



**A REPORT TO THE
WEST VIRGINIA
LEGISLATURE**

June 7, 2015

Post Audits Subcommittee

Senate Members

The Honorable William P. Cole, III
The Honorable Mike Hall
The Honorable Jeffrey V. Kessler

House Members

The Honorable Tim Armstead
The Honorable Eric Nelson
The Honorable Timothy Miley

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The Honorable Timothy Armstead, Speaker
West Virginia House of Delegates
Post Audits Subcommittee, Co-Chair
Room 228 M, Building 1
State Capitol Complex
Charleston, WV 25306

Dear Mr. President and Mr. Speaker:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we conducted a compliance audit of the Division of Highways (DOH) Courtesy Patrol Program for the period of July 1, 2005 through June 30, 2014.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit disclosed certain findings, which are detailed in this report. The DOH management response to the audit findings is included at the end of the report.

Respectfully submitted,

Denny Rhodes

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ABBREVIATIONS

DOH	Division of Highways
DOT	Department of Transportation
DHHR	Department of Health and Human Resources
CCCWV	Citizens Conservation Corps of West Virginia
TANF	Temporary Assistance for Needy Families
RFQ	Request for Quotation
CDL	Commercial Driver’s License
FY	Fiscal Year (June 1 st through July 30 th)
FFY	Federal Fiscal Year (October 1 st through September 30 th)
GAGAS	Generally Accepted Governmental Auditing Standards

OBJECTIVES and CONCLUSIONS

OBJECTIVE ONE

Can the Division of Highways (DOH) operate the Courtesy Patrol Program, internally as currently described in the latest contract, for an annual cost less than what is currently expended by the State for the operation of the Courtesy Patrol?

If so, what are the estimated annual costs to the State and the potential annual savings for the State?

Conclusion

DOH can operate the Courtesy Patrol Program internally, as currently described in the latest contract, at a cost less than the current amount expended.

The estimated annual cost incurred by DOH to maintain the Program, as outlined in the contract, is approximately \$1.45 million less than that of the current contract cost. With the implementation of additional measures to reduce and/or offset costs along with reduced service hours, the State could save as much as \$8.41 million over the three year life of the contract.

Related Findings and Recommendations

Finding 1: Operation of Courtesy Patrol Program by the State Could Save as Much as \$8.41 Million Over Three Years

- 1-1. The Legislative Auditor recommends the West Virginia Legislature codify the corporate sponsorship of government operated programs.
- 1-2. The Legislative Auditor recommends DOH obtain a corporate sponsorship of the Program through a competitive bidding process, transition to the direct management of the program, and cancel the Courtesy Patrol contract.
- 1-3. The Legislative Auditor recommends DOH assess the number of patrol hours per route that can be reduced, if any, and apply those reductions.
- 1-4. The Legislative Auditor recommends DOH develop the Program operations, policies and procedures in such a way as to allow the use of the TANF grant currently being utilized by the vendor, and develop the tiers of employment for the Courtesy Patrol operators in such a way as to guide the transition of Courtesy Patrol operators to other vacant positions within DOH, as necessary and available, while maintaining the eligibility of the Program for TANF funds.
- 1-5. The Legislative Auditor recommends DOH evaluate the Program and report to the Post Audits Subcommittee during the October 2015 interim meeting with a plan to proceed.

OBJECTIVE TWO

Have the vendor requirements in the Request for Quotation (RFQ) changed from fiscal year (FY) 2003 through FY 2014 in such a way that competition for the contract is limited?

If so, how has the contract been changed to limit competition for the contract?

Conclusion

The vendor requirements in the RFQ have changed from FY 2003 through FY 2014. The changes made to the RFQ do restrict the number of vendors eligible to bid on the contract; however, the changes do not significantly limit the competition for the contract.

Related Findings and Recommendations

No Findings.

OBJECTIVE THREE

Does DOH provide sufficient oversight of the Courtesy Patrol Program?

If sufficient oversight is not provided, how is it not provided and what caused the lack of sufficient oversight?

Conclusion

DOH does not provide sufficient oversight of the Program.

DOH does not utilize available statistical data provided by the vendor, nor the statistical data available internally to make positive changes to the program. DOH does not monitor the fuel purchases made by the vendor which increases the risk of fraud. DOH requested contract renewals that potentially increased the cost to the State, made payments not in compliance with contract terms, and unnecessarily expedited payments to the vendor.

The lack of sufficient oversight was caused by DOH not requiring specific data be reported by the vendor and not recognizing the connection between the internal DOH traffic data and the reduced outcomes of the Program. DOH also did not require the vendor to submit fuel receipts, did not establish a process to reconcile the fuel receipts to the billing statements. Further, DOH did not establish fleet replacement guidelines in the contract with the vendor, did not adhere to its own stated fiduciary logic of how often and in what numbers the Program fleet should be replaced, and did not adhere to all contract terms and Division of Purchasing guidelines regarding payments to the vendor.

Related Findings and Recommendations

Finding 2: DOH Did Not Adequately Manage Contract Performance

- 2-1. The Legislative Auditor recommends DOH institute specific reporting requirements of the vendor that will provide more detailed information to allow more effective management of contract performance. The reporting requirements should include all of the data categories currently required but rather than receiving an aggregation of all data, the data should include details indicating the route, shift, and date associated with the services performed.
- 2-2. The Legislative Auditor recommends DOH use additional data along with DOH traffic data to make targeted changes to patrol hours, assigned vehicles, etc. where data suggests the patrols are needed concerning individual patrol routes.
- 2-3. The Legislative Auditor recommends DOH require the vendor to submit all receipts for fuel card purchases and perform reconciliations of the invoices and receipts on an ongoing and regular basis.

Finding 3: DOH Failed to Follow All Terms of the Courtesy Patrol Contract

- 3-1. The Legislative Auditor recommends DOH follow the terms and conditions of the contract agreement and discontinue paying the vendor before services are rendered and administer change orders as approved by the West Virginia Division of Purchasing.
- 3-2. The Legislative Auditor recommends DOH discontinue paying invoices and contract amounts before due.

Finding 4: Contract Renewals Potentially Increase Cost to the State

- 4-1. The Legislative Auditor recommends DOH only request renewal of the Courtesy Patrol contract when 50% or less of the total fleet is to be replaced. When greater than 50% of the total fleet for the Courtesy Patrol contract needs to be replaced, the contract should be rebid.
- 4-2. The Legislative Auditor also recommends DOH develop specific guidelines for fleet replacement and add those guidelines to the contract terms.

Finding 5: Payments in Excess of Contract Amount

- 5-1. The Legislative Auditor recommends DOH obtain a refund from the vendor in the amount of \$84,638.10 and discontinue making payments on vendor expenses not authorized by contract.

Finding 6: Unnecessary Expediting of Payments to Vendor

- 6-1. The Legislative Auditor recommends DOH establish procedures for payment walkthroughs to be performed only to avoid late fees or when due to an error on the part of the State.

FINDINGS and RECOMMENDATIONS

Program revived in 1998. Patrols 25 zones, 16 hours a day, 365 days a year assisting motorists and employing TANF recipients.

FINDING 1: OPERATION OF COURTESY PATROL PROGRAM BY THE STATE COULD SAVE AS MUCH AS \$8.41 MILLION OVER 3 YEARS

The West Virginia Courtesy Patrol Program was revived by Governor Cecil Underwood, in 1998, as part of the West Virginia Welfare-to-Work initiative. The program originally began in 1979, but was disbanded after four years due to a lack of funding. Since its rebirth, the program has been operated by the non-profit Citizens Conservation Corps of West Virginia (CCCWV) via contract with Division of Highways (DOH) and the West Virginia Division of Tourism.

The Courtesy Patrol drivers (employed by CCCWV) patrol 25 zones, assigned by DOH, of 50 to 70 miles roundtrip, 16 hours a day, 365 days per year. These zones include 8 interstates and 5 corridors in 30 counties. The primary duties of the drivers include assisting stranded motorists, removing roadway hazards, providing gas or directions, and changing flat tires.

The goal of the Program is to provide two benefits. The primary goal is to benefit the traveling public using the highways by providing assistance to those in need. The secondary goal is to reduce the number of individuals receiving welfare in WV by employing those receiving Temporary Assistance for Needy Families (TANF) funds.

From FY 2006 through FY 2014 DOH paid \$29.3 for management of the Program.

During the audit period of FY 2006 through FY 2014, CCCWV received \$29.3 million in state funding from DOH for management of the Program. The funds received by CCCWV were for personnel expenses, vehicle insurance, vehicle maintenance, and administrative expenses. DOH transferred an additional 2.6 million to CCCWV for the purchase of the patrol fleet.

DOH is also responsible for the purchase of all fuel used by the Program. The amount of fuel expense DOH incurred during the audit period for the operation of the Program could not be determined. DOH did not require the vendor to submit fuel receipts and did not reconcile fuel purchases to invoices (*see Finding 2*).

DOH could save \$4.34 million over three years by operating the Program internally, and up to \$8.41 with Program modifications.

As of the FY15 contract, DOH is now required to directly purchase the patrol vehicles and provide motor vehicle insurance, while leasing the vehicles to CCCWV at the rate of \$17.60 per month for each vehicle.

Potential Savings to the State

Based on the FY 2015 contract and the projected expense for DOH to operate the program internally, the State could potentially save **\$4.34 million** over the life of the current three year contract if operated by DOH. The potential savings could increase up to **\$8.41 million** with additional measures, including corporate sponsorship and federal grant money. Further cost savings could be achieved by reducing patrol hours, utilizing DOH resources, and training patrol drivers to fill vacant DOH positions.

Cost Comparison

2015 contracted cost is approximately \$3.2 million.

The 2015 contract amount is \$3,185,174. A comparison based on current vendor requirements between the current contract cost and the estimated cost to run the program within DOH, can be found in *Table 1*. The comparison includes wages and associated employer expenses for all positions, additional employee benefits, and maintenance expenses¹. Items not included are purchase price, fuel, and automobile insurance associated with the Courtesy Patrol vehicles which are currently paid by DOH.

Additionally, the Courtesy Patrol drivers are not provided benefits, such as health insurance or retirement, by CCCWV; therefore, those items were also removed from the initial comparison. Additional benefits and costs to the State are addressed in *Table 3* on page 7.

Table 1: Comparison of Current Cost of Contract vs. DOH Estimated Cost to Operate Based on Current Vendor Requirements	
FY15 Contract Cost:	\$3,185,174
Projected Cost Increase² of Contract per Year:	\$231,149
Less Lease Payment by Vendor for Patrol Vehicles:	\$7,603
Total Contract Cost:	<u>\$3,408,720</u>
DOH Wage/Salary Cost Estimate:	
75 Drivers (\$8.00/hour)	\$1,248,000
7 Patrol Supervisors (\$11.98/hour)	\$174,384
6 Dispatchers (\$9.37/hour)	\$116,928
1 Manager (\$18.93/hour)	\$39,372
Employer Expenses for all Employees:	
Employer Payroll Taxes	\$120,769
Workers' Compensation Estimate	\$48,594
Unemployment Claims	\$1,758
Benefits for Supervisors, Dispatchers, & Manager Only:	
PEIA Health Insurance Premiums ³	\$63,370
Employer Retirement Contribution	\$46,296
PEIA Basic Life Insurance Premiums Paid by State	\$336
Other Program Expenses:	
Estimated Maintenance on Vehicles	\$103,445
Total Estimated Cost to State per Year:	<u>\$1,963,252</u>
Per Year Savings:	<u>\$1,445,468</u>
Total Estimated Savings over the Typical 3-yr. Contract:	<u>\$4,336,404</u>

¹ Based on average maintenance expenses reported by CCCWV invoices. Amount would likely be less if run by DOH.

² Based on average historical cost increase of 7.39% via change orders for the previous three year contract.

³ Based on the average percentage employer insurance premiums cost to wages for all DOH employees. Insurance premiums could be higher or lower based on what plan the employee chooses.

TANF Grant

CCCWV annually receives a \$350,000 grant to utilize TANF recipients as patrol drivers.

CCCWV received an additional \$350,000 per year during the audit period, via a federal grant. The grant pays the salaries and benefits for five Dispatchers, one Chief Dispatcher, four Field Supervisors, and a Chief Field Supervisor employed by CCCWV. **DOH would be eligible for the same funding.**

In exchange for receiving the funds, it is the responsibility of CCCWV to provide development opportunities to the TANF recipients participating in the welfare-to-work program. CCCWV has implemented a two-year program designed to provide development opportunities for the TANF participants. During federal fiscal year (FFY) 2014, CCCWV served 17 TANF recipients⁴, with five TANF employees still in the program as of September 30, 2014 (end of FFY 2014). From FFY 2009 – FFY 2014, seven participants completed the two-year program implemented by CCCWV and ten others left the program for better employment (*see Table 11 on page 29*).

DOH currently operates a training facility which could be used to train TANF recipients to fill DOH vacancies.

If operated internally by DOH, the secondary goal of the Program could be achieved through the training program currently in place at the WV DOH Equipment Operator Training Academy, which assists DOH employees in learning how to operate various types of highway equipment and obtaining a commercial driver’s license (CDL) certification. DOH could set up the Courtesy Patrol operator as a multi-tiered position⁵. One full-time permanent employment tier as an operator, and another tier for an apprentice position with the goal of training the operator to fill one of the many vacancies DOH has available. Filling the vacant DOH positions with trained Patrol Operators could also reduce the overtime expenses caused by the vacancies and increase the success rate of the TANF Welfare-to-Work Program.

Corporate Sponsorship

On average \$552,777 was received for corporate sponsorship of similar programs in other states.

Comparable⁶ programs in Indiana, Maryland and Ohio each received a corporate sponsorship to offset costs. A sponsorship benefits both the program and the sponsor. Indiana received \$1.1 million over three years from State Farm Insurance. Maryland received \$1.3 million over three years and Ohio received \$3.4 million over four years, both also from State Farm Insurance. In exchange for sponsoring each of the three programs, the State Farm corporate logo was placed on the patrol vehicles, uniforms, and on signs denoting active patrol areas on the highway. The average revenue from the corporate sponsorships for these three states was \$552,778 per year.

State law does not explicitly prohibit private sponsorship or advertising to fund the Program; however, the current statutory provisions do not provide sufficient

⁴ Information obtained from reports submitted by CCCWV to DHHR as part of the TANF grant sub-recipient reporting requirements. From FFY 2009-2014, CCCWV served the following number of TANF recipients per year respectively, 36, 31, 24, 21, 22, and 17. Over 6 years, the number of TANF recipients utilized in the Courtesy Patrol Program has decreased by over 52%. See Table 11 in Appendix A for more information.

⁵ These positions would increase the estimated cost to DOH by approximately \$415,678 if all positions qualified for health insurance, basic life insurance, and retirement benefits.

⁶ Based on comparable duties and services provided.

authorization to DOH to solicit sponsors⁷. Legislative authorization to obtain a sponsorship would be necessary. If WV could obtain a corporate sponsorship, the revenue could offset the cost of the Program by an estimated average of \$1,658,334 over the three year contract period.

Patrol Hours & Routes

Program routes and hours can be adjusted based on program data and traffic data.

According to CCCWV unaudited Program statistics for the audit period, assistance provided by the Program has decreased 30%, while the total miles patrolled has decreased by 22% (see Table 2). Over the same period, the number of patrol vehicles, drivers, and patrol hours has remained constant. With available traffic data collected by the Traffic Analysis Section of DOH and the statistics provided by the drivers of the Courtesy Patrol, DOH could decrease the hours patrolled and the number of vehicles assigned to a route, effectively reducing the wage, maintenance, and fuel costs (See Finding 2).

Table 2: Change in Assistance Provided and Miles Driven by the Courtesy Patrol				
Year	Miles Driven	% Reduction	Physical Assistance	% Reduction
2006	3,850,735	---	20,168	---
2013	3,007,154	22%	14,169	30%

Conclusion

DOH could save \$1.93 million with a TANF grant and sponsorship.

In comparison to the current cost of the Program to the State, the potential cost savings could be as much as \$1.93 million per year, or \$5.78 million over the life of the typical 3-year contract if DOH utilizes the TANF grant and receives an estimated average sponsorship (see Table 3).

Table 3: Estimated Savings Over Typical 3-Year Contract with Additional Revenue and Changes to the Position	
Total Contract Cost:	\$3,408,720
Total Yearly Cost if Run by DOH:	<u>\$1,963,252</u>
Initial Difference Compared to Contract:	\$1,445,468
Adding the TANF Grant:	\$350,000
Less Benefits for Permanent Full-time Operators:	<u>\$415,678</u>
Estimated Savings per Year:	<u>\$1,379,790</u>
Adding Potential Corporate Sponsorship:	<u>\$552,778</u>
Estimated Savings per Year:	<u>\$1,932,568</u>
Estimated Savings over Typical 3-year Contract:	<u>\$5,797,704</u>

⁷ See Legislative Legal Opinion on page 33.

Decreased patrol hours and vehicles could increase savings to \$8.4 million over three years.

The potential exists to reduce costs further by assessing the data provided by the drivers to determine where Program services are needed. DOH could decrease the hours patrolled and the number of vehicles assigned to particular routes, effectively reducing wages and vehicle expenses; therefore, increasing the possible savings to the State up to \$8.4 million over the three year life of the contract (See Table4).

Table 4: Estimate of Additional Savings with Proposed Reduction in Patrol Hours Compared to Cost of Current Contract⁸ for 16 Hour Patrols

	14 Hour Patrols	12 Hour Patrols	10 Hour Patrols
Total Current Contract Cost:	\$3,408,720	\$3,408,720	\$3,408,720
DOH Wage/Salary Cost:	\$1,386,270	\$1,193,856	\$1,001,442
Employer Expenses:	\$150,125	\$129,129	\$108,132
Benefits⁸:	\$97,887	\$85,772	\$73,656
Maintenance:	\$90,514	\$77,583	\$64,653
Total:	\$1,724,796	\$1,486,340	\$1,247,883
Initial Difference:	\$1,683,924	\$1,922,380	\$2,160,837
+TANF Grant:	\$350,000	\$350,000	\$350,000
-Benefits (All Operators):	\$363,718	\$311,758	\$259,799
Estimated Savings per Year:	\$1,670,206	\$1,960,622	\$2,251,038
+Corporate Sponsorship:	\$552,778	\$552,778	\$552,778
Estimated Savings per Year:	\$2,222,984	\$2,513,400	\$2,803,816
Over 3-year Contract:	\$6,668,952	\$7,540,200	\$8,411,448

Use of DOH maintenance facilities and fuel depots could provide further savings.

Additionally, DOH has ten district offices and multiple regional offices with fueling stations and maintenance departments. The fuel purchased for use by DOH is at a slightly lower price than commercial stations⁹; therefore, cost for fuel usage could possibly be reduced by utilizing the DOH stations. Utilization of the maintenance departments could decrease costs further due to no additional cost for labor services and the ability to obtain better pricing for parts via state contracts.

Recommendations

- 1-1. The Legislative Auditor recommends the West Virginia Legislature codify the corporate sponsorship of government operated programs.
- 1-2. The Legislative Auditor recommends DOH obtain a corporate sponsorship of the Program through a competitive bidding process, transition to the

⁸ Benefits for Supervisors, Dispatchers, and the Manager.

⁹ Estimate based on limited information; therefore, any possible savings was not calculated. Initial calculations were estimated at \$0.25/gallon.

direct management of the program, and cancel the Courtesy Patrol contract currently in place with CCCWV.

- 1-3. The Legislative Auditor recommends DOH assess the number of patrol hours per route that can be reduced, if any, and apply those reductions.
- 1-4. The Legislative Auditor recommends DOH develop the Program operations, policies and procedures in such a way as to allow the use of the TANF grant currently being utilized by the vendor, and develop the tiers of employment for the Courtesy Patrol operators in such a way as to guide the transition of Courtesy Patrol operators to other vacant positions within DOH, as necessary and available, while maintaining the eligibility of the Program for TANF funds.
- 1-5. The Legislative Auditor recommends DOH evaluate the Program and report to the Post Audits Subcommittee during the October 2015 interim meeting with a plan to proceed.

FINDING 2: DOH DID NOT ADEQUATELY MANAGE CONTRACT PERFORMANCE

DOH did not adequately manage the contract performance of the Program administered by CCCWV. Failing to adequately monitor contract performance prevents the continuous improvement of the effectiveness and efficiency of the program, and thereby prevents improving the program results.

DOH did not use available data to improve the Program.

According to the National Institute of Governmental Purchasing, contract management should be an ongoing process to improve the results of contract performance by making critical decisions based on evidence, and integrating and aligning the agency’s management, policies, and practices to improve the results for the public. Additionally, the WV Purchasing Handbook (7.5.2.2) requires an agency to measure outcomes, monitor contract compliance and assess contractor performance. DOH did not make critical decisions based on evidence available in vendor data obtained from CCCWV regarding program outcomes. DOH also did not align the management and practices of DOH to enable the utilization of traffic data already generated by DOH to improve the results of the Program. Furthermore, DOH did not assess contract compliance by not reviewing fuel purchases made by CCCWV in operation of the Program. By not reconciling fuel card expenditures, DOH was unable to determine if all charges for fuel were for the Courtesy Patrol; therefore, the potential for fraud is high.

Vendor Data

DOH received program data from CCCWV indicating a reduction in services and made no program changes.

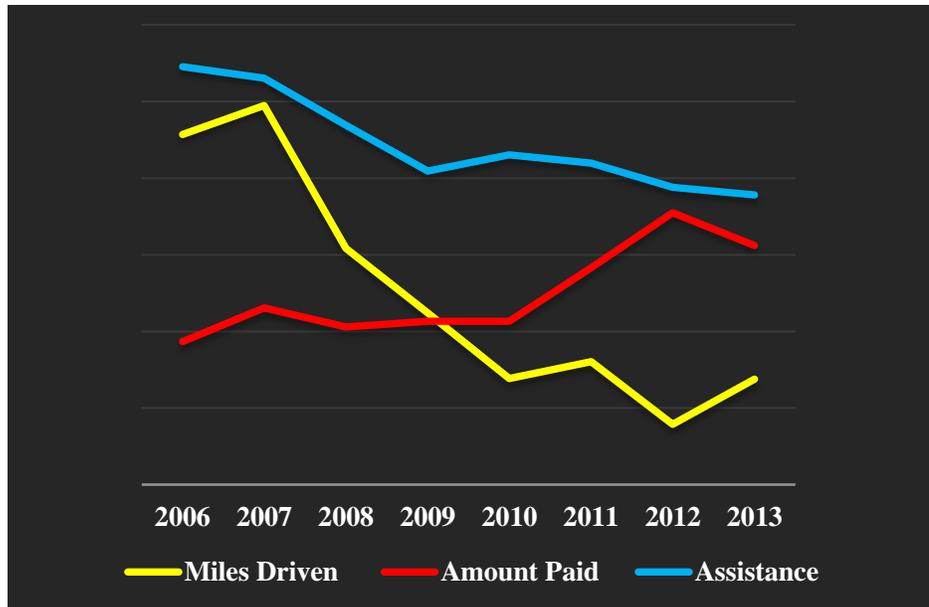
CCCWV reports to DOH a bi-weekly total of miles driven and services provided by the program in a given period including physical assistance which includes vehicles assisted and checked, debris and animals removed, and first aid or CPR provided (see Table 5). The data provides overall trends, but does not provide details of the shift, time and location of occurrence, or patrol route. DOH has developed the Courtesy Patrol contract as written to merely require totals regarding outcomes of the patrol activities. No further detail is required of the vendor by DOH; therefore, DOH cannot detect trends in specific routes regarding the number of individuals served and the time the service was provided. The limited required data prevents DOH from addressing data trends by making targeted changes in patrol hours to specific routes.

Table 5: Unaudited Courtesy Patrol Data			
Year	Miles Driven	Physical Assistance¹⁰	Amount Paid
2006	3,850,735	20,769	\$3,058,088.65
2007	3,950,374	20,232	\$3,171,500.36
2008	3,458,405	17,975	\$3,106,859.96
2009	3,234,817	15,794	\$3,126,116.76
2010	3,008,888	16,568	\$3,126,116.76
2011	3,067,856	16,171	\$3,305,651.78
2012	2,851,679	15,016	\$3,490,596.76
2013	3,007,154	14,650	\$3,381,165.00

¹⁰ Physical assistance rendered by patrol operators includes vehicles assisted, debris removed, animals removed, procedural and abandoned vehicles checked, and first aid or CPR provided.

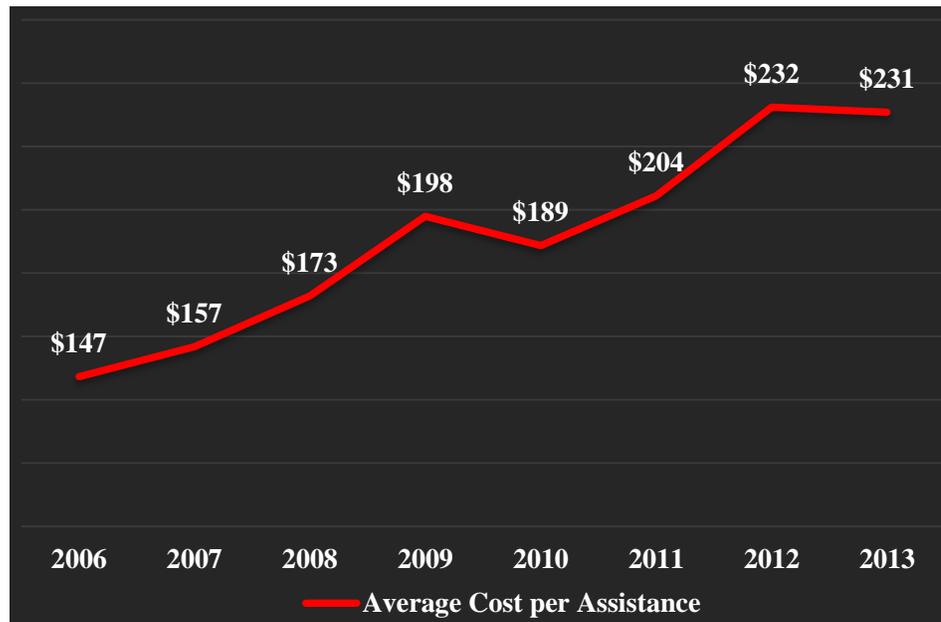
Although the data is limited, it does indicate a reduction in miles driven and physical assistance provided by the program; however, the program cost continued to increase (see Figure 1).

Figure 1: Trends in Unaudited Courtesy Patrol Program Data



The average cost per physical assistance per amount paid during each contract has increased \$84, from \$147 per assistance in 2006 to \$231 per assistance in 2013 (See Figure 2).

Figure 2: Average Cost per Assistance



DOH Traffic Data

DOH collected data indicating reduced traffic, and made no changes to the Program.

The Traffic Analysis Section within DOH collects and compiles traffic data for the Department of Transportation (DOT). Data is continuously collected at 60 locations statewide. Additional short duration collection takes place at over 2,500 locations annually. One result of this data collection is a traffic count report indicating the number of vehicles traveling between predetermined points¹¹.

The average traffic count for six traffic areas has decreased between the two time periods¹² of 2006-2009 and 2010-2013. Most notably, there has been a 21% decrease in traffic on I-64 from Beckley to Virginia, an 18% decrease in traffic on I-70 from Ohio to Pennsylvania, and a 13% decrease in traffic on I-64 from Kentucky to I-77 in Charleston. Although these areas have seen a reduction in the number of vehicles traveling the roadway there has been no change in the number of patrol hours or patrol vehicles (see Table 6).

After inquiry with DOH regarding the decrease in traffic data and its use, or lack thereof, in the management of the Program, DOH stated the following indicating management’s awareness of the traffic decrease:

“Increased fuel costs result in decreased traffic. DOT traffic data for many of the interstate route sections reflect decreased counts between the years 2006 and 2013.” (Emphasis added)

Additional inquiry with DOH following the above quote determined the data was not utilized in any way to develop more cost effective parameters for the Courtesy Patrol contract.

Table 6: Trends in Unaudited DOH Data Versus Contract Changes¹³

Traffic Route	(06-09) vs (10-13) Change in Traffic	Change in Hours	Change in Vehicles
I-64 Beckley to VA	-20.99%	0	0
I-68 Morgantown to MD	9.13%	0	0
I-64 KY to I-77 Charleston	-12.77%	0	0
I-70 OH to PA	-18.67%	0	0
I-77 VA to OH	-3.09%	0	0
I-79 Charleston to PA	-1.20%	0	0
I-81 VA to MD	-0.56%	0	0
I-470 Ohio to I-70	4.52%	0	0

The traffic data information combined with more detailed statistical data from the vendor would allow DOH to effectively target cost saving measures, on an individual route basis, such as the number of hours a route is patrolled, the

¹¹ The predetermined points are state lines, interstate exits, and major intersections of roads such as the meeting of I-64 and I-77.

¹² The data was grouped into four year segments and averaged over the four years to ensure a more accurate comparison so no particular year of data skewed the results unfairly.

¹⁰ Additional information for the 2006-2013 traffic data is available in Table 9 on page 30.

number of vehicles assigned to a route, etc., thus increasing the effectiveness and efficiency of the Program.

DOH did not reconcile vendor fuel purchases.

Fuel Card Reconciliations

CCCWV is issued fuel cards through DOH to purchase fuel necessary for the operation of the Program. Reconciliations of the fuel expenditures were requested from DOH, but could not be provided. The response from the former DOT Director of Finance and Administration was as follows:

“I have discussed this request with the Maintenance Division. That division has advised me they have not performed reconciliations of the fuel card usage by the Courtesy Patrol.”

Combining vendor data and traffic data can increase program effectiveness and efficiency.

The potential for fraud to occur by charging fuel not used in the Program vehicles is high and the ability to detect these unauthorized charges is reduced if receipts are not reconciled to the invoices on an ongoing basis.

Recommendations

- 2-1. The Legislative Auditor recommends DOH institute specific reporting requirements of the vendor that will provide more detailed information to allow more effective management of contract performance. The reporting requirements should include all of the data categories currently required but rather than receiving an aggregation of all data, the data should include details indicating the route, shift, and date associated with the services performed.
- 2-2. The Legislative Auditor recommends the DOH use the additional data along with the DOH traffic data to make targeted changes to patrol hours, assigned vehicles, etc. where the data suggests the patrols are needed concerning individual patrol routes.
- 2-3. The Legislative Auditor recommends DOH require the vendor to submit all receipts for fuel card purchases and perform reconciliations of the invoices and receipts on an ongoing and regular basis.

FINDING 3: DOH FAILED TO FOLLOW ALL TERMS OF THE COURTESY PATROL CONTRACT

DOH failed to follow all terms of the Courtesy Patrol contract. The agency consistently paid invoices from CCCWV before the service period had ended and failed to follow the payment terms stipulated in a change order. Failure to follow contract terms violates state purchasing procedures and increases the possibility of billing and payment inaccuracies due to unforeseen issues with services yet to be rendered.

DOH paid \$25.6 million in invoices an average of 2.5 days early.

Payment before Services Received

The Courtesy Patrol contracts in effect during the audit period stated, “Vendor shall submit invoices, in arrears” and “Payment in advance is prohibited.” DOH received 102 out of 116 (88%) invoices from CCCWV an average of six days before the service period had ended. DOH then paid 95 of the 116 (78%) invoices, totaling \$25.06 million, an average of 2.5 days before the services were received.

Change order for monthly increase was paid in one lump sum.

Incorrect Administration of a Change Order

DOH submitted a request for a change order to increase “the monthly service fee from \$270,483.90 to \$304,323.46” for March 2012 – June 2012 to cover an unanticipated increase in the workers’ compensation premium to the Program. The change order, approved by the Division of Purchasing, modified the terms of the contract by increasing the monthly amount an additional \$33,839.56 for each of the four months remaining on the contract period. DOH paid the additional funds authorized in the change order in one lump sum of \$135,358.24 in March 2012, effectively paying \$101,518.68 before it was due.

Recommendations

- 3-1. The Legislative Auditor recommends DOH follow the terms and conditions of the contract agreement and discontinue paying the vendor before services are rendered and administer change orders as approved by the West Virginia Division of Purchasing.
- 3-2. The Legislative Auditor recommends DOH discontinue paying invoices and contract amounts before due.

FINDING 4: CONTRACT RENEWALS POTENTIALLY INCREASE COST TO THE STATE

Replacing the majority of the vehicles while increasing the contract cost reduces the benefit of a renewal.

DOH renewed the Courtesy Patrol contract multiple times during the audit period which may have unnecessarily increased the cost to the State due to the replacement of almost all patrol vehicles with each contract renewal.

Currently, when the Courtesy Patrol contract is awarded to a vendor, the term is for one year with the option to renew the contract for two subsequent years. At the time of the initial awarding of the contract, DOH must purchase a new fleet¹⁴ of patrol vehicles for use by the vendor.

A memo from the former Director of the DOT Finance & Administration Division addressed to the Assistant Director of the Purchasing Division indicated the business logic of DOH for renewals as follows:

*“Contract renewals allow the State (DOH) the flexibility to negotiate with the contractor the patrol truck needs/replacements for another cycle. The replacement criteria used deals mainly with odometer readings and maintenance expenses. **Typically, contract renewals result in half or less of the contractor’s patrol fleet of 36 trucks being replaced.** If we are required to re-bid the contract, all bidders will be required to purchase a new fleet (36) of 2011 model trucks. At the very least, the fleet of new trucks will cost the State over \$500,000. Since the inception (1998) of the contracted patrol service, the DOH has always requested the renewal option. Renewing the contract is a much less expensive option for the State.” (Emphasis Added)*

Replacing 50% or less of the vehicles when renewing saves the State money.

Renewing contracts when 50% or less of the fleet needs to be replaced is sound business logic; however, three out of the four times the Courtesy Patrol contract was renewed, it was at a higher amount than the original bid and the majority of the patrol vehicles were replaced (*see Figure 2*). By not following the philosophy stated to the Division of Purchasing, DOH unnecessarily increased the cost of the contract as much as \$545,010. Replacing the majority of the fleet while also increasing the amount of the contract negates the benefit to the State of renewing the contract instead of rebidding the contract.

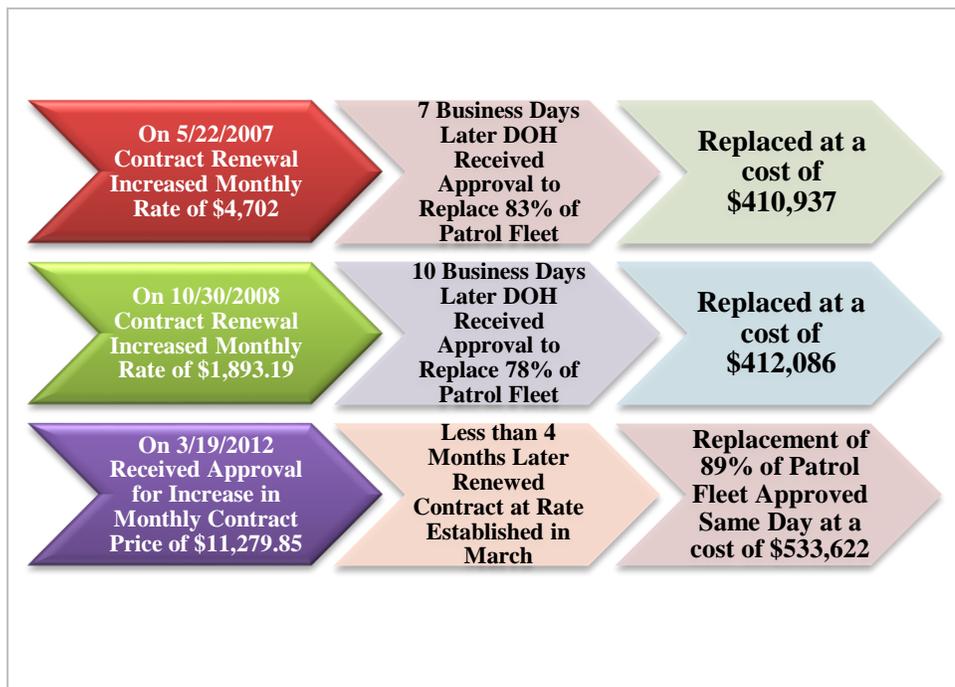
With each re-bid of the contract, the monthly payment remained the same as the previous contract or decreased; however, with each renewal the monthly payment increased. Additionally, the length of time between vehicle replacements has decreased from an average of 18 months to 12 months and the number of miles driven between these dates has decreased (*See Table 7*).

¹⁴ The fleet consists of 36 vehicles. Thirty-two are used regularly. Four are for minimizing downtime due to repairs or other issues.

Table 7: Frequency of Fleet Replacement					
Purchase Approval Date	Renewal or Rebid	# of Vehicles Purchased	% of Fleet Replaced	Months Between Purchases	Miles Between Replacement ¹⁵
11/21/2005	Re-bid	36	100%	-	-
6/1/2007	Renewal	30	83%	18.6	6,005,319
11/13/2008	Renewal	28	78%	17.7	5,422,146
6/29/2010	Re-bid	36	100%	19.8	5,115,978
6/27/2011	Renewal	18	50%	12.1	2,837,777
6/29/2012	Renewal	32	89%	12.3	3,021,170

Each fleet purchase request occurred a short time after each contract renewal.

Figure 3: Timing of Fleet Replacement per Contract Renewal



Once the initial contract is awarded DOH requests all renewals allowable under the contract regardless of the associated costs of increased monthly allotments and replacing nearly the entire fleet. Given the DOH decision to replace almost all of the patrol vehicles and the increase in contract price, DOH should have requested bids in lieu of renewing the contract (see Table 8).

¹⁵ Based on unaudited statistical data provided by CCCWV.

Table 8: Estimated Unnecessary Fleet Cost to the State

Dates	Cost Per Vehicle	Vehicles Replaced	50% Fleet Replacement	Unnecessary Extra Cost
06/01/2007	\$13,698	30	18	\$164,376
11/13/2008	\$14,717	28	18	\$147,170
06/29/2012	\$16,676	32	18	<u>\$233,464</u>
Total				<u>\$545,010</u>

Renewing contracts with cost increases and majority of fleet replacement negates cost savings of the bid process

Failure to rebid the contract when more than 50% of the fleet is needed to be replaced prevents the State from realizing any cost savings potentially achieved through the competitive bidding process. Replacing more than 50% of the fleet while increasing the monthly expenditure negates the benefits obtained from the bidding process.

Recommendation

- 4-1. The Legislative Auditor recommends DOH only request renewal of the Courtesy Patrol contract when 50% or less of the total fleet is to be replaced. When greater than 50% of the total fleet for the Courtesy Patrol contract needs to be replaced, the contract should be rebid.
- 4-2. The Legislative Auditor also recommends DOH develop specific guidelines for fleet replacement and add those guidelines to the contract terms.

FINDING 5: PAYMENTS IN EXCESS OF CONTRACT AMOUNT

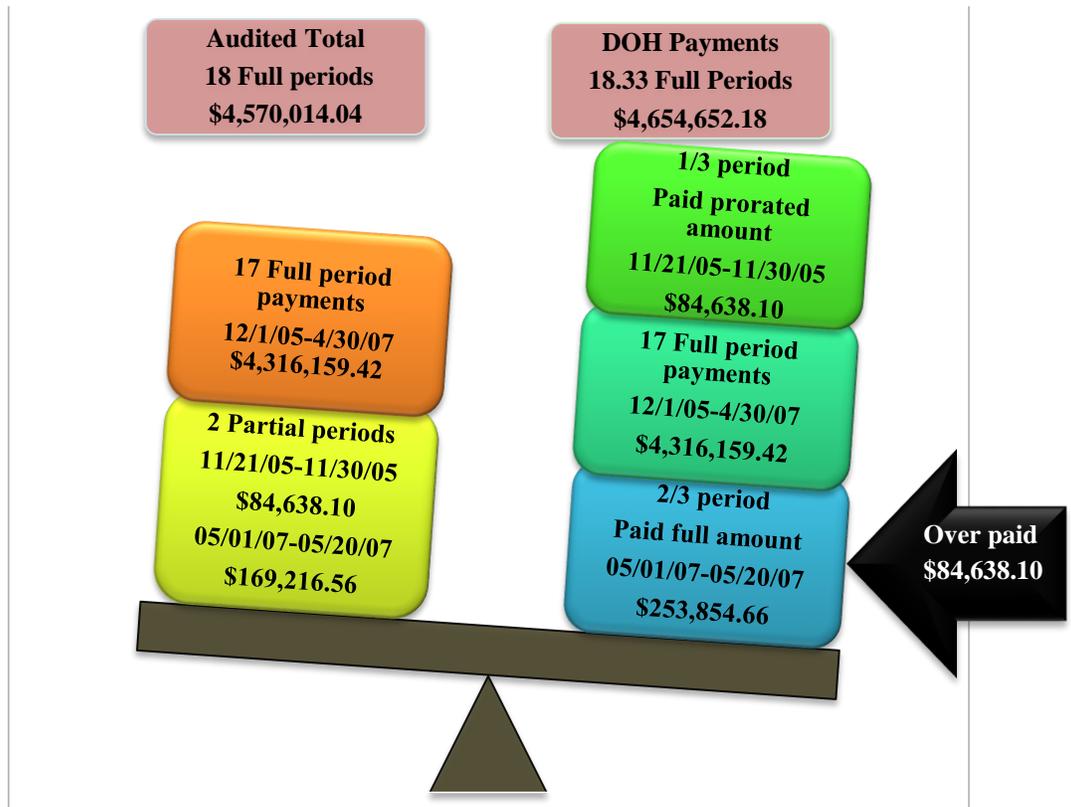
During FY 2006, DOH made two payments totaling \$96,139 in excess of the amount authorized by the contract in effect at the time of each payment. One payment of \$11,501 was for reimbursement of maintenance expenses prohibited by contract and one payment of \$84,638 was for a partial month of operations not authorized in a change order. The payment of amounts greater than the contract violates state purchasing procedures, causes funding to be unavailable for other uses, and prohibits the earning of interest on the funds.

Payment of \$84,638 in Excess of Contract

DOH made 18.33 payments in an 18 month period causing an overpayment of the contract.

The Courtesy Patrol contract in effect beginning November 21, 2005 was 18 months in length, required 18 monthly reimbursements not exceeding the contracted amount to CCCWV. DOH was billed for the partial month of November thus creating the need for a final partial payment at the end of the contract period and the full amount for the seventeen months in between. The final payment of the contract should have been prorated for the period of May 1, 2007 to May 20, 2007. CCCWV billed for the last month and neglected to prorate the invoice to the appropriate amount. DOH paid the invoice causing an overpayment in the amount of \$84,638. This effectively resulted in the payment of 18 full monthly payments and one partial payment to CCCWV instead of 17 full payments and two partial payments.

Figure 4: Overpayment of Contracted Amount

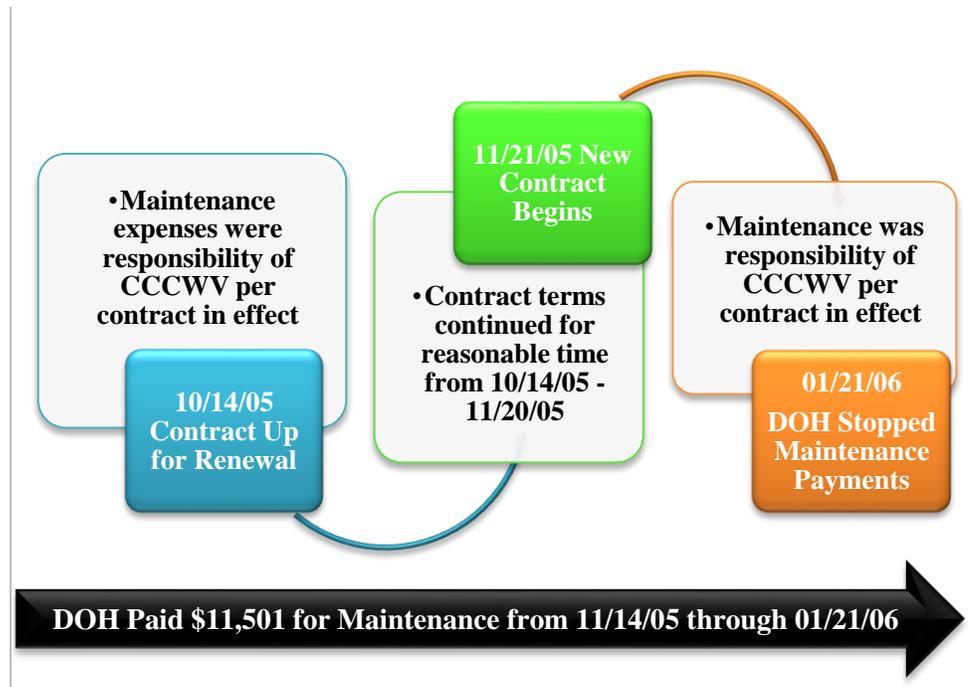


Inappropriately Paid Maintenance Expenses

DOH paid CCCWV expenses already covered by the contract in effect.

The Courtesy Patrol contract in effect through October 14, 2005 required the vendor to be responsible for all vehicle maintenance and indicated the contract terms would remain in effect for a reasonable timeframe after the contract end date, up to 12 months, unless 30 days’ notice was given by the vendor to cancel. When the contract expired on October 14, 2005, CCCWV and DOH continued the Courtesy Patrol operations according to contract terms under the reasonable timeframe exception until a new contract was awarded on November 15, 2005.

Figure 5: Maintenance Payments



DOH requested and received approval through the Purchasing Division on the basis that the contract award had been delayed causing CCCWV to have to utilize the old fleet for longer than planned. The previous fleet replacement at a cost of \$481,177 occurred approximately 12 months prior; therefore, the majority of the vehicles had only been in use for less than a year. During other years the patrol vehicles have been in use for much longer before being replaced (See Finding 4).

Recommendations

- 5-1. The Legislative Auditor recommends DOH obtain a refund from the vendor in the amount of \$84,638.10 and discontinue making payments on vendor expenses not authorized by contract.

FINDING 6: UNNECESSARY EXPEDITING OF PAYMENTS TO VENDOR

DOH requested \$2.9 million be issued to the vendor within 24 hours.

DOH unnecessarily expedited payment of invoices at the request of CCCWV. Of 116 transactions¹⁶, 11 (9.48%) totaling \$2.86 million were walked through the state payment process by the agency in order to have the payment issued within 24 hours. Best business practices dictate that to be a more efficient and effective entity, business processes should be streamlined to reduce non-value added processes and to automate where possible therefore reducing additional costs.

DOH facilitated preferential treatment when the vendor indicated difficulty meeting payroll.

CCCWV requested payments to be expedited with the claim the business was unable to meet its payroll obligations. DOH requested each walkthrough¹⁷ at an additional cost of \$5 per transaction “for vendor to meet payroll.” Although there are not strict guidelines justifying a request for a walkthrough, performing an unnecessary walkthrough in order to meet the payroll of a vendor is an inefficient use of state funds. It can also foster the appearance of preferential treatment when performed for a reason other than the State potentially being charged fees for late payment or as a result of an error on the part of the State.

Recommendation

- 6-1. The Legislative Auditor recommends DOH establish procedures for payment walkthroughs to be performed only to avoid late fees or when due to an error on the part of the State.

¹⁶ Ten of the eleven were walked through and paid prior to the close of the billing period. These are included in finding 3.

¹⁷ Walkthroughs are performed when special processing of payments are required where an employee physically walks the paperwork to the State Auditor’s office for expedited processing, incurring additional fees and bypassing the normal accounts payable workflow.

Informational Item 1: Current Legislative Rules May Make the DOH Liable for Negligent Actions of the Contracting Drivers.

Under the current contract, CCCWV hires and supervises the patrol drivers, but the vehicles are owned by the State and leased to CCCWV. Although the drivers are trained to reduce road hazards and prevent vehicle accidents, there have been accidents involving courtesy patrol vehicles, including the death of one patrol driver. Because the vehicles are owned by the state, DOH is subject to a legislative rule of the West Virginia Department of Administration: "State Owned Vehicles," 148 CSR 3.

This rule limits the use of state-owned vehicles to state employees.

State owned and leased vehicles, including temporarily leased vehicles, may be used under only one of the following two (2) categories or conditions:

- “9.1.1. Use by multiple employees; or
- 9.1 .2. Use by primarily one (1) employee.”

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

If an accident were to occur with a state-owned patrol vehicle driven by a CCCWV employee, the fact that DOH permitted a non-employee to drive the vehicle would be grounds for DOH to be liable to anyone injured in the accident.

By having a third-party company drive the state-owned vehicles, DOH is violating the legislative rule and, therefore, violating the law.

Recommendations

- I-1. The Legislative Auditor recommends one of the following three scenarios: DOH follow the recommendations in Finding One and internally operate the Program, the Program stops using state-owned vehicles, or the law must be rewritten to allow certain non-state entities to operate vehicles leased from the state.

APPENDIX A

AUTHORITY

The audit was conducted pursuant to WV Code §4-2, as amended, which requires the Legislative Auditor to “make post audits of the revenues and funds of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the State and of the organization and functions of the State and its spending units.”

The Post Audit Division of the Office of the Legislative Auditor is organized under the Legislative Branch of the State and the audits are reported to the Legislative Post Audits Subcommittee. This organizational structure has historically allowed the Division to be organizationally independent when audits are performed on an agency, Board, or program of the Executive Branch of the State.

This communication is intended solely for the information and use of the Post Audits Subcommittee, the members of the WV Legislature, management of DOH, and WV taxpayers. Once presented to the Post Audits Subcommittee this report is a matter of public record and its distribution is not limited. The reports are designed to assist the Post Audits Subcommittee in exercising its legislative oversight function, to provide constructive recommendations for improving State operations, and as a report of agency activities to the WV taxpayers.

SCOPE

The audit scope included a review of applicable internal control policies and procedures, analysis of CCCWV provided statistical data, analysis of DOH traffic data, review of Courtesy Patrol contracts, bid documentation, change orders, and invoices; compliance with West Virginia Code, West Virginia State Purchasing Division Purchasing Handbook, best business practices and DOH policies and procedures applicable for the audit period.

The audit included examining, on a test basis, evidence of compliance with those requirements referred to above and performing other procedures, as necessary. The audit does not provide a legal determination of DOH’s compliance with those requirements.

DOH management is responsible to accurately and efficiently perform all duties mandated under WV Code Chapter 17 as well as other applicable areas of WV Code, the Code of State Rules, its own internal policies, and as a result of its own audits. To achieve this DOH must create and maintain policies and procedures to ensure all duties mandated are performed. Additionally, it is the duty of DOH to accurately track and account for all State monies.

DOH management is also responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding assets, and compliance with applicable laws, rules, and regulations are achieved. Due to inherent limitations in internal control, errors and fraud may nevertheless occur and not be detected.

The scope over internal controls involved only assessing controls significant to the audit objectives. To conclude on the adequacy of internal controls regarding DOH as a whole was not a specific objective of the audit. Any significant internal control weaknesses discovered were reported in the findings.

This report includes findings regarding significant instances of noncompliance with applicable laws, rules and regulations as related to the objectives. Instances of noncompliance deemed insignificant to warrant inclusion in the report, or instances outside the scope of the audit, but still merited the attention of DOH management, were communicated in a letter to DOH management, if applicable.

EXIT CONFERENCE

A draft of the report was sent to management on May 27, 2015 with a request to schedule an exit conference on or before June 4, 2015. The agency did not request a conference.

OVERALL SUFFICIENCY OF EVIDENCE

All testimonial evidence obtained by the audit team was evaluated for objectivity, credibility, and reliability and was obtained under conditions in which the employee was able to speak freely without intimidation. The employees had direct knowledge of their working area and there was no evidence employees were biased. Additionally, we assessed the sufficiency and appropriateness of computer processed information regardless of whether the information was provided to us or was independently extracted by using an Internal Control Questionnaire, assessing the reliability and integrity of data, performing analytical reconciliations, and testing the supporting documentation.

The auditors performed and documented an overall assessment of the collective evidence used to support findings and conclusions, including the results of any specific assessments conducted to conclude on the validity and reliability of specific evidence, according to Section 6.69 of the Yellow Book, by documenting internal controls, and performing tests of an appropriate size.

The overall evidence obtained was relevant to the objectives and findings. All evidence supported the findings, giving validity in having a reasonable basis for measuring what was being evaluated. The overall evidence was reliable when tested and can be verified and supported. In establishing the appropriateness of the evidence as a whole, the auditors tested reliability by obtaining supporting documentation, used original documents when available, verified the credibility of testimonial evidence, evaluated analytical review, assessed risk through an analytical risk assessment, and applied auditor judgment on the overall evidence.

When assessing the sufficiency and appropriateness of evidence, the auditors evaluated the expected significance of evidence to the audit objectives, findings, and conclusions, available corroborating evidence, and the level of audit risk as described in Section 6.71 of the Yellow Book, by using professional judgment and statistical sampling to determine a sufficient quantity for the testing and to determine the type of evidence needed based on the audit objectives.

The auditors did not identify any limitations or uncertainties in evidence that were significant to the audit findings and conclusions. The evidence obtained in the course of the audit provides a reasonable basis for the findings and conclusions based on the audit objectives.

METHODOLOGY

OBJECTIVE ONE

All contracts, change orders, payments and supporting documents from FY 2006 through FY 2014 were reviewed. The payments and supporting documentation were reviewed for trends or inconsistencies. The amount remitted to the vendor by year, by contract and in total was calculated and compared to the authorized contracted amount. Items DOH would be required to purchase to supply each patrol vehicle, the number of patrol days, length of patrol hours, and patrol routes were obtained from the 2014 Courtesy Patrol contract. Costs for vehicle supplies were calculated for an eight hour and a 16 hour shift.

Wages, Positions, and Employer Payroll Expenses

Based on the 2014 Courtesy Patrol contract requirement of a 16 hour shift seven days a week, required DOH staffing levels were determined to be one manager, six dispatch personnel, seven patrol supervisors and 75 patrollers. Wages for patrollers were set at the hourly minimum wage rate when the audit began (\$7.25). To determine wage rates for the remaining positions current job postings were obtained from the Division of Personnel website. Managers were classified as a Highway Administrator 4. Patrol Supervisors were classified as a Supervisor-2. Dispatchers were classified as Telecommunicator-Highways.

The rates for employer contributions including, all payroll taxes, retirement benefits, and health insurance were obtained from various sources. The employer contribution for health insurance is dependent upon the coverage selected by the employee; therefore, the contribution for the single coverage for all employees was selected to represent the low end of the range and the contribution for the family medical coverage for all employees was selected to represent the high end of the range. For each end of the range, yearly wages and payroll taxes were calculated and summed to the low and high health contributions. To account for vehicle maintenance expense, the unaudited maintenance cost billed by the vendor for FY 2014 was calculated. The resulting cost for vehicle maintenance did not account for the likely reduced cost associated with DOH performing the maintenance versus the cost associated with utilizing an outside vendor. Summing the vehicle maintenance with the health insurance costs, wage expenses, and payroll taxes represents a “conservative estimated range” of

potential savings. Once calculated this data was compared to the expenditures for the 2014 contract.

The same calculations detailed above were then performed at the new minimum wage rate of \$8.00 per hour and the proposed federal minimum wage rate of \$10.10. Using the previously obtained job postings from the DOP, the salaries for the manager, dispatch personnel, and patrol supervisors were increased at the same rate as the minimum wage rate increased. The minimum of the salary ranges for each of the staff positions was used for the WV minimum wage, and a mid-range salary was determined for the proposed federal minimum wage. To calculate the maximum employee cost for the program the highest salary was selected for each of the support staff positions and the maximum salary for a Transportation Worker-1 from the DOP website was chosen for the patrollers. The calculations were then performed and compared to the 2014 Contract amount that would be in effect for FY 2015. The cost of maintenance was also added in as an expense for DOH. The maintenance expense was calculated by reviewing the prior 12 months invoices submitted by the Courtesy Patrol vendor.

Additional information was obtained to more accurately focus the calculations. Using DOH data from the four prior years of Personal Services and Employee Benefits an average for the four years was calculated for Employee Benefits. The calculated average was then applied to the previously calculated salaries (\$8.00 per hour for Patrol Drivers and Minimum Salary Scale for all other employees) to determine a more realistic and reliable estimate of Employer Payroll Taxes and Other Contributions. Calculations were made for just the supervisory, dispatch, and management staff. The increase or decrease in benefits cost to the employer based on what the employee chooses was footnoted in the report. The benefits for the Courtesy Patrol Drivers were also calculated based on the averages calculated from DOH's four year trend calculating 100% of drivers receiving benefits.

Determining Additional Cost Savings

Due to Courtesy Patrol programs in surrounding states obtaining corporate sponsorships to reduce the cost of operating a Courtesy Patrol program, the impact of obtaining a sponsorship was necessary to quantify. A search of internet news articles provided the sponsorship information for various states, counties and municipalities. Sponsorships not obtained on a state level, obtained by densely populated areas, or for extremely large populations were not considered representative of potential sponsorships for WV, and were not included. The remaining articles provided representation of the lowest to highest expected sponsorship, as well as an average sponsorship. The three levels of sponsorships were applied to the different costs previously calculated to achieve a total potential cost reduction if internally administered by DOH and if sponsorships were obtained at all levels of pay (including 2014 contract calculations).

Potential fuel savings through utilizing the DOH fueling stations for part of the time was determined based on the hours of operation at the usage rates of 25%, 30%, and 50%. The cost per gallon for DOH was determined by pulling a recent fuel invoice and then finding a corresponding purchase on the same date from the WEX fuel card reports the Courtesy Patrol utilizes. The average cost of

gallons purchased on that date were calculated. The number of gallons of fuel per year used by the Courtesy Patrol was pulled from the WEX reports for the past year and used as a basis for the cost savings.

To determine if patrol hours could be reduced to allow for additional savings, unaudited DOH traffic data and unaudited vendor patrol data was analyzed. Due to a lack of specificity with the data, potential cost savings were estimated by calculating the operational cost in two hour increments. This resulted in ranges for 14, 12, 10 and eight hour work days. Staffing levels for patrollers were adjusted based on hours per week. Maintenance cost was adjusted based on a percentage of the original 16 hour work day. The four levels of staffing hours were combined with the three levels of wage rates to give an overview of staffing and wage possibilities.

The results of the reduced patrol hour calculations were added with the sponsorship information to show additional savings from the standard 16 hour work day schedule. The range of estimated expense for the 14, 12, 10, and eight hour work day was compared against the estimated expense for the DOH operation of the Courtesy Patrol at a 16 hour work day. This resulted in the conservative estimate of potential savings for the DOH to operate the Courtesy Patrol internally with reduced patrol hours and a corporate sponsorship.

Upon contacting the Division of Health and Human Resources (DHHR) the audit team was advised DOH would also be eligible for the TANF grant as long as the Courtesy Patrol Program, when transferred to DOH, still met the same criteria. Information on the TANF applications and performance/expenditure reports were reviewed. All performance measures reported to DHHR by CCCWV were charted in an excel spreadsheet. The information was analyzed to determine the number of TANF recipients that were assisted in the FFY reports provided to the audit team by DHHR. The grant contracts were also reviewed for requirements to determine if DOH could meet these requirements. Once the analysis established that DOH could easily meet these requirements the TANF funds of \$350,000 per year were added as a part of the potential cost savings measures.

OBJECTIVE TWO

All RFQ's from 2003 through 2014 were reviewed, and the requirements of each noted. Although the audit period began in 2005, the 2003 RFQ was reviewed to provide a comparison basis for the 2005 RFQ. The requirements from each RFQ were compared to the previous RFQ to determine when the requirement was added or removed, and reviewed to determine their validity. Requirements were then reviewed for excessive years of experience or extreme specificity. If a requirement was added, removed, or questionable a detailed explanation for the requirement was obtained from DOH. These explanations were reviewed in the context of the overall contract to determine their validity.

OBJECTIVE THREE

Agency reconciliations of the vendor fuel cards were requested to allow a review of the reconciliations. DOH was unable to provide the requested reconciliations due to no reconciliations being performed; thus, no further work was necessary.

The unaudited Courtesy Patrol statistics from the vendor were reviewed for the type of information reported and how the information was reported. A list of the vendor performance requirements were obtained from the 2010 and the 2014 contract. Using the list of requirements in the 2010 and 2014 contracts, patrol statistics submitted by the vendor were reviewed to determine if appropriate information was reported and if the information was reported by route and by shift. The requirements were then determined to either be essential or non-essential to monitor the contract performance. An item was determined to be essential if reporting the requirement would provide necessary data to assist the agency in making management decisions for the required patrol routes, mandatory patrol hours, allocation of vehicles per route, etc. If the reports submitted did not contain essential information to manage the program and were not broken down by route and time, the contract was deemed to not be adequately monitored.

Change orders were then compared to payments made to the vendor from the 2005 contract through the 2014 contract. This allowed the audit team to determine if payments were made according to all approved contracts and change orders.

Change orders were examined for adhering to the terms of the contract, following the requirements in the WV Purchasing Handbook, and were reviewed to determine if they were in the best interest of the State. All of the contracts in effect during the audit period were examined and pertinent information was entered on a chart which included document name, contract year, date of approval, beginning date, end date, contract length, number of renewals, reasonable extension time, vehicle cost that was included in contract/change order (if any), and operational cost due to change or renewal in contract. The change orders were then examined and information was entered into the spreadsheet to indicate an increase or decrease to the contract and the new operating cost was entered.

The change orders were compared to WV Purchasing procedures, by calculating the percentage of change against original contract amount, to determine if the increase was more than 10% of the contract amount. Approval of increases above 10% are allowed if determined to be in the best interest of the State; therefore the reason for the change order was examined to determine if the expense was unforeseen and if approving the change order was in the best interest of the State. To be in the best interest of the State a change order would have to represent a cost savings or add value to the contract. If the change order was to reduce the amount of the contract or only increase the contract by less than 10% for an unforeseeable expense then the reason for the change order would be valid. If the request for change order was a foreseeable expense, increased the amount over the 10% threshold, or was not in the best interest of the State then the contract should have been rebid.

APPLICABLE LAWS, POLICIES, OR AGREEMENTS

West Virginia State Code §5A-8-9
Purchasing Division Procedures Handbook December 1, 2000
Purchasing Division Procedures Handbook July 1, 2007
Purchasing Division Procedures Handbook – Revisions 1 - 22
Courtesy Patrol 2014 Purchase Order
Courtesy Patrol 2014 Request form RFQ Grant Agreement
Courtesy Patrol 2010 Contract
Courtesy Patrol 2010 Request form RFQ Grant Agreement
Courtesy Patrol 2010 Contract Change Order 1 - 11
Courtesy Patrol 2005 RFQ and Bids
Courtesy Patrol 2005 Purchase Order Short Payments no conflict
Courtesy Patrol 2005 Contract
Courtesy Patrol 2005 Purchase Order Maintenance Exp
Courtesy Patrol 2005 Change Order 1 – 6

Table 9: Unaudited DOH Traffic Data Obtained From DOH Website

Median Traffic Year	I-64 Beckley to VA	I-68 Morgantown to MD	I-64 KY to I-77 Charleston	I-70 OH to PA	I-77 VA to OH	I-79 Charleston to PA	I-81 VA to MD	I-470 OH to I-70
2006	14,000	22,000	63,000	48,000	21,000	25,000	57,000	30,000
2007	15,550	22,850	60,500	52,000	21,150	25,900	56,500	30,400
2008	15,000	25,500	61,500	52,000	21,500	30,250	62,000	36,000
2009	12,500	23,500	58,250	48,000	20,000	26,250	56,000	29,000
2010	10,250	24,000	58,750	44,000	18,250	25,750	55,000	33,000
2011	10,500	26,500	52,500	36,500	18,500	25,000	55,000	33,000
2012	11,500	26,750	56,000	40,500	19,500	28,000	56,000	32,000
2013	<u>12,827</u>	<u>25,166</u>	<u>44,928</u>	<u>41,652</u>	<u>24,817</u>	<u>27,360</u>	<u>64,201</u>	<u>33,073</u>
06-09 Avg. Median	14,263	23,463	60,813	50,000	20,913	26,850	57,875	31,350
10-13 Avg. Median	<u>11,269</u>	<u>25,604</u>	<u>53,045</u>	<u>40,663</u>	<u>20,267</u>	<u>26,528</u>	<u>57,550</u>	<u>32,768</u>
Difference	<u>-2,994</u>	<u>2,141</u>	<u>-7,768</u>	<u>-9,337</u>	<u>-646</u>	<u>-322</u>	<u>-325</u>	<u>1,418</u>
Percentage Change	-20.99%	9.13%	-12.77%	-18.67%	-3.09%	-1.20%	-0.56%	4.52%

Table 10: Unaudited Vendor Reported Data

Year	Miles Driven	Total Calls ¹⁸	Total Assistance ¹⁹	Contracted Amount
2006	3,819,070	191,088	20,168	\$3,046,973.16
2007	3,950,374	180,889	20,232	\$3,081,627.71
2008	3,458,315	159,310	17,975	\$3,105,922.73
2009	3,234,817	163,878	15,794	\$3,126,116.76
2010	2,873,454	159,401	15,287	\$3,126,116.76
2011	3,067,856	164,735	16,171	\$3,305,651.78
2012	2,851,679	154,940	15,016	\$3,448,844.14
2013	<u>3,007,154</u>	<u>156,811</u>	<u>14,169</u>	<u>\$3,381,165.00</u>
Total Change 2006-2013	<u>-811,916</u>	<u>-34,277</u>	<u>-5,999</u>	<u>\$334,191.84</u>

¹⁸ Includes-Assist, driver related, parkways authority, DOH, law enforcement, 911, public, appreciation and miscellaneous calls.

¹⁹ Includes-Vehicles assisted, debris removal, animals removed, procedural and abandoned vehicles checked, CPR, first aid.

Table 11: Unaudited Progress Reports for CCCWV TANF Grant Obtained from DHHR

	Grant Fiscal Year (Oct 1, 2008-Sept 30, 2009)	Grant Fiscal Year (Oct 1, 2009-Sept 30, 2010)	Grant Fiscal Year (Oct 1, 2010-Sept 30, 2011)	Grant Fiscal Year (Oct 1, 2011-Sept 30, 2012)	Grant Fiscal Year (Oct 1, 2012-Sept 30, 2013)	Grant Fiscal Year (Oct 1, 2013-Sept 30, 2014)
Drivers Receiving TANF ²⁰	36	31	24	21	22	17
Number of Drivers Exited the Program						
Drivers Leaving--Extenuating Circumstances	13	13	8	8	12	7
Drivers Leaving--Terminated	2	3	1	4	0	3
Drivers Leaving--Left for Better Employment	2	1	1	2	2	2
Drivers Leaving--Completed 2 year program	0	1	3	1	2	0
Total	<u>17</u>	<u>18</u>	<u>13</u>	<u>15</u>	<u>16</u>	<u>12</u>
Number of Drivers Retained						
Drivers Retained for less than 3 months	12	5	7	7	7	12
Drivers Retained for 3 months	7	4	2	5	7	10
Drivers Retained for 6 months	10	9	3	5	5	12
Drivers Retained for 12 months	2	7	5	1	2	4
Drivers Retained for 18 months	1	3	1	0	0	0
Drivers Retained for 24 months	4	3	6	3	1	0
Services and Activities						
Drivers Provided Support and Supervision	36	31	24	21	22	*
Training on Workplace Conduct	27	12	11	10	16	*
Unsubsidized Full Time Employment	36	31	24	21	22	*
Non-Courtesy Patrol Training	16	20	20	17	10	*
Educational Opportunities and Enhancements						
Enrolled in College	1	1	1	1	1	*
Pursuing GED	8	10	12	9	7	*
Establishing their IEP (Have diploma/GED)	16	11	11	11	14	*
Total	<u>25</u>	<u>22</u>	<u>24</u>	<u>21</u>	<u>22</u>	*
Job Development and Transition Services						
AmeriCorps Educational Awards Available	27	6	5	8	6	*
	27	12	11	10	16	*
TANF Employees at Federal Fiscal Year End						
Highest Number of TANF Recipients Supervised	19	13	11	6	6	5
Lowest Number of TANF Recipients Supervised	24	13	9	13	10	9
	10	7	6	6	5	3

*Items for Grant Fiscal Year were not available from the grant closeout report and could not be calculated from the quarterly reports.

²⁰ These numbers include some of the same people from year to year; therefore, counting some individuals more than once. In actuality 94 TANF recipients were employed by CCCWV from FFY09 through FFY14. Of those, 87 did not complete the two year program.

DHHR Response to DOH TANF use

From: Green, Melisa J [REDACTED]
Sent: Tuesday, March 24, 2015 10:03 AM
To: Melissa Bishop; Kenneth "Mike" Jones; Cassis, Brian M
Cc: Hage, Sue C; Exline, Nancy N; Adkins, Linda J; Weekley, Jim K; Fleck, Emily S; Monica.A.Hamilton [REDACTED]; Scarberry, Betty Jo; Vealey, Sharon M
Subject: Audit (DOH) CCCWV Courtesy Patrol

To address your initial question regarding DHHR BCF's TANF grant to CCCWV asking if a state **agency such as DOH would be eligible to receive the TANF grant** to run the program in the same manner as CCCWV, the **answer is yes**: States may reserve Federal TANF funds that they receive for any fiscal year for the purpose of "providing assistance" under the TANF program, without fiscal year limitation. A State may only expend reserved money: (1) within the TANF program; and (2) to provide benefits that meet the definition of "assistance" or on related administrative costs.

The Bureau currently uses state agencies such as The Office of Economic Opportunity to run other such programs. Secondly, if DOH would be found ineligible, then we would have to initiate a Request for Application from interested non-profit agencies for evaluation and possible approval.

The information requested regarding CCCWV from 2009-2014 will be sent electronically to the Legislative Post Audit Division in separate emails due to the size of the documents.

Please let me know if there is anything further you may require.

Thank you very much,

Melisa J.Green, Director
Division of Grants and Contracts
WV Dept of Health and Human Resources
Bureau for Children and Families
350 Capitol Street, Room 730
Charleston, West Virginia 25301

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Legal Opinion on West Virginia Courtesy Patrol

to: Melissa Bishop
from: Doren Burrell
subject: ALTERNATIVE FUNDING MODELS
 FOR STATE COURTESY PATROL
 PROGRAM
date: May 28, 2015

At your request I have made an investigation into the legal restrictions that may apply to the current and proposed methods of funding the West Virginia Courtesy Patrol (hereinafter referenced as the “WVCP”) program. My research indicates that there is a potential liability issue under the current method of operation and that alternative models may require additional legislation and rule-making.

FACTUAL BACKGROUND

The WVCP is a legislatively-created program in which drivers, using state-owned vehicles regularly patrol the eight interstate highways within West Virginia, as well as five additional corridors. The patrol staff provide assistance to the traveling public – motorists from West Virginia and from other states – on these highways. They can resolve some common problems of vehicle breakdowns, summon more specialized aid, direct traffic around hazards, provide driving directions, and are often the first responders to the scene of vehicle accidents. Their services promote West Virginia as a hospitable place for tourists and they greatly increase the level of safety within their patrol areas. Up until this year, the WVCP has been funded by the WV Division of Tourism from a special revenue fund known as the Tourism Promotion Fund. The Division of Highways oversees the operation of the program and has entered into a contract, let through competitive bids, with a private organization which provides the patrol drivers and their training. The patrol drivers use state-owned vehicle that are leased to the contracting organization.

During the 2015 Regular Session of the Legislature, the organization of the WVCP program was changed so that after June 30, 2015, the Division of Highways would have complete responsibility for the funding and operation of the program. The legislation, Senate Bill 581, also discontinued transfers from the Tourism Promotion Fund as the funding source for the program.

LEGAL REVIEW

With these upcoming changes to the organization of, and the termination of the funding source for, the WVCP program, there are several legal restrictions that the Division of Highways (“DOH”) will need to consider when choosing how best to implement the program.

1. Current legislative rules may make the DOH liable for negligent actions of the contracting drivers.

Under the current system, an outside party hires and supervises the patrol drivers, but the vehicles are owned by the state. Although the drivers are trained to

reduce road hazards and prevent vehicle accidents, there have been accidents involving courtesy patrol vehicles, including the death of one patrol driver. Because the vehicles are owned by the state, the agency which uses these vehicles (DOH) is subject to a legislative rule of the West Virginia Department of Administration: "State Owned Vehicles," 148 CSR 3.

This rule limits the use of state-owned vehicles to state employees:

"§148-3-9. Permissible Uses.

9.1. Generally.

State owned and leased vehicles, including temporarily leased vehicles, may be used under only one of the two (2) categories or conditions:

9.1.1. Use by multiple employees; or

9.1 .2. Use by primarily one (1) employee."

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

Thus, if an accident were to occur with a state-owned courtesy patrol vehicle driven by a person employed by the contracting service, the fact that the DOH permitted a non-employee to drive the vehicle would be grounds for the DOH to be liable to anyone injured in the accident. Simply put, by having a third-party company drive the state-owned vehicles, the DOH is violating the legislative rule and, therefore, violating the law. To avoid this situation, one of three things must occur: 1) the DOH stops using an outside contractor to provide the drivers and brings the program "in-house," 2) the contract program stops using state-owned vehicles, or 3) the law must be rewritten to allow certain non-state entities to operate vehicles leased from the state. In this last instance, the rewrite could take place either by requesting the Department of Administration to modify its rule or the Legislature could enact an amendment to the state Code to authorize such an arrangement.

2. Although state law does not explicitly prohibit private sponsorship or advertising to fund the WVCP program, the current statutory provisions do not provide sufficient authorization to the DOH to solicit sponsors.

Since the new legislation ends the dedicated transfer of money from the Tourism Promotion Fund, the DOH must now look to other sources of money to operate the WVCP, regardless of whether the DOH operates it through state employees or through an outside contractor.

One alternative that has been proposed is to obtain some form of business sponsorship of the program. In some other states an insurance company has sponsored similar programs and the name of the sponsoring company is displayed on the patrol vehicles, on signs notifying travelers of the availability of the service, and in some cases on the uniforms worn by the patrol drivers.

I have examined the West Virginia Constitution and the West Virginia Code and there is nothing that explicitly prohibits such sponsorship – either in the form of a public-private partnership or as a straightforward, pay-to-play advertising agreement. However, the West Virginia Ethics Act has a general prohibition on exploiting public programs for the benefit of a particular, private interest. Specifically, the Code states that a “public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person,” West Virginia Code §6B-2-5(b)(1). Because the identification of a private interest, such as an insurance company, with a state agency may connect the prestige of the agency to the private company, this provision of the Code has been interpreted to prohibit advertising or endorsements tied to state programs.

The West Virginia Ethics Commission (hereinafter referenced as the “Ethics Commission”) enforces this provision of the Code and treats each situation on a case-by-case basis. Historically they have not approved of circumstances in which advertising or promotional images would be tied directly to a state program. In 2003, the Ethics Commission would not approve programs in which vehicles carrying advertising were to be provided to cities and counties in lieu of those governments’ direct purchase of standard vehicles. (Ethics Commission Advisory Opinions 2003-03 and 2003-09.) However, in recent years the Ethics Commission has allowed explicit advertising in state-produced publications (Advisory Opinion 2004-24) and state websites (Advisory Opinion 2014-15) under certain conditions.

To avoid running afoul of the provisions of the Ethics Act, an agency such as the Department of Highways should first seek an advisory opinion from the Ethics Commission regarding the particular agreement that the agency proposes to implement. The Ethics Commission looks to the agency’s enabling legislation, the agency’s mission and the benefit to the public. If the Ethics Commission approves the arrangement, they may require additional limitations, such as a disclaimer of endorsement.

In the new law that transfers all responsibility for the WVCP program to the Division of Highways, there is a clear statement of public benefit. Senate Bill 581 from the 2015 Regular Session of the Legislature added the following statement into W. Va. Code §17-1-3, “[t]he Legislature finds that a courtesy patrol program providing assistance to motorists on the state's highways is one of a most beneficial public safety service to residents of the state using public highways and serves as a showing of the state's hospitality and good will to tourists visiting the state.” The identification of this benefit is an important factor favoring approval of private sponsorship for the WVCP, but it is not sufficient in itself.

Nothing in the provisions of Senate Bill 581 establishes or describes how the Division of Highways may allocate or obtain funds necessary to operate the WVCP. The law is silent on this. While the bill does not *prohibit* a private sponsorship of the program, it also does not specifically *authorize* this. It does not give the Division of Highways the permission or the mandate to solicit sponsorships, enter into agreements to provide support, or establish a public-private partnership for the WVCP program. In other cases in which the Ethics

Commission has approved arrangements that visibly connect a private entity with a state agency, a key factor has been the existence of legislation that specifically contemplates the proposed arrangement.

When it comes to funding the WVCP program, the Legislature has provided for a special account – the Courtesy Patrol Fund – for its operation, but the description of the appropriate sources of money for this Fund are limited. The pertinent provisions of West Virginia Code §17-1-3 are as follows:

(2) ... The administration of the special revenue account in the State Treasury known as the Courtesy Patrol Fund shall be transferred to the Division of Highways: ... Moneys paid into the fund may be derived from the following sources:

(A) Any gifts, grants, bequests, transfers, appropriations or other donations which may be received from any governmental entity or unit or any person, firm, foundation, corporation or other private entity;

(B) Any appropriations by the Legislature which may be made for the purposes of this section; and

(C) All interest or other return accruing to the fund.

It is important to note that the common characteristic of the items listed in paragraph (A) is that they are all one-way transactions. This provision speaks of transfers or donations of money where nothing is given back in return. A sponsorship or advertising arrangement necessarily involves an exchange of value; a quid pro quo. The statute does not include any mention of obtaining funds from contract payments, consideration, or sponsorship fees. When it comes to some form of sponsorship of a state program, the Ethics Commission actually looks for a reciprocal benefit to both sides of the transaction because this clear exchange of value is not considered to violate the prohibition of private gain from public office.

Based upon the factors I have set out, it is my belief that although there is a recognizable public benefit from the operation of the WVCP, there is not sufficient statutory authorization that would support approval by the Ethics Commission for private sponsorship of the program. It is my recommendation that if the Division of Highways seeks to fund the program in such manner, that the agency request legislation that specifically authorizes it.

3. If the state seeks private sponsorship of the WVCP, the DOH should promulgate rules to provide for a fair and neutral process of managing sponsors.

If the DOH adopts a sponsorship program for the WVCP, the agency will have to ensure fairness in the process and recognize that this program will be subject to the requirements of due process, free speech and other constitutional provisions. Therefore the DOH should consider legislative rules to provide for conditions that are reasonably likely to arise. In drafting these rules, the agency should, at a minimum, consider how to allocate or apportion the recognition of sponsorships if more than one company wishes to participate, how competition

between companies will be handled, and what provisions there should be for termination or substitution of sponsorships.

CONCLUSION

Under the state law, the current operation of the West Virginia Courtesy Patrol Program may subject the agency to legal liability by virtue of rule requiring state-owned vehicles to be driven by state employees. If the DOH seeks obtain funding for the program from private sources, the DOH should request legislation that specifically authorizes such an arrangement and should carefully draft legislative rules to ensure fairness in the solicitation, retention and termination of sponsors.

DOREN BURRELL

Attorney

Office of Legislative Services

APPENDIX B MANAGEMENT RESPONSE

June 2, 2015

**Mr. Denny Rhodes, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610**

Dear Mr. Rhodes:

I write to express my concurrence with the findings and recommendations outlined in the compliance audit conducted by your office relating to the operation of the Courtesy Patrol Program.

I have asked my staff to begin formulating a feasible plan to transition the Courtesy Patrol Program to a fully internal operation, managed by the Division of Highways. This plan will review all reasonable future options to maintain this public service while minimizing costs by seeking to attain available federal and state resources. Further, my office will examine potential corporate sponsorship opportunities to assist in offsetting the agency's costs.

I expect that the finalized proposed plan will be available to the Joint Committee on Government and Finance by its October 2015 interim meeting.

Sincerely,

**Paul A. Mattox, Jr., P.E.
Secretary of Transportation/
Commissioner of Highways**

PAM:Sj

