problems.** The Board will terminate on April, 2007. The Legislature is faced with three choices:

The Board has overlooked some procedural steps in voting and therefore documenting the decisions that it has taken.

The Board has proposed legislation that would continue the Board in its present configuration for two additional years, and then relocate the project within an agency and allow the Board to become an advisory board.

- allow the Board to terminate and the project to disappear;
- continue the Board for an additional two years (as the Board will propose in draft legislation in the next regular session); or
- relocate responsibility for the project to an appropriate agency, and continue the Board as an advisory board.

The Board has proposed legislation that would continue the Board in its present configuration for two additional years, and then relocate the project within an agency and allow the Board to become an advisory board. **The Legislative Auditor is not in favor of continuing the Board for two years since this would perpetuate the problems of the existing Board.** The Legislative Auditor recommends immediately seeking an agency location for the completion of the project because this would provide a more efficient structure for the completion and future maintenance of this project. The Board should only be continued as an advisory board to approve policy decisions. The Legislative Auditor recommends that the public safety project which the Board is responsible for creating be continued, but that the project be immediately transferred to an agency setting and that the mandate of the Board be changed, so that the agency becomes responsible for the routine decisions required by the project and the Board functions strictly as an advisory board to the project.

Recommendations

2. *The Legislature should consider relocating the responsibility for completing the public safety statewide addressing and mapping project to an appropriate agency.*
3. *The Legislature should consider legislative change so that when the West Virginia Addressing and Mapping Board terminates on April 1, 2007, it will become an advisory board to the agency responsible for the addressing and mapping project.*
4. *The Legislature should consider making any other revisions to the Code and rules necessary to allow the relocated project to move forward to completion.*

Issue 3

The Statewide Addressing and Mapping Board's Change in Direction to Shift Contracted Addressing Work to the Counties Has Raised Questions and Concerns About the Statewide Addressing and Mapping Project.

Issue Summary

The addressing contractor hired to work with the counties and municipalities did not deliver information in a timely fashion and the Board terminated the contractor in June, 2006.

The West Virginia Statewide Addressing and Mapping Board faces termination in April, 2007 and has been unable to complete the project. The Board has mapped the state using the photographic imagery necessary to support the 9-1-1 addressing portion of the statewide addressing and mapping project. However, the addressing contractor hired to work with the counties and municipalities did not deliver information in a timely fashion and the Board terminated the contractor in June, 2006. The termination caused the Board to create a plan relying upon the counties to finish the work started by the addressing contractor.

The Legislative Auditor is concerned that three months before the Board's termination, the amount of addressing work left to complete is still not defined by county.

As a result, the Board has come under criticism following the release of the plan in July, 2006. The criticism centers on the amount of money spent by the Board, and the amount to be allocated to the counties to complete the addressing project. The \$5.8 million remaining from the original \$15 million fund is being dispersed between the Board's contracted project manager, the operation of the Board, and the purchase of hardware and software for data storage and upgrades to allow the counties to complete and update addresses in the GIS mapping database. The Board is reserving an amount of money to effect an intergovernmental transfer establishing a permanent location for storage of the statewide addressing and mapping data, and to provide reimbursement to the counties. The completion plan shifts the addressing work to the counties but does not propose to pay for the total cost of the work to be completed.

Counties and other stakeholders expressed their disappointment in the project's status following the July, 2006 meeting. The Legislative Auditor surveyed the counties to determine their addressing status and concerns. Thirty-one counties responded with information about their individual addressing projects, their understanding of the Board's initial project requirements and new direction. The Legislative Auditor is concerned that three months before the Board's termination, the amount of addressing work left to complete is still not defined by county, the amount of work remaining to be completed is significant, and some counties may be unable to complete the project. **The Legislative Auditor recommends**

that the Board review the status of addressing completion in each county and issue a detailed report to the Legislature prior to its termination in order to assist the Legislature and the counties in future planning to complete the project.

The Board's addressing contractor was responsible for developing a comprehensive set of support services for the counties to complete the statewide 9-1-1 city-style addressing and the development of related telephone company databases.

The Termination of the Addressing Contractor Left the Addressing Portion of the Project Incomplete

The West Virginia Statewide Addressing and Mapping Board hired a project manager in 2002 to design and implement the permanent statewide addressing and mapping system. The contracted project manager was also responsible for developing mapping and addressing specifications and overseeing two other vendors; a mapping contractor, and an addressing contractor. The additional vendors were employed to perform specific parts of the project; photographing the state from the air and converting the aerial photographs into information layers, and working with the counties to collect and assign addressing data. The Board hired a mapping contractor in 2003 to create the mapping layers necessary to support the 9-1-1 addressing component of the project. The mapping portion of the project was completed in 2004 (see Issue 1).

The project requires close coordination with the counties because the counties and municipalities have the legal responsibility to create addresses.

In November, 2003 the Board also hired an addressing contractor to work with the counties and municipalities to complete the 9-1-1 addressing component. The Board's addressing contractor was responsible for developing a comprehensive set of support services for the counties to complete the statewide 9-1-1 city-style addressing and the development of related telephone company databases. At the outset of the project, West Virginia had an estimated 400,000 locations requiring the assignment of new addresses. Locating a 9-1-1 caller is dependent on linking a telephone number to a city-style address in a database. The project requires close coordination with the counties because the counties and municipalities have the legal responsibility to create addresses. In order to assist the counties, the Board obtained extracts from tax and utility-customer databases to link old and new addresses, and facilitated close coordination with the U.S. Postal Service and telephone companies. The Board also developed addressing standards, sample ordinances, procedures, data sharing policies, training materials, and an easy-to-use address-maintenance system.

The contract between the Board and the addressing contractor required that statewide addressing would be complete in a little over three years, even though the state of Maine, with a similar

The Board found that it was difficult to determine if the addressing contractor was performing adequately despite repeated meetings with the addressing contractor and project manager.

Following mediation with the contractor, the Board issued a change order to the addressing contract that defined its expectations.

The Statewide Addressing and Mapping Board terminated the addressing contractor in June, 2006 following an unsuccessful attempt to salvage the relationship with the contractor.

Earlier in the year the Board and the addressing contractor participated in mediation in order to clarify communication. The decision to terminate the addressing contractor was made about four months after the mediation when the contractor's performance remained unsatisfactory to the Board and the counties. The Board spent about \$3.2 million (a little over half of the agreed \$6.1 million addressing contract) with this vendor. In terminating the contract, the Board negotiated a \$500,000 settlement with the addressing contractor.

population size and dispersal of residents in rural areas, has not completed addressing in 11 years. The Board found that it was difficult to determine if the addressing contractor was performing adequately despite repeated meetings with the addressing contractor and project manager. The Board designated McDowell County as a pilot project, and through the experience of this county was finally able to determine that the address and telephone number match rate did not meet the Board's expectations. Following mediation with the contractor, the Board issued a change order to the addressing contract that defined its expectations. Since the Board's vice-chair was also the director of 9-1-1 and emergency services in this county, the Board was able to develop an understanding of the addressing contractor's processes, and to issue specific requirements. However, after the contract had been in effect for two and a half years, the Board concluded that the work of the addressing contractor was not acceptable and the Board terminated the addressing contractor.

The Board Reached A Final Settlement With the Addressing Contractor

The Statewide Addressing and Mapping Board terminated the addressing contractor in June, 2006 following an unsuccessful attempt to salvage the relationship with the contractor. Earlier in the year the Board and the addressing contractor participated in mediation in order to clarify communication. The decision to terminate the addressing contractor was made about four months after the mediation when the contractor's performance remained unsatisfactory to the Board and the counties. The Board spent about \$3.2 million (a little over half of the agreed \$6.1 million addressing contract) with this vendor. In terminating the contract, the Board negotiated a \$500,000 settlement with the addressing contractor. In August, 2006 the Board issued a purchase requisition and memorandum to the Purchasing Division to create a third change order to the contract that reflected the settlement amount. The Board decided not to pursue a lawsuit to recover lost revenue for the failure of the addressing contractor to perform according to the contractual agreement with the Board. In a letter to the Legislative Auditor dated November 17, 2006, the Board chair stated:

We did carefully consider that possibility, but after much discussion between Board members and on advice of legal counsel and the Purchasing Division, we instead pursued and secured a final settlement favorable to the State. At the time of the settlement, the addressing contractor, ... claimed they were owed over \$1.3 million for work performed to date. ... The addressing contractor made additional claims,

The chair noted that the Board avoided significant disruption to the project's schedule and secured the addressing contractor's agreement to perform transitional services to the State that made the contract dissolution much smoother.

which the Board did not accept, that brought their entire claim to about \$1.8 million. Despite our differences, both sides agreed to pursue a negotiated settlement. As a result, the Board agreed to a final payment to the addressing contractor of \$500,000 and all further monetary claims by the contractor were dropped.

The Board chair continued that the Board saved the State at least \$800,000 claimed by the addressing contractor, and also saved the State additional litigation costs anticipated to be in the hundreds of thousands of dollars. The chair noted that the Board avoided significant disruption to the project's schedule and secured the addressing contractor's agreement to perform transitional services to the State that made the contract dissolution much smoother.

The Board Delayed Acting on the Addressing Contractor's Termination

The counties were concerned about the addressing contractor missing meetings, having problems with scheduling fieldwork, not communicating with 9-1-1 officials, having software problems and having data collection errors.

According to the Board's chair, the Board was made aware of concerns about the addressing contractor soon after the addressing contractor began work. In a written statement to the Legislative Auditor, the chair noted that both the project manager and the counties raised concerns. The counties were concerned about the addressing contractor missing meetings, having problems with scheduling fieldwork, not communicating with 9-1-1 officials, having software problems and having data collection errors. The Board had an independent concern about the amount of work that the contractor was finishing because the contractor was submitting invoices based on a percentage complete basis, but the Board could not verify that the work had been completed. The counties were reporting to the Board that the contractor was not physically present in the county, or that the work was not proceeding as it should be. The project manager reported technical concerns to the Board. According to the Board, the apparent causes of the contractor's failure were:

1. the addressing contractor's top management did not spend enough time in the state;
2. the addressing contractor did not provide good training to its employees in the state;
3. the addressing contractor did not follow the suggestions of the Board; and
4. the addressing contractor did not follow the plan that it had originally proposed to the Board during the hiring process.

The Board considered the impact of termination on the project, and also the possible consequences of a lawsuit by the addressing contractor.

The Legislative Auditor reviewed the actions of the project manager and the Board, and concluded that the Board and the project manager both provided oversight to the addressing contractor. However, the consensus style of the Board's functioning prohibited decisive Board action. Initially, the deputy project manager indicated verbally to the Board that it should terminate the addressing contractor. However, the Board was reluctant to act in haste and disrupt the project. The Board considered the impact of termination on the project, and also the possible consequences of a lawsuit by the addressing contractor. Therefore, the project manager did not make any formal recommendation to the Board to terminate the addressing contractor and the Board failed to take decisive action until 10 months before the Board's scheduled termination date.

When the Statewide Addressing and Mapping Board terminated the addressing contractor, the Enhanced 9-1-1 addressing and mapping project was not finished.

The Proposed Addressing Completion Plan Involves Shifting More Work Back to the Counties

When the Statewide Addressing and Mapping Board terminated the addressing contractor, the Enhanced 9-1-1 addressing and mapping project was not finished. The Board initially thought that it could use one of the other contractors that responded to the Expression of Interest (EOI) for an addressing contractor in 2003. However, when the Board learned from the Purchasing Division that it would have to reissue the EOI, it decided that the time involved would create an unacceptable delay to the project. Further, the Board had spent over \$3 million on the first addressing contractor, and felt that it should conserve the remaining funds in order to complete the project and reimburse the counties. Finally, some counties had expressed a desire to the Board to complete the addressing work themselves. The Board decided that the remaining work, such as address verification, old-to-new address matching and telephone number matching required local resources to complete, and made the decision to draft the plan that called upon the counties to complete this portion of the project with enhanced assistance from the project manager.

The Board decided that the remaining work, such as address verification, old-to-new address matching and telephone number matching required local resources to complete.

Stakeholders Have Concerns as a Result of the Proposed Plan

In July, 2006 the Board distributed draft copies of the proposed plan to complete the addressing project. The plan shifts all addressing work to the counties and requires the project manager to provide assistance. The proposed plan, issued to all the counties and stakeholders, has raised a number of questions and concerns. As a result, stakeholders expressed concerns about the actions that the Board has taken, and the new

direction of the Board's addressing and mapping project. The stakeholders expressing concerns include county addressing directors, in addition to a Kanawha county commissioner and prospective vendors. A prospective vendor for addressing services to the counties raised concerns about expenditures by the Board in raising the amount of the project manager's contract. The vendor questioned the actions of the Purchasing Division in approving contract change orders (see Issue 4).

The proposed plan, issued to all the counties and stakeholders, has raised a number of questions and concerns.

The release of the draft completion plan included a proposed budget to allocate the remaining \$5,818,181 in the Statewide Addressing and Mapping Fund. The money is being split five ways with amounts set aside for the Board's operations, the project manager, the counties, the purchase of hardware and software, and a future intergovernmental transfer. A primary concern is the amount of money available for compensation to the counties for their work. The money allocated for the counties represents about 44% of the remaining budget and will not pay for all of the costs in completing the addressing work.

A primary concern is the amount of money available for compensation to the counties for their work.

In late August, 2006, a Kanawha County commissioner wrote a letter to the Department of Military Affairs and Public Safety complaining about the delay in the completion of the project, the amount of money that has been spent, and the proposal to partially reimburse the counties after the counties complete the addressing work. The commissioner felt that the counties should receive all of the money remaining at that time (\$5,818,181). He stated in a newspaper article that he plans to ask the State to release the money to the counties prior to the addressing completion. The estimated budget is seen in Table 1:

Table 1 West Virginia Statewide Addressing and Mapping Board Estimates to Complete Addressing and Mapping Project Within Existing Budget		
Budget Item	Amount	Description
Statewide Addressing and Mapping Board	\$350,000	Operating budget for staff, director costs and legal expenses.
Hardware and Software	\$450,000	System upgrades and the handheld GPS units that will be given to the counties.
Intergovernmental Transfer	\$500,000	Funds to establish the West Virginia Addressing Coordination Office (permanent location for the mapping system database).
Contractors	\$1,984,310	Funds for contractor support, data conversion, training, system development and administration.
Counties	\$2,533,871.65	Funds to be distributed as partial reimbursement to the counties for addressing work.
Total	\$5,818,181.65	Total budget of unencumbered funds remaining as of June 30, 2006.
<i>Data Source: Draft Project Plan of West Virginia Statewide Addressing and Mapping Board</i>		

Since the release of the proposed plan and the proposed budget, the estimated amount of money available for the counties has increased by about \$200,000, raising the amount to about \$2.7 million. The decision of how to create a fair distribution has involved the counties. The Board has revised the formula used to calculate the individual amount going to each county, and the formula now includes:

The counties are still uncertain about the specific amount that each county will receive since the actual reimbursement amounts were not finalized in the December, 2006 board meeting.

- county population based on July, 2005 census;
- county area in square miles;
- county number of state road miles;
- number of addressable structures in the county; and the
- project manager's estimate of completion in the county.

The counties are still uncertain about the specific amount that each county will receive since the actual reimbursement amounts were not finalized in the December, 2006 board meeting. This delay occurred because the counties noted that there were errors in the number of addressable structures listed for some counties.

In November, 2006, the Kanawha county commissioner raised additional concerns in a letter to the Statewide Addressing and Mapping Board about the total expenditures of the Board since its inception in 2001. The Legislative Auditor received a report prepared by the Department of Administration for the Board that shows that after five years the Board has spent \$11,052,740.93 of the original funding. Amounts paid to date to the three vendors are:

The Board chair noted that of the expenditures to date, 96% has been spent on the three contractors, with only 4% over the period of the Board's existence being spent on all other expenses.

- Project Manager - \$2 million;
- Mapping contractor - \$4.7 million;
- Addressing contractor - \$3.2 million.

The Board chair noted that of the expenditures to date, 96% has been spent on the three contractors, with only 4% over the period of the Board's existence being spent on all other expenses. The expenditures by the Board from 2001 to November 2006 are seen in Table 2 below.

Table 2 Statewide Addressing and Mapping Board Expenditures FY 2001-FY 2007 (November, 2006)	
All personnel expenses	\$88,975.40
Office and related expenses	\$34,337.80
Insurances	\$11,570.00
Computer services and software	\$70,568.70
Advertising and promotional	\$25,113.29
Training	\$5,889.81
Travel	\$25,348.15
Hospitality	\$13,661.76
Attorney Services and Expenses	\$190,121.62
Contractual Services	\$10,587,154.40
Total Expenditures	\$11,052,740.93
<i>Data Source: Report compiled for the Board by the Department of Administration/ Finance Division.</i>	

In addition to sharing the concerns about how the Board had spent the Statewide Addressing and Mapping Fund, some counties were confused about the actions of the Board.

County Responses to Legislative Survey On Addressing and Mapping Project

In addition to sharing the concerns about how the Board had spent the Statewide Addressing and Mapping Fund, some counties were confused about the actions of the Board. In order to identify clearly the concerns felt by the counties, and to allow the counties to make a statement about

the addressing and mapping project, the Legislative Auditor contacted all 55 counties by electronic mail in November, 2006. The Legislative Auditor based the survey questions on concerns that had been raised by various counties as a result of the Board's new plan for completing addressing work in the counties. The 31 responses received by the Legislative Auditor represented all of the state's regions with the exception of the Eastern Panhandle. No counties responded from that part of the state. The survey questions are listed below, along with a summary of the responses received by the Legislative Auditor from the 31⁵ counties:

The Legislative Auditor based the survey questions on concerns that had been raised by various counties as a result of the Board's new plan for completing addressing work in the counties.

Addressing and mapping in the state was not consistent prior to the development of the Statewide Addressing and Mapping project.

1. **Did your county have an addressing project prior to the Statewide Addressing and Mapping Board project?** Addressing and mapping in the state was not consistent prior to the development of the Statewide Addressing and Mapping project. Fourteen of the counties responding stated that they already had an addressing project prior to the statewide project, while **17 counties did not have an addressing project.**
2. **If so, can you estimate how far along you were in this project when the Board was created?** Four counties indicated that addressing was complete or substantially complete, and another four indicated that addressing was between 50-80% complete at the beginning of the statewide addressing and mapping project. The rest of the counties responding to this question answered that their projects were in planning stages, and that some steps toward addressing had been taken, such as roads being named and addresses assigned to rural route customers.
3. **Did you stop your project after the Board started the statewide project?** Of the 14 counties with an addressing project, 5 halted the project when the statewide project was started. One county stated that the project was postponed at the request of the Statewide Addressing and Mapping Board. Another county had contracted with an addressing contractor that went into bankruptcy. This county halted the project because the county did not have sufficient staff to continue the project.
4. **If you continued, what is the current status of addressing in your county?** One county stated that it's

⁵One of the counties responding apparently has a separate addressing and mapping project that does not interface with the statewide project.

addressing project is complete. Six counties responded that their addressing is substantially complete (between 87-98%), and some noted that they are in the process of postal conversion. Another county noted that addressing is ongoing due to growth and change, and did not estimate a percentage of completion.

5. **After the statewide addressing project started, what was your understanding about who would pay for addressing in your county?** Understanding varied among counties about who would pay for the project. Fourteen counties thought that the Statewide Addressing and Mapping Board would pay for the project, 2 counties thought that it would be a county responsibility while 15 counties had an accurate understanding that payment for the project would be a responsibility of the county and the Board, and that at the conclusion of the project some partial reimbursement might be available to the counties. One county commented that it understood that the state project would mean that “the cost to the county would be nearly eliminated.”

Understanding varied among counties about who would pay for the project.

6. **Do you know the current status of addressing in your county?** Most counties responding to the survey have recently reviewed their project with the Board’s project manager and were able to answer that they did know the status of the addressing needs in their counties. Therefore, 24 counties replied yes to this question and 7 counties replied that they did not know the current status of addressing in their county.

Twenty-seven counties felt confident that they did understand what now needs to be done,

7. **Do you clearly understand what needs to be done now to finish addressing in your county?** Twenty-seven counties felt confident that they did understand what now needs to be done, although 4 counties indicated that they did not have enough information and did not understand what needs to be done to finish addressing in their county.

8. **Does your county have the resources to finish the addressing?** The counties were divided on this issue and expressed various concerns. Eighteen indicated that they either had the resources or that they would get the addressing done as long as the Board provided some reimbursement and outside technical assistance remained available. **Seven counties indicated that they did not have the resources to finish the project and another 6 questioned whether they would be able to finish addressing in their counties due to the lack of resources, either**

in terms of personnel or money.

9. **Is your county able to use the maps and other information that is already available as a result of the statewide addressing and mapping project?** Nearly all (24) of the survey respondents are using the maps. Three of these counties are using the map database with added plat information from the assessor's office, and a fourth county noted that it had added a fire hydrant layer to allow fire departments to locate hydrants in their area. However, six counties indicated that they were not using the maps for a variety of reasons including problems with the speed of the mapping website, or a lack of tools or information from the addressing contractor. One of these counties has a completely separate project and another county raised concerns about the need for updating sections of the map where growth in the county has already occurred.

A common theme in many responses was that creation of the Board and provision of funding served as a catalyst to get individual county addressing projects underway.

10. **Do you have anything you would like to tell us about the addressing project?** A common theme in many responses was that creation of the Board and provision of funding served as a catalyst to get individual county addressing projects underway. In addition, several counties mentioned that there was a need for statewide guidelines and standardization in addressing. Two counties noted that they continue to need help working with the post office and postal conversion. Seven counties expressed frustration because they did not have enough information, and the project has taken a long time. Three counties disagreed with various actions taken by the Board, and one county made specific recommendations about how the project should have been approached by the State. However, 16 (over half of the counties responding to this question) agreed that the project is necessary and should continue for the benefit of the state. One county's comments were particularly eloquent: "We believe that the Statewide Addressing and Mapping Project is critical to the continuing infrastructure of the counties we serve. ... **This is a project that cannot be allowed to fail.**" (Emphasis added)

Responses from the counties verified that a number of counties do have concerns about the project and the direction that the Board has taken.

Responses from the counties verified that a number of counties do have concerns about the project and the direction that the Board has taken. A few counties are concerned about communication, or a lack of information about the status of addressing in their counties based on not receiving information from the addressing contractor. However, the majority of the counties recognize the need for the addressing and mapping project to continue, and made many thoughtful comments about the project in general and their individual

county's needs in order to complete county-wide addressing for Enhanced 9-1-1.

Obstacles to the Completion of the Addressing and Mapping Project

The present completion status of the addressing and mapping project will not be known until the data are analyzed, prepared, and loaded into the database system.

The Legislative Auditor is concerned that valuable and necessary information will not be placed in the statewide addressing and mapping system because the amount of time remaining for the Board to complete the project is inadequate and the amount of money remaining to complete the project may be insufficient. These two concerns have been discussed in the preceding two issues of this report. However the Legislative Auditor has identified several additional obstacles to the completion of the addressing and mapping project. They are:

Legislative Auditor is concerned about what will happen as a result of counties that are unable to complete the addressing project because they do not have the necessary funds or personnel.

- **The Board does not yet have an accurate and comprehensive report of the status of addressing work to be completed in each county.** The addressing contractor honored its settlement agreement with the Board and released the remaining information to the Board in late September, 2006. Although the Board worked out a smooth transition, due to the volume of data received from the addressing contractor, the status of addressing completion for all of the counties was still not finalized for the December, 2006 board meeting.
- **The amount of work remaining to be completed is significant.** The present completion status of the addressing and mapping project will not be known until the data are analyzed, prepared, and loaded into the database system. In the draft proposal for the project completion, the Board listed a number of pages with state maps that show significant amounts of addressing work yet to be done. The Board has admitted that the completion status varies widely and that in some counties, very little work has been completed. Completing the work will be complicated because of the rugged terrain of the state, the scattered population, and the numerous separate 9-1-1 call centers. The Board may discover that this portion of the project will require far more effort than was originally envisioned for the project's completion.
- **Some counties may be unable to complete the project.** The Legislative Auditor is concerned about what will happen as a result of counties that are unable to complete the addressing project because they do not have the necessary funds or personnel.

The Board has acknowledged that the revised approach to finishing the project will entail substantial effort by the counties

The Board's creation and the original intent of the project was to develop a comprehensive statewide mapping and addressing system since some counties had been unable to complete addressing and the result was a piecemeal public safety effort according to the Board. The Board has acknowledged that the revised approach to finishing the project will entail substantial effort by the counties. However, there will only be partial reimbursement to the counties due to the constraints of the budget. The Statewide Addressing and Mapping Board has not addressed the consequences if some counties are unable to complete the work and cites the earlier, independent statutory responsibility of the counties to provide Enhanced 9-1-1 services. There is a risk that some counties will be unable to complete the addressing work due to the costs, and will not contribute necessary information to the statewide system or be able to provide Enhanced 9-1-1 services within the county. If this happens, the state will be left with the original "piecemeal effort" that it sought to avoid.

Some counties may not be able to complete the addressing work, and the impact of their inability to complete the work has not been addressed.

Conclusion

The Statewide Addressing and Mapping Board, mandated in 2001 to create an Enhanced 9-1-1 public safety system, has worked toward the goal of producing a comprehensive and cohesive system despite budgetary and time constraints. However, the performance of the addressing contractor and the contractor's subsequent termination leaves the completion of the addressing project in doubt. Three months prior to the Board's termination in April, 2007 there are obstacles to the completion of the project. The Board is attempting to finish the project, using the counties to complete the actual addressing work, although the counties will not be reimbursed for their total costs. Some counties may not be able to complete the addressing work, and the impact of their inability to complete the work has not been addressed. The Board still does not know the exact completion requirements of addressing in every county. The Legislative Auditor recommends that prior to its termination, the Board should complete an in-depth review of the status of addressing completion in each county, and issue a detailed report to the Legislature based on this information. Such a report will assist in the future planning and continuation of the addressing and mapping project.

Recommendation

5. *The West Virginia Statewide Addressing and Mapping Board should review the status of addressing completion for each county, and issue a detailed report to the Legislature to assist the Legislature and the counties in future planning to complete the project.*

Changes to the Statewide Addressing and Mapping Board's Project Management Contract Were Made According to Purchasing Division Requirements.

The remaining money budgeted for the statewide addressing project and the proposed allocation of money between the counties and the project manager caused a potential vendor to question whether state Purchasing Division actions allowed the cost of the project manager's contract to increase, reducing the amount of money now available to complete the project.

Issue Summary

Following the termination of its addressing contractor, the West Virginia Statewide Addressing and Mapping Board proposed that the counties finish the remaining addressing work in order to complete the statewide 9-1-1 addressing and mapping project. The Board proposed that the contracted project manager, Michael Baker, Jr. Inc., train and assist the counties. The remaining money budgeted for the statewide addressing project and the proposed allocation of money between the counties and the project manager caused a potential vendor to question whether state Purchasing Division actions allowed the cost of the project manager's contract to increase, reducing the amount of money now available to complete the project. The Board submitted change orders in excess of 10 percent of the project manager's contract which were approved by the Purchasing Division. Change orders that go above a 10 percent cost limit are discouraged in the Purchasing Division's policy handbook.

The Legislative Auditor also found that the Purchasing Division does not have a standard procedure to identify and calculate the cost amount that a change order will add to a purchase order.

The Board's five-year project management contract with Michael Baker, Jr., Inc. is open-ended, and was awarded to the low bidder. **The original total bid amount of the contract was estimated to be \$989,326. It is now estimated to be \$3.5 million.** The Legislative Auditor reviewed the contract, the Statewide Addressing and Mapping Board's actions and the Purchasing Division's review and approval of the project manager's contract change orders. **While the change orders for this contract exceeded the Purchasing Division policy threshold, the Legislative Auditor concludes that the Purchasing Division acted appropriately in this situation.** The Legislative Auditor also found that the Purchasing Division does not have a standard procedure to identify and calculate the cost amount that a change order will add to a purchase order. The Purchasing Division noted that it approves several different types of contracts, and that some types (such as open-ended contracts) do not allow for a quick assessment of the percentage of amount added to the contract by the change order. In addition, factors such as the uncertainty of the total amount of work required contribute to the decision of whether to review for the 10 percent threshold. Finally, the imposition of a 10 percent threshold is not required by state Code and is applied at the discretion of the director of the Purchasing Division.

The Board Added Costs to the Project Manager’s Contract Change Orders

Michael Baker, Jr. Inc, an engineering firm that has done extensive work for the State, was awarded an open-ended contract in September, 2002 to provide project management services for the statewide 9-1-1 addressing and mapping project.

Michael Baker, Jr. Inc, an engineering firm that has done extensive work for the State, was awarded an open-ended contract in September, 2002 to provide project management services for the statewide 9-1-1 addressing and mapping project. Open-ended contracts are awarded when certain costs such as hourly rates are known, but the total number of hours are not known. The West Virginia Statewide Addressing and Mapping Board sought a project manager to be the “architect” to provide oversight of the design, development and implementation of a statewide addressing and mapping system to provide high quality digital maps of the entire state, and assign city-style addresses to every identifiable structure in the state. This is the job description contained in the Request For Proposal(RFP) issued by the Board in April, 2002. The RFP noted that the Board and the project were funded primarily through the Incentive Regulation Plan of Verizon West Virginia and approved by the Public Service Commission.

The engineering firm of Michael Baker, Jr. Inc. was technically qualified and was the low bidder for the number of hours estimated for the project and the overall hourly rate to be charged.

The engineering firm of Michael Baker, Jr. Inc. was technically qualified and was the low bidder for the number of hours estimated for the project and the overall hourly rate to be charged. The total cost bid of \$989,326 for the five-year contract was 15 percent lower than the competing bidder. See Table 3 for a comparison of the cost estimates of the two vendors that submitted bids for the project manager contract.

The project costs were estimates since the bid solicitation indicated that there were a number of unknown factors with this project due to its size and complexity.

	Michael Baker, Jr. Inc	Plangraphics
Estimates		
Number of Hours to Complete	7690	7811
Overall Hourly Rate	\$128.65	\$148.31
Overall Project Cost	\$989,326	\$1,158,482

The project costs were estimates since the bid solicitation indicated that there were a number of unknown factors with this project due to its size and complexity. The five-year contract would be renewed by change orders submitted for approval to the Purchasing Division on the

anniversary date of the contract. The first change order added work requested by the Board that increased the contract by \$450,412. This amount was 46% above the original estimated amount of the contract. The second change order again added work requested by the Board, increasing the contract by \$939,848, and bringing the cost of the contract to 95% above the original amount. For the third change order, the Board did not identify any additional work for the project manager, but did identify that the estimated number of hours to complete the work would be increased. The cost added to the change order was not estimated by the Board. A fourth change order, submitted by the Board to the Purchasing Division in late August, 2006 includes changes made by the Board to the project manager's tasks in order to complete the addressing project using work supplied by the counties. Like the third change order, there is no estimated cost although the increased work and the cost per unit of work are included.

The prospective vendor specifically questioned the Purchasing Division's approval of change orders that added more than 10 percent to the overall cost of the contract since the Purchasing Division has a written policy that discourages increases of over 10 percent.

The Purchasing Division Did Not Evaluate the Added Amounts to the Project Management Contract

Following the release of the proposed completion plan for the statewide addressing and mapping project, a prospective addressing services vendor to the counties raised a concern regarding the Michael Baker, Jr. Inc. contract. The prospective vendor noted that only a small amount of money is proposed for reimbursement to the counties for addressing work, and suggested that the actions of the Purchasing Division caused the Michael Baker contract to become inflated. The prospective vendor specifically questioned the Purchasing Division's approval of change orders that added more than 10 percent to the overall cost of the contract since the Purchasing Division has a written policy that discourages increases of over 10 percent. The statement of policy contained in the Division of Purchasing Policies and Procedures Handbook reads:

Any change request of a purchase order in excess of 10 percent of the original contract amount (aggregate) is strongly discouraged. The Purchasing Director, at his discretion, may grant a change in any amount if unforeseen circumstances have occurred and such change is in the best interest of the state of West Virginia.

The Legislative Auditor met with the Director of the Purchasing Division and asked about the approval of the existing three change orders to the project manager's contract in regard to the Purchasing Division's policy of a 10 percent threshold on change orders. In a written response

following the meeting, the Director of the Purchasing Division noted that the Division had ongoing, and frequent contact with the Board and stated:

The Statewide Addressing and Mapping Board was unable to know, or perhaps even accurately estimate the total cost of the project. Based on this uncertainty, the Purchasing Division could not feel comfortable providing a review of the suggested 10 percent change order threshold.

We understood that the agency, which was given a limited life to accomplish this specific project, would have only a couple of full time employees and the scope of this large, complex contract, may exceed their ability to successfully complete the project without detailed and increasing assistance from a vendor engaged to be the contract manager. ... It was our understanding that the state would need to rely on the winning vendor for advice, guidance and perhaps additional paid support, via change orders, as it proceeded to accomplish this project. ...the Statewide Addressing and Mapping Board was unable to know, or perhaps even accurately estimate the total cost of the project. Based on this uncertainty, the Purchasing Division could not feel comfortable providing a review of the suggested 10 percent change order threshold.

The Director concluded in his written statement that the Purchasing Division had reviewed this contract and that "At all times during the review of this contract, we believed the agency was proceeding reasonably and in compliance with Purchasing Division laws, rules and guidelines."

The Director also noted that in some situations there may be reason to further question a change order; however, depending on the specific contract, there may not be reason to pose questions. In regard to the Michael Baker Jr, Inc. contract, the Director concluded in his written statement that the Purchasing Division had reviewed this contract and that "At all times during the review of this contract, we believed the agency was proceeding reasonably and in compliance with Purchasing Division laws, rules and guidelines." An additional point regarding change orders was made by the Director of the Purchasing Division who stated that "Neither the West Virginia Code, or the Code of State Rules provides any requirements relative to change orders." He also noted that the 10 percent threshold is only a guideline.

The Legislative Auditor agrees with the Director of the Purchasing Division. The Purchasing Division used appropriate discretion in reviewing and approving the change orders to the project manager's contract, and acted on the written requests and written justification of the Statewide Addressing and Mapping Board. These change orders had already been subject to the approval of the Board and its legal counsel. While the Purchasing Division did not identify and calculate the added costs that the Board's requests added to the project manager's contract, several factors must be taken into account. The first is that the 10 percent threshold is not mandated in statute, and therefore serves only as a guideline.

According to the Director of Purchasing, the Purchasing Division does not have a formal, documented procedure to calculate and determine if a change order is in excess of 10 percent of the original purchase order.

The clarification of the difficulty in reviewing certain types of contracts for the application of the 10 percent policy is necessary because the Purchasing Division's policy does not specify that the 10 percent policy cannot be applied to all contracts.

The second factor is that the original Request For Proposal uses language that allows the Board to add requests and tasks to the project manager's job. Finally, the type of contract issued for the project manager is based on estimates of time required to complete the project. Consequently, in this situation the Purchasing Division acted appropriately and followed all of its existing procedures for change order review and approval.

The Purchasing Division Does Not Have A Procedure to Implement Its Policy

According to the Director of Purchasing, the Purchasing Division does not have a formal, documented procedure to calculate and determine if a change order is in excess of 10 percent of the original purchase order. The Director explained that creating such a procedure might be difficult because:

The Purchasing Division issues many types of contracts including fixed price contracts, open ended state statewide and agency supply contracts, professional service contracts and discount from list contracts. It is not possible to develop one type of method to prove or disprove the percentage of increase to many contracts. ... On many contracts, especially those for which we contract on a lump sum basis, calculating the estimated or exact total is practical and possible. Also, on these types of contracts, it is also practical and possible to calculate and review the suggested 10 percent change order benchmark.

The clarification of the difficulty in reviewing certain types of contracts for the application of the 10 percent policy is necessary because the Purchasing Division's policy does not specify that the 10 percent policy cannot be applied to all contracts. Publication of a policy stated in such general terms can cause confusion and the appearance of impropriety. To avoid confusion, and possible objections by the general public, the Purchasing Division's 10 percent policy should specify that it cannot be applied to all types of purchasing agreements, particularly open-ended contracts. In the situation regarding the contract for the Statewide Addressing and Mapping Board's project manager, the contract was appropriately reviewed and evaluated by Purchasing Division personnel, but information regarding the 10 percent threshold was not assessed since this criterion can not be applied to an open-ended contract.

Conclusion

The Legislative Auditor concludes that the actions of the Purchasing Division, in regard to the project manager contract with Michael Baker Jr. Inc., are justified.

The Purchasing Division has a written policy that is not clear regarding the types of contracts to which the 10 percent criterion applies. The lack of clarity may cause confusion and the appearance of impropriety.

The statewide addressing and mapping project is a large, complex undertaking. According to the Board, it is one of the largest mapping and addressing projects undertaken to date anywhere in the world. Given the unique nature of the project, the Request for Proposal for a project manager was broad-ranging in scope and allowed for flexibility in tasks and requests from the Board. Consequently, the Purchasing Division decided not to refuse the change orders since they reflected the uncertainty and scope of the original RFP. The Legislative Auditor concludes that the actions of the Purchasing Division, in regard to the project manager contract with Michael Baker Jr. Inc., are justified. **The Legislative Auditor further concludes that although the 10 percent criterion is not in statute, it is prudent for this requirement to remain an *administrative decision* because there are many unforeseen situations that arise once a contract is awarded. It would be difficult and disruptive to a project to dismantle a contract and require that it be rebid if its cost exceeded a mandated limit.** However, the Purchasing Division has a written policy that is not clear regarding the types of contracts to which the 10 percent criterion applies. The lack of clarity may cause confusion and the appearance of impropriety. **Therefore, the Legislative Auditor recommends that the Purchasing Division clarify its 10 percent policy to specify the types of contracts to which the policy applies, and develop additional rules and criteria in regard to evaluating contract change orders.**

Recommendation

6. *The Purchasing Division should explain that the 10 percent policy for change orders cannot be applied in all types of contracts. In addition, the Purchasing Division should consider developing additional types of rules and criteria in regards to evaluating contract change orders instead of relying solely on the 10 percent policy. The Purchasing Division should report back to the Joint Committee on Government Organization by July of 2007 in regards to rule and policy changes.*

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 20, 2006

Craig Neidig, Chairman
Statewide Addressing and Mapping Board
1124 Smith Street, Room LM-10
Charleston, West Virginia 25301

Dear Mr. Neidig:

This is to transmit a draft copy of the Special Report of the West Virginia Statewide Addressing and Mapping Board. This report is scheduled to be presented during the January 7-9, 2007 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 on Friday 22 December. In addition, we need your written response by noon on Wednesday, December 27, 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, January, 2007 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 black ink, appearing to read "Michael Midkiff".

Michael Midkiff
Research Manager

Enclosure

_____ *Joint Committee on Government and Finance* _____

I N T E R
L E G I S L A T I V E
S E R V I C E S
O F F I C E

MEMO

**To: John Sylvia, Director
Performance Evaluation and Research Division**
From: Randall Elkins, Counsel
Subject: Statewide Addressing and Mapping Board - Subcommittee Meetings
Date: December 28, 2006

I am responding to your letter in which you expressed your concern that subcommittees of the Statewide Addressing and Mapping Board were holding meetings in violation of the Open Governmental Proceedings Act, W. Va Code §§6-9A-1 through 12.

W. Va. Code §6-9A-3 requires all meetings of any governing body to be open to the public and requires each governing body to promulgate rules by which the date, time, place and agenda of all meetings are made available, in advance, to the public and news media. It also requires each governing body of the executive branch to file a notice of any meeting with the Secretary of State for publication in the State Register containing the date, time, place and purpose of the meeting. The notice is required to be filed in a manner to allow each notice to appear in the State Register at least five days prior to the date of the meeting.

W. Va. Code §6-9A-2 provides the following definitions:

...

(3) "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; ...

(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action.

....

(5) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(6) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power.

...

John Sylvia, Director
Page 2
December 28, 2006

(7) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

To the extent the subcommittees either take action on their own or make recommendations to the Board, their meetings are required to comply with the provisions of the Open Governmental Proceedings Act, W. Va Code §§6-9A-1 through 12. The subcommittees are governing bodies, since they are made-up of members of a public agency (the Board) and, at a minimum, they appear to have the authority to make recommendations to the Board on policy or administration.

My conclusion is supported by **Open Meetings Advisory Opinion No. 2006-10**, issued on September 7, 2006 by the West Virginia Ethics Commission's Committee on Open Governmental Meetings. A copy of the opinion is included. Although much of the opinion addressed site visits, the opinion included the following language which I believe would apply to the Board's subcommittees:

It should be noted that after a committee has conducted one or more site visits, any deliberation or discussion on the merits of any recommended decision or official action to be approved or proposed, should take place at a public meeting which is noticed and conducted in accordance with the requirements of the Act.

Subsequent to your letter your staff forwarded additional questions concerning the operations of the Statewide Addressing and Mapping Board to me. Before attempting to answer the questions I will address the definition of the term "meeting" as the term is used in the Open Governmental Meetings Act W. Va. Code §§6-9A-1 through 12.

W. Va. Code §6-9A-2 includes a definition of meeting for purposes of the Act. It provides:

(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

According to the West Virginia Supreme Court of Appeals, a meeting for purposes of W.Va. Code §6-9A-2, can take on any number of forms. In its opinion in *McComas v. Board of Educ. of Fayette County*, 475 S.E.2d 280, 197 W.Va. 188, (W.Va. 1996) the Court found that a county board had violated the Act when four out of five of its members met with its superintendent, and two of its vice superintendents at the board's office the day before a scheduled public meeting. The Court included the following description of the meeting:

In this case, the petitioners below presented materials opposing the school closings and consolidation plan to the Board at its public meeting on February 16, 1995. As a result one of the Board members, Mr. Flint, wanted an opportunity to ask questions of the Superintendent concerning the presented material. The two agreed to get together on Sunday, February 19, 1995. Mr. Flint then invited three other Board members to attend. All of the Board, except one member who was not informed of the session, went to hear the Superintendent's responses to Mr. Flint's questions. In addition to the Superintendent, two vice-superintendents (including the vice-superintendent over finances) were at the meeting. The attendees followed no formalities. There is evidence, however, that other Board members besides Mr. Flint may have asked a few questions. The meeting lasted approximately two hours. The next day at the scheduled public meeting, the Board permitted people to voice their concerns about the closings and consolidation. The Board, without much discussion, then voted to go forth with the closings and consolidation plan.

The Court agreed with the circuit court's decision, in which it found:

"[A] quorum of the Board of Education met on February 19, 1995, at the central office and discussed the issue of consolidating Gauley Bridge High School. This issue, which required a quorum vote, was later on February 20, 1995, voted upon by the board. The Court, therefore, finds that the meeting of February 19, 1995, was a meeting to deliberate toward a decision or a proposal on which a vote of the governing body is required at any meeting at which quorum is present."

The Court listed several criteria to be used in determining whether conversations meet the Act's definition of a meeting. They were the:

- Content of the discussion;
- Number of members of the public body participating;
- Percentage of the public body that those in attendance represent;
- Significance of identity of absent members;
- Intentions of the members;
- Nature and degree of planning involved;
- Duration of meeting and of substantive discussion;
- Setting; and
- Possible effects on decision-making of holding the meeting in private.

The Court cited several other nontraditional situations where a meeting for purposes of the Act may be found to have been held. It included the following in its opinion:

Other jurisdictions have examined the same criteria in deciding whether private, nontraditional sessions or gatherings at social events can violate the Sunshine Law. In *Blackford, supra*, a series of private meetings held between individual board members and the superintendent compelled the Florida court to find there had been a violation of the open meetings law. There were never enough members in one place to constitute a quorum to take official action in *Blackford*, but a violation was still found because of the nature of the meetings. See also *Bundren v. Peters*, 732 F.Supp. 1486, 1500 (E.D.Tenn., N.D.1989) (even a social gathering could "circumvent the spirit and letter of the Open Meetings Act"). Similarly, in *Stockton Newspapers, Inc. v. Members of Redevelopment Agency of City of Stockton*, 171 Cal.App.3d 95, 214 Cal.Rptr. 561 (1985), the California Court of Appeals held that a series of nonpublic telephone conversations between an agency and its attorney for the purpose of obtaining a commitment or promise by the majority of the body constituted a meeting within the purview of the statute. The court found the word "deliberation" "connotes not only collective discussion but also the 'collective acquisition and exchange of facts preliminary to the ultimate decision[.]'" 171 Cal.App.3d at 102, 214 Cal.Rptr. at 564. (Citation omitted). See also *Moberg v. Independent School Dist. No. 281*, 336 N.W.2d 510 (Minn.1983) (although social gatherings are exempt from the act, a quorum of board members cannot conduct business under the guise of a social event); *Van Hooser v. Warren County Bd. of Educ.*, 807 S.W.2d 230 (Tenn.1991) (although, generally board members conversing with attorney is exempt from statutory requirements, any decision made or deliberation toward a decision still constitutes a meeting under the open meetings act). In *Thuma v. Kroschel*, 506 N.W.2d 14 (Minn.App.1993), the Minnesota appellate court even sustained a finding that an eight-minute conference by a few members of a public entity could constitute a meeting in violation of the open meetings act. See also *Board of County Comm'rs of St. Joseph County v. Tinkham*, 491 N.E.2d 578 (Ind.App. 3 Dist.1986) (a thirty-minute meeting held immediately before scheduled meeting where official matters were discussed violated the law).

In applying the criteria in the McComas case the Court stated:

We find particularly significant the facts that four-fifths of the Board (a quorum) and the three highest ranking county administrators gathered with the purpose of addressing a highly topical matter of school business. That the discussion was a question-and-answer session in no way lessens the need for it to be public. Indeed, conveyance of information from the chief county administrator and proponent of a proposal that is of great importance, sensitivity, and controversy to the citizens of Fayette County would seem to be the very kind of program that ought to be before the public. The meeting was prearranged, albeit in a very casual manner, it lasted two hours, took place at the county Board offices, and occurred the day before the crucial vote on the topic of the discussion. All of these criteria support the circuit court's conclusion that this was a "meeting," as that term is used in the Sunshine Law.

Most telling of all, however, may be the effect on decision-making that could have resulted from the meeting's private setting. On the Thursday preceding Sunday the 19th, opponents of the consolidation presented the Board with materials that they apparently thought supported their position. Mr. Flint, conscientiously fulfilling his duties as a board member, reviewed the materials and concluded they did indeed raise serious questions in his mind. It was therefore most appropriate for Mr. Flint to address those questions to the Superintendent, the chief county administrator and the architect of the consolidation plan. It was not appropriate, however, to exact the answers to those questions in a private meeting. Essentially, Fayette County was in the middle of a debate on consolidation that put the Superintendent as proponent and the circuit court petitioners as opponents. Anyone who is the least bit familiar with advocacy knows that it is a whole lot easier to prevail in a debate when the opponent is absent. The dynamics are completely different, and they gave the Superintendent an inherent advantage not only in persuasion but also in any effort at building a coalition on the Board. (That is, the dynamics encouraged an "us versus them" attitude among the persons at the meeting.) We do not question in the least the good faith of all those who attended the meeting on February 19th, but we cannot ignore that there was very little discussion of the proposal by the Board members at the public meeting on February 20th, preceding the Board's vote. The two-hour meeting on February 19th, obviously deprived the public of hearing the Superintendent's responses to the questions raised by the petitioners' materials, of hearing the give-and-take of the Board's deliberations, and of holding both the elected and appointed public servants accountable for their reasoning. Not only did the process fail to afford any opportunity for members of the public or, more importantly, the dissenting Board member, to challenge the Superintendent's responses to questions, but it also created (at least) the appearance that public servants were deliberating behind closed doors and beyond the scrutiny of the sovereign. We believe these facts, and the other criteria discussed above, lead inexorably to the conclusion that permitting such meetings as that of February 19, 1995, to be held in private would seriously undermine the fundamental purposes of the Sunshine Law.

We therefore hold that a planned meeting among four-fifths of a school board to gather, review, or discuss information relevant to an issue before the board must be public, and if it is not, its conduct violates the Open Governmental Proceedings Act, W.Va. Code, §6-9A-3. We leave government officials with this guide: "When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State." *Town of Palm Beach v. Gradison*, 296 So.2d at 477.

Subsequent to the Court's decision in *McComas*, the Legislature amended the definition of "meeting" to add additional exemptions. The additional exemptions are:

(B) Any on-site inspection of any project or program;

...

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational,

John Sylvia, Director
Page 6
December 28, 2006

training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

The additional questions asked are set forth below. My answers rely on the material discussed above.

1. Do regular teleconference calls involving notification of all Board members that sometimes include taking minutes and creating an agenda, fall within the open meetings act?

The answer to this question is, probably yes. The fact that the members are communicating through teleconference calls does not preclude the possibility that the teleconference may be a meeting and be subject to the Open Meetings Act. According to the Act's definition and the Court's opinion in McComas the determination depends of the specific facts of the calls. The fact that minutes are taken and an agenda is prepared would tend to indicate that the meeting was not held in a "social, educational, training, informal, ceremonial or similar setting" and therefore not meeting that exemption.

The subject matter of the discussions would need to be evaluated to determine if they were intended to lead to an official action. Based on the Court's decision in McComas any official action the discussions could lead to would not need to have taken place during the teleconference, but could have taken place at a subsequent Board meeting.

2. The Executive Committee is listed as assisting the project manager for a number of months on problems with the addressing contractor. Should the Executive Committee have reported on these problems to the full Board?

Based on the materials provided, the Executive Committee had no authority to act on behalf of the full Board in any situation where Board action was required pursuant to its responsibilities under the controlling statutory provisions, rules or contractual provisions. Once again, the specific factual situations would need to be examined. The subject matter of the discussions would need to be evaluated to determine if they were intended to lead to an official Board action.

3. The legal counsel and the project manager both reference pre-Board meetings with committees and other Board members. Should these meetings have been subject to the Open Governmental Proceedings Act?

Most likely. See answer to number 1.

4. Should the full Board have voted to accept the Evaluation Committee's recommendation to hire the various contractors?

John Sylvia, Director
Page 7
December 28, 2006

Based on the materials provided, only the Board possessed the authority to enter into contracts, except to the extent it had authorized the Project Manager to subcontract. To the extent the Board entered into contracts to hire the various contractors it would have had to approved the contracts in a meeting subject to the Act's requirements.

5. Should the full Board have discussed the modifications to the project manager contract and approved moving forward to modify the contract before they were sent to the Purchasing Division, or did the legal counsel's report and the Board's acceptance of the report, constitute approval by the Board?

Changes in the contract required approval by the Board and should have been done in a meeting subject to the Act's requirements. The Board did not have the authority to delegate its approval authority to any other person or entity, including its subcommittees.

I hope I have adequately addressed your questions. If you need further assistance in this matter, do not hesitate to contact me.

Appendix C: Agency Response WV Statewide Addressing and Mapping Board



R E C E I V E D
DEC 28 2006

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

**West Virginia
Statewide Addressing and Mapping Board**

JOE MANCHIN III

1124 Smith St., Suite LM-10

CRAIG A.

NEIDIG

GOVERNOR

Charleston, WV 25301

CHAIRMAN

MEMORANDUM

TO: Michael Midkiff, Research Manager, West Virginia Legislature
FROM: Craig A. Neidig, Chairman
SUBJECT: Board Response to Special Report of the West Virginia Statewide
Addressing and Mapping Board
DATE: December 28, 2006

Dear Mr. Midkiff:

Please find attached the Board's response to the special report of the WVSAMB.

A copy of the Board Counsel's response to Legal Questions on Draft Legislative Audit Report is attached separately.

Sincerely,

Craig A. Neidig
Chairman, WVSAMB

The WV Statewide Addressing and Mapping Board (“WVSAMB”) appreciates the opportunity to respond to some of the findings of the Legislative Audit pertaining to the board’s procedures and activities.

We would like to recognize the efforts of the personnel of the Legislative Auditor’s Office while researching this complex technical and political project. We acknowledge their discussions with various board members, county 9-1-1 officials, our contractors and other constituents who have worked hard to make this project a reality.

The Board would like to point out, however, that we believe that the time allowed for a written response to the audit was not adequate considering we were given only two-and-one-half days to respond during the Christmas/New Year break. Most board members were on vacation and unavailable to present their input on the matter. However the attached summary reflects the initial comments of individual board members to the audit’s findings.

We will be prepared to give more detailed responses for our presentation to the Joint Committee on Government Operations during the January 2007 Legislative interim session.

Issue 1.

The Board appreciates the findings of the legislative audit that the base-mapping and GIS database created as a result of the project have been of immense benefit to the State, including state agencies, Federal partner agencies, and the public in general. The Board had the foresight to develop a mapping and GIS database that went beyond the original 9-1-1 focus and adhered to standards and formats that could be used by the broadest community of users and that serves as a model for other projects of its type across the nation and the world.

The Board strongly concurs with the audit’s findings that the legislature needs to permanently fund the project in a consistent and sustainable way. Continuance of the project will build on and further enhance the considerable investment in mapping and GIS data to support critical infrastructure applications in all of West Virginia government operations.

Issue 2.

The Board respectfully disagrees with the auditors recommendations on Issue 2 for the following reasons.

The Board was carefully constructed by the legislature and its membership populated by the governor in order that all significant stakeholder groups would be represented. The technical aspects of the project were adequately considered via the contracting of a project management team consisting of world-renowned subject matter experts. The combination of local, political and industry knowledge coupled with the

technical advice provided by the contracted project management team created synergies that could not be duplicated in any existing West Virginia governmental agency.

The Board made the proper decisions when it came to hiring contractors based on accepted professional qualifications, best value principles, and the rigorous and stringent oversight of the state purchasing division.

The addressing contractor's failure to perform should not be construed as the Board's failure to function.

The Board takes exception to the heading "The Board Delayed Acting on the Addressing Contractor's termination." The Board did not delay in making a decision or in taking action. Rather, the Board made careful and deliberate analysis of its alternatives and took the course of action that had the best chance of success.

The Board takes exception to specific allegations of violations of open meeting requirements. Any meetings referenced as not having proper public notice can be documented as being well-attended by the public.

Regarding discussions between individual board members in situations where less than a "quorum" was present, such as telephone calls, emails and electronic communications, the Board's Counsel has provided a legal opinion on the subject. The opinion is attached and was previously provided to the Legislative Auditors during the Board's exit interview. All official Board business was indeed conducted in a public forum.

Regarding Board approval of contract award documents cited in the audit, the Board maintains that all actions and decisions were made in strict compliance with Division of Purchasing rules and regulations and with the full knowledge and consent of the Board.

Issue 3.

The Board respectfully disagrees with the audit's recommendation to sunset the board as scheduled in April 2007. The Board, our project management team, The Division of Homeland Security and Emergency Management within the Department of Military Affairs and Public Safety, and our county 9-1-1 stakeholders have developed a solid plan to see the project through to completion, as long as the Board is allowed to exist and continue as currently formed.

Since the survey of counties referenced in the audit report, the project management team has fully deployed its new addressing coordination team, and has made significant strides in approaching the concerns of our county 9-1-1 stakeholders. All counties have been contacted, most on multiple occasions, by the county addressing liaisons. The vast majority of counties now have detailed addressing plans in place, and the other counties are in the process of completing their plans. We thus have built significant momentum in a very short time since the termination of the addressing

contractor and the need for a new plan to finish the project.

The 2001 Legislature was on the right track when it chose to create an independent board that represented every main constituent related to public safety and county government operations. Despite the findings and recommendations of the audit, the Board feels that to disrupt Board operations and its connections to the county stakeholders it has built and sustained over the last six years would be detrimental to the continuation of the project. We estimate that it would take at least six months to a year for an agency to prepare itself, staff for, and assume control of the addressing project. Any loss of momentum once again could ultimately jeopardize the project's completion.

Since July 2006, the Board has developed a plan for the orderly transition of the project to a host agency by 2008. The Board will introduce legislation during the 2007 General Session to this effect. The Board's recommendation as part of this plan is for the WV Department of Military Affairs and Public Safety (DMAPS), as the lead public safety agency, to assume the responsibility for inheriting the project. However, it would be premature for the department to take on this additional responsibility as early as April 2007.

Conclusion

The Legislature was correct to form a Board with voting representatives of practically every discipline affected by the 9-1-1 statewide mapping and addressing project. These citizen board members have worked hard for no pay, and in addition to their full-time regular jobs. When faced with performance issues with the addressing contract, the Board members took the only choice available to them that had a possibility of finishing the project on time and within budget. Since the termination of the addressing contract, the Board has put in place an aggressive plan for finishing the project, and that plan is gaining significant momentum.

The Legislative Auditor's Office and the Board are in strong agreement that the project must continue. Lives are at stake in 9-1-1 emergencies, and no one can seriously question that the project, when completed, will save lives.

The individual Board members, who have served without compensation, stand to gain nothing by the continuation of the Board. However, not only are they willing to continue to do so, but they believe that they must continue to serve in order for the project to succeed. The positive momentum gained in the past weeks since deploying the new full addressing project management team will be lost by a transfer to a state agency now. The Board respectfully recommends that the Legislature provide for the continuation of the Board until the end of the project, and to ensure the transition to a state agency willing to accept the maintenance of the mapping and addressing system after the project's completion. A two-year extension should be more than sufficient to accomplish this.



WEST VIRGINIA
STATEWIDE ADDRESSING AND MAPPING BOARD
1124 Smith St., Room LM-10
Charleston, WV 25301

JOE MANCHIN III
GOVERNOR

CRAIG A. NEIDIG
CHAIR

December 22, 2006

For: To Whom It May Concern
From: Joseph J. Starsick, Jr.
Re: Legal Questions on Draft Legislative Audit Report

The question has arisen whether the informal discussions between individual SAMB members and the project manager and, occasionally, counsel, constituted "meetings" within the meaning of West Virginia's open meetings or "sunshine" law, West Virginia Code Section 6-9A-1, *et seq.* In addition, the question has arisen whether the recent informational telephone conference calls during which the project manager gave status reports on the project constituted meetings under the law.

The statutory definition of a "meeting" is "the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means." West Virginia Code Section 6-9A-2(4). A "quorum" is "the gathering of a simple majority of the constitute membership of a governing body." West Virginia Code Section 6-9A-2(6). As your legal counsel, the undersigned consistently and conservatively advised the Board that a meeting cannot be held, nor any official action taken, without a quorum. On that advice, the Board consistently interpreted its procedural rules to require a quorum for any official action. It would be nonsense to say that two members could act for and bind an eleven-member board.

In my respectful opinion, the draft legislative audit report misreads the law. The provisions of West Virginia Code Section 6-9A-3 require that "meetings" be open to the public. The conversations referenced in the report between board members, the project manager, and occasionally, counsel, never included a quorum of board members and never included a vote or other official action.

The West Virginia Supreme Court of Appeals has stated that a "common sense" approach must be taken to determining whether a "meeting" has taken place. McComas v. Board of Education of Fayette County, 197 W. Va. 188, 475 S. E. 2d 280 (1996). If a statute or rule requires a quorum – as the Board required in every instance for a meeting, and in fact did not hold meetings to conduct official business when a quorum was not present – a "meeting" cannot take place without a quorum. *Id.* In addition, the West Virginia Supreme Court of Appeals quoted with approval the explanation of a Florida appeals court:

"[I]t would be unrealistic, indeed intolerable, to require of such professionals that every meeting, every contact, and every discussion with anyone from whom they would seek counsel or consultation to assist in acquiring the necessary information, data or intelligence need to advise or guide the authority by whom they are employed, be a public meeting within the disciplines of the Sunshine law. Neither the letter nor the spirit of the law require it."

Id., 475 S.E. 2d at 289.

In the aftermath of the McComas decision, the West Virginia Legislature amended West Virginia Code Section 6-9A-2(4) to make clear that certain informal discussions were not "meetings" within the meaning of the law:

"The term 'meeting' does not include:

...

"General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action[.]"

In addition, that Code Section also states that a "meeting" includes meetings by telephone or electronic means but does not include "[a]ny on-site inspection of any project or program[.]"

SAMB is a "blue ribbon" citizen board of voluntary professionals, each with expertise in an area representing a different discipline. Although the undersigned did advise that the safest course was to notice the conference calls as public "meetings," the purpose of those calls was to allow Board members to listen the project manager's explanation of the status of the project, and not to discuss or to take public action. Board members were advised only to ask questions of the project manager on project, and not to discuss policy matters among themselves. This seems to be exactly the sort of general discussion and inspection of the status of the project that the legislature defined not to be a public meeting.

The draft report, in fact, implicitly recognizes that it was impossible for SAMB to accomplish its legislatively-mandated task without individual professional board members informally discussing technical issues among themselves and with the project manager. The draft report nonetheless faults SAMB, and indeed accuses it of legal violations, for failing to accomplish the impossible. This interpretation of the law defies common sense, the Supreme Court's rulings and the Code's definition of what constitutes a public "meeting." It is respectfully urged that the Legislative Auditor reconsider. Any contrary finding by the audit would do a disservice to the honest citizen Board members who unselfishly and tirelessly served the public by working on this lifesaving project without pay for over five years.

Because Jeff Matherly of Bowles Rice McDavid Graff & Love LLP also advised the Board during the period the undersigned was off on medical leave in 2005 and 2006, Mr.

Matherly has been consulted, and he concurs with this opinion. Of course, as is the case for any opinion, this opinion is subject to changes in law, in changes of court interpretations of the law, and in the potentiality of unexpected vagaries and miscarriages of justice.



Joseph J. Stasick, Jr.

Bowles Rice McDavid Graff & Love LLP

Copy to: Jeff Matherly, Esq.

Appendix D: Agency Response from the Purchasing Division



JOE MANCHIN III
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON STREET, EAST
P.O. BOX 50130
CHARLESTON, WEST VIRGINIA 25305-0130

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

DAVID TINCHER
DIRECTOR

January 3, 2007

RECEIVED
JAN 04 2007

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

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

Dear Mr. Midkiff:

In response to your December 20, 2006 letter, please be advised that the Purchasing Division agrees with the recommendations made by the Performance Evaluation and Research Division in the draft copy of the Special Report of the West Virginia Statewide Addressing and Mapping Board.

If you have any questions or need additional information, please let me know.

Respectfully,

A handwritten signature in cursive script, appearing to read "David Tincher".

David Tincher, Director
Purchasing Division

DT/dw



















