

STATE OF WEST VIRGINIA

**Update of the
PRELIMINARY PERFORMANCE REVIEW OF THE**

West Virginia Racing Commission

**Planned Compliance with 3 Recommendations
In Compliance with 1 Recommendation
Non Compliance with 1 Recommendation**

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

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

November 2001

PE01-19-218

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November 2001

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
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(304) 347-4890
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John Sylvia
Director

November 11, 2001

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

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


Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting an Update of the Preliminary Performance Review of the *West Virginia Racing Commission*, which will be presented to the Joint Committee on Government Operations on Sunday, November 11, 2001. The issues covered herein are "Planned Compliance with 3 Recommendations"; In Compliance with 1 Recommendation;" and "Non Compliance with 1 Recommendation."

We transmitted a draft copy of the report to the Commission on October 11, 2001. On October 17, the Commission requested an extension of time so that it could fully respond. We conducted an exit conference with the Racing Commission on October 24, 2001. We received the agency response on October 30, 2001. We faxed the revisions to the report to the Commission on November 8, 2001.

Let me know if you have any questions.

Sincerely,


John Sylvia

JS/wsc

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Executive Summary

This report is the second update of the Preliminary Performance Review of the West Virginia Racing Commission. The original report was issued in January 1999 and was updated in October 1999. This report is conducted in accordance with the West Virginia Sunset Law, West Virginia Code, Chapter 4, Article 10, Section 5a. The purpose of this update is to determine whether or not the agency has complied with the recommendations made in the original review.

The January 1999 review identified the following issues:

1. The Racing Commission Lacks Security Due to the Absence of a Director of Security or an Inspector at Each Track.
2. Racing Commission Employees Are Not Receiving Annual or Sick Leave.
3. The Racing Commission Lacks the Necessary Controls for Expenditures for the WV Breeder's Classic.

The October 1999 update found the Commission was in compliance with recommendations 5 and 6 and in partial compliance with recommendation 7 and in non-compliance with recommendations 1, 3, 4, and 8. Recommendation 2 required legislative action. This update uses the following designations of levels of compliance :

Table 1
Levels of Compliance

<u>In Compliance</u> - The Commission has corrected the problems identified in the review.
<u>Partial Compliance</u> - The Commission has partially corrected the problem identified in the review.
<u>Planned Compliance</u> - The Commission has not corrected the problem but has provided sufficient documentary evidence to find that the Commission will do so in the future.
<u>In Dispute</u> - The Commission does not agree with either the problem identified or the proposed solution.
<u>Non-Compliance</u> - The Commission has not corrected the problem identified in the review.
<u>Requires Legislative Action</u> - The recommendation was intended to call to the attention of the Legislature to one or more statutory issues.

The West Virginia Racing Commission is in **Planned Compliance** with Recommendation 1; **Planned Compliance** with Recommendation 3; **In Compliance** with Recommendation 4; **Non Compliance** with Recommendation 7; and **Planned Compliance** with Recommendation 8.

Issue 1: The Racing Commission Lacks Security Due to the Absence of a Director of Security or an Inspector at Each Track.

Recommendation 1:

The Racing Commission should hire more security officers and investigators as required by the West Virginia Code, as amended.

Level of Compliance: Planned Compliance

The Racing Commission has initiated the process to hire one investigator at each race track. See Appendix D.

Issue 2: Racing Commission Employees Are Not Receiving Annual or Sick Leave.

Recommendation 3:

The West Virginia Racing Commission should change the current per diem employees to bi-monthly, salaried employees so they are able to accrue sick and annual leave.

Level of Compliance: Planned Compliance

The Racing Commission has accumulated weekly data from the implementation of recommendation four that will enable the Commission to arrive at a compensation package. The Commission, with the full support of the Department of Tax and Revenue, intends to begin implementation of this recommendation with its four full time veterinarians.

Recommendation 4:

The Racing Commission should require all employees to complete time sheets.

Level of Compliance: In Compliance

Beginning in October 1999, the Racing Commission has required employees to complete time sheets. The form is available in Appendix B.

Issue 3: The Racing Commission Lacks the Necessary Controls for Revenues and Expenditures for the WV Breeder's Classic.

Recommendation 7:

The Racing Commission should promulgate Legislative Rules pertaining to promotional expenditures for the West Virginia Breeder's Classic or any other expenditures for stakes races paid from funds controlled by the Commission.

Level of Compliance: Non Compliance

The Racing Commission has not promulgated rules since the original report, nor has it indicated that it intends to promulgate rules pertaining to promotional expenses for the Breeders Classic. In August 1999, the Purchasing Division awarded West Virginia Breeder's Classic, LTD sole source provider status. In October 1999 the Racing Commission reported that "the desired goals and objectives" of the recommendation were achieved by the contract with the West Virginia Breeder's Classic, LTD.

In September 2001, the Racing Commission reported that:

No rule per se has been submitted yet. To address this [The Director of Racing] was appointed as chairperson of the "Committee to Enhance the Quality and Quantity of Racing Thoroughbreds in West Virginia". This Committee is comprised of thoroughbred breeders, racing officials, and representatives of racetrack management. They have been tasked in their meetings to make recommendations to the West Virginia Racing Commission on this matter.

The Legislative Auditor recommended that the Commission promulgate rules so that allowable promotional expenses would be clearly defined. Although the Racing Commission has taken action to bring more controls over the Breeder's Classic expenditures, there is a need to define what are appropriate means of promoting and what sources are also appropriate such as radio, television and the emergence of the internet.

Recommendation 8:

The Racing Commission should immediately close the local bank account for the Breeder's Classic funds and transfer the balance and any future proceeds into a state account with the State Auditor's Office.

Level of Compliance: Planned Compliance

The outside bank account for the Breeder's Classic fund contains over \$10 million. (See Table 2).

Table 2
West Virginia Racing Commission Racetrack Video Lottery Account

	Fiscal Year 2000	Fiscal Year 2001
Deposits	\$2,870,230	\$4,586,519
Expenditures	\$1,060,101	\$2,098,718
Year End Balance	\$6,989,650	\$10,614,421
Source: Information provided by the Racing Commission at the request of the Legislative Auditor.		

On October 30, 2001, the Commission informed the Legislative Auditor that it intends to seek a statutory change that "would require this outside bank account to be an additional special revenue fund for which we would be required to submit to the annual budget process involving the executive and legislative branches of government". As a special revenue account the Breeder's Classic fund would be a state account administered by the State Auditor's Office and the Treasurer's Office.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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



John Sylvia
Director

October 11, 2001

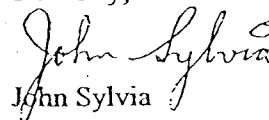
Linda Lacy, Executive Director
West Virginia Racing Commission
106 Dee Drive
Charleston, WV 25311

Dear Ms. Lacy:

Attached is a draft copy of the Update of the Preliminary Performance Review of the West Virginia Racing Commission. This report is scheduled to be presented at the Sunday, October 21 interim meeting of the Joint Committee on Government Operations. It is expected that a representative from your agency be present at the interim meeting to orally respond to the report and answer any questions the committee may have. We would like to schedule an exit conference with you (at our office or on the telephone) to discuss any concerns you may have about the report between Monday, October 15th and Wednesday, October 17th. Please contact Shannon Riley, Research Analyst to schedule at your earliest convenience. We will need to receive your written response to the report no later than noon on Thursday, October 18th in order for us to include your response in this report.

We do not yet have the schedule for the time and location of the interim meeting, but we will contact you as soon as this information is available. Thank you for your assistance in providing information and responding to letters and phone calls in a timely and helpful manner.

Sincerely,


John Sylvia

c: Brian Kastick, Cabinet Secretary
Joe Cuomo, Director of Racing

Joint Committee on Government and Finance

APPENDIX B

**West Virginia Racing Commission
Official Hourly Time Sheet**

**WEST VIRGINIA RACING COMMISSION
OFFICIAL HOURLY TIME SHEET**

EMPLOYEE: _____

TRACK: _____

TIME PERIOD: _____

	<u>TIME IN</u>	<u>TIME OUT</u>	<u>TIME IN</u>	<u>TIME OUT</u>	<u>TOTAL HOURS:</u>
SUNDAY	_____	_____	_____	_____	_____
MONDAY	_____	_____	_____	_____	_____
TUESDAY	_____	_____	_____	_____	_____
WEDNESDAY	_____	_____	_____	_____	_____
THURSDAY	_____	_____	_____	_____	_____
FRIDAY	_____	_____	_____	_____	_____
SATURDAY	_____	_____	_____	_____	_____
				TOTAL	=====

I, _____, hereby certify that I have recorded the above
(Employee's signature)

listed times and hours and that they accurately and truly record my actual presence and work schedule for the indicated time period while discharging my duties.

REVIEWED BY SUPERVISOR: _____
(Signature)

APPENDIX C

**West Virginia Racing Commission
Racetrack Video Lottery Account**

LINDA L. LACY
EXECUTIVE SECRETARY

106 Dee Drive
Charleston, WV 25311



Phone (304) 558-2150
Fax (304) 558-6319

E-mail lacyl@wvnet.edu
Web Site www.state.us/racing/

STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
WEST VIRGINIA RACING COMMISSION

Bob Wise
Governor

Memorandum

To: Ms. Shannon Riley
Research Analyst
Performance Evaluation and Research Division
Legislative Auditor's Office

From: Linda L. Lacy

Date: October 3, 2001

Subject: "West Virginia Racing Commission Racetrack Video Lottery Account"

Facsimile Transmission: (304) 347-4939

Here is the information that you requested pertaining to the above cited account as it relates to total deposits and total expenditures for Fiscal Years 2000 and 2001.

If any other information is needed, please advise.

JFC/sp

West Virginia Racing Commission Racetrack Video Lottery Account

Deposits and Expenditures
Fiscal Years 2000 and 2001

	<u>Fiscal Year 2000</u>	<u>Fiscal Year 2001</u>
<u>Deposits</u>	\$2,870,229.82	\$4,586,519.33
<u>Expenditures</u>	\$1,060,101.00	\$2,098,718.06

Note: This account is provided for in Chapter 19, Article 23, Section 13c of the West Virginia Code.

LINDA L. LACY
EXECUTIVE SECRETARY

106 Dee Drive
Charleston, WV 25311



Phone (304) 558-2150
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STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
WEST VIRGINIA RACING COMMISSION

Bob Wise
Governor

October 3, 2001

Ms. Ida Mary B. Hull
F & M Bank
Post Office Box 40
Ranson, West Virginia 25438

Facsimile Transmission: (304) 725-3671

Dear Mr. Hull:

This correspondence is in reference to our account No. 1223585.

Please change the title or caption of this account to read **only** as follows:

"West Virginia Racing Commission
Racetrack Video Lottery Account"

This title should appear on your records as well as on our monthly statements. This title reflects correctly the change made by the West Virginia Legislature.

If you have any questions, please advise.

Sincerely,

A handwritten signature in cursive script that reads "Linda L. Lacy".

Linda L. Lacy

JFC/ii

APPENDIX D
Agency Response

LINDA L. LACY
EXECUTIVE SECRETARY

106 Dee Drive
Charleston, WV 25311



Phone (304) 558-2150
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STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
WEST VIRGINIA RACING COMMISSION

Bob Wise
Governor

October 17, 2001

Mr. John Sylvia
Director
Performance Evaluation and Research Division
Joint Committee on Government and Finance
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Dear Mr. Sylvia:

This is in response to your correspondence dated October 11, 2001, with an attached copy of the "Update of the Preliminary Performance Review of the West Virginia Racing Commission".

The West Virginia Racing Commission met on Friday, October 12, 2001, and discussed the "Update of the Preliminary Performance Review of the West Virginia Racing Commission".

On behalf of the Chairman Mr. Robert J. Burke, and his fellow members Commissioner Dr. Bryan F. Mitchell, and Commissioner Andrew A. Payne III the following are the responses for your consideration.

The West Virginia Racing Commission respectfully requests that we be granted an extension of time to fully respond since it is necessary to consult with racing association personnel on matters of an inspector at each racetrack. Members of the West Virginia Racing Commission will be consulting with racing association personnel as set forth in 178-2-23.4 of the *Greyhound Rules of Racing* and 178-1-33.4 of the *Thoroughbred Rules of Racing* concerning inspectors pursuant to Chapter 19, Article 23, Section 5 of the *West Virginia Code*. It is expected that all information for a response will be available for the interim meeting in November.

Issue Area I: "The Commission lacks security due to the absence of a Director of Security or an Inspector at each track".

Response: In our initial written response to Mr. David Mullins dated September 19, 2001, on this issue, reference was made to the title of Director of Racing being assigned, with additional duties, to our Director of Audits. In making this reference, the purpose was not supplant or replace inspector positions, but rather the sole purpose was, and continues to be, to effect a plan to utilize the aforementioned Greyhound Rule 178-2-23.4 and Thoroughbred Rule 178-1-33.4 (see attached verbatim copies) in this manner:

(A). Under the provisions of these rules, at least one (1) inspector would be designated under the terms of the rules;

(B). At the thoroughbred racetracks, the inspector would be directed daily by the three member on-site Board of Stewards (two of whom are Racing Commission paid employees). Each inspector would have his/her duties and responsibilities fixed by the Racing Commission, but each would be directed daily by the Board of Stewards. The Director of Racing and Executive Secretary will monitor this procedure. This same procedure would be established at the two greyhound racetracks with the on-site Board of Judges (presided over by a Racing Commission employee) directing each day the inspectors' duties and responsibilities.

The Following is quoted from your "Update of the Preliminary Performance Review of the West Virginia Racing Commission" under your cover letter dated October 11, 2001:

"These new rules... give the commission authority to designate special investigators, paid by the racing associations, at each track. The Racing Commission has not exercised this authority as of October 2001. These rules provide authority which would comply with the recommendation if exercised".

This is quoted since, on Friday, October 12, 2001, the Racing Commission decided to implement these rules but needs additional time (until the November legislative interim meeting) to consult with the racing association.

Issue Area 2: "Racing Commission Employees are not Receiving Annual and Sick Leave"

Response: The Racing Commission has accumulated data concerning work schedules over the past two years (approximately) to ascertain which of the per diem employees qualify for sick and annual leave. This data will serve as a basis for determining eligibility. We will be working with and seeking assistance from the West Virginia Department of Personnel to affect this policy.

In addition, we have prepared and submitted a "Request for Supplemental Appropriation for fiscal year 2002" as well as an "Improvement Above Current Level Request for fiscal year 2003" to provide funding to pay for the replacement or substitute employees; (see attached)

Issue Area 3: “The Racing Commission Lacks the Necessary Controls for Revenues and Expenditures for the West Virginia Breeder’s Classic”.

Response: During its meeting on Friday, October 12, 2001, the Racing Commission approved the following in order to effect controls:

(1). Chapter 19, Article 23, Section 13c (b) (1) of the West Virginia Code be amended to add this paragraph:

“Provided, that beginning with fiscal year two thousand and three and in each fiscal year thereafter in which the Racing Commission anticipates spending any money from the account, the Racing Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of promotional activities, advertising, administrative costs, and stakes purses for the West Virginia Thoroughbred breeders classic”.

We are submitting this proposed language for enactment into the statute. The Racing Commission currently has four (4) special revenue budgets. Adopting this language would give us a fifth special revenue budget as well as provide control over revenue and expenditures for the West Virginia Breeders Classic through executive department and legislative oversight as is the situation involving our current special revenue funds 7300, 7304, 7305, and 7307;

Issue Area 4: “The Commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures and unobligated balance in the special bank accounts authorized by this section”.

Response: We concur that no quarterly report was filed with the legislative auditor for this fund. **We apologize for this unintended oversight.** Our executive secretary after serving fifteen years in this position retired. During the transitional period and hiring the replacement, other duties were emphasized to the exclusion of the quarterly reports which were unintentionally overlooked. Attached are the quarterly figures to document the figures submitted in “Table 2” of the “Update of the Preliminary Performance Review of the West Virginia Racing Committee” submitted under your cover letter dated October 11, 2001. In addition, we are providing information for the quarter ending September 30, 2001, as well as providing the required information to the State Treasurer;

Issue Area 4 (continued): “Legislative Oversight Abolished”

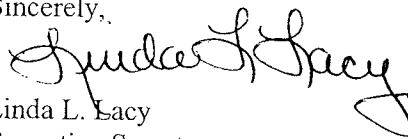
Response: “The Racing Commission was not aware of this until informed recently. Further, there was no fiscal note request sent to the Racing Commission (as is the usual practice when legislation affecting racing is introduced).

Please note that we do file detailed annual revenue and expenditure data with the Department of Administration's Financial Accounting and Reporting Section (FARS) and submit to the Legislature an accounting of this account in our Annual Report.

Notwithstanding the abolishing of this legislative oversight, we will submit quarterly data as previously required to the legislature.

Again, thank you for the opportunity to provide these written responses and we are requesting postponement of our appearance before the interim meeting until November which will allow us to have a definitive response which would fully address the matter involving inspectors.

Sincerely,



Linda L. Lacy
Executive Secretary

JFC/sp

Attachments

pc: Mr. Brian Kastick
Cabinet Secretary
Department of Tax and Revenue

LINDA L. LACY
EXECUTIVE SECRETARY

106 Dee Drive
Charleston, WV 25311



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STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
WEST VIRGINIA RACING COMMISSION

Bob Wise
Governor

October 30, 2001

Mr. John Sylvia
Director
Performance Evaluation and Research Division
Joint Committee on Government and Finance
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Facsimile Transmission: (304) 347-4939

Dear Mr. Sylvia:

In our letter to you dated October 17, 2001, we requested an extension of time to fully respond to the findings of the "Update of the Preliminary Performance Review of the West Virginia Racing Commission".

The request for an extension of time centered on one finding in particular for which time was needed to coordinate with our two (2) greyhound racetracks to implement a *Greyhound Rule of Racing*, 178-2-23.4 and to implement a *Thoroughbred Rule of Racing, 178-1-33.4*. Both of these citations concern inspector positions at these four (4) racetracks.

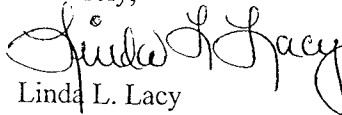
Since Mr. Joseph F. Cuomo and I met with you and David Mullins on Wednesday, October 24, 2001, we have worked with the four (4) racetracks to implement these cited rules. Attached is a letter from each of the four (4) racetracks committing to establishing and maintaining these inspector positions under the precise terms of the rules including their (i.e., racing associations) funding these positions with these inspectors' duties and responsibilities being proscribed by the West Virginia Racing Commission. Mr. Cuomo is now working with the racing associations in developing and implementing these inspector positions.

On another matter, (see attached) we have sent a letter to Mr. Brian M. Kastick, Cabinet Secretary for the Department of Tax and Revenue, requesting that the statute involving the outside bank account concerning the "West Virginia Thoroughbred Breeders Classics" be amended to require all expenditures from this account be subject to the annual budget process as is the case with our current four (4) special revenue funds (i.e., 7300, 7304, 7305, and 7307). Specially, we are seeking a statutory change that would require this outside bank account to be an additional special revenue fund for which we would be required to submit to the annual budget process involving the executive and legislative branches of government.

On Thursday, October 25, 2001, Mr. Cuomo and I met (along with other divisions of the Department of Tax and Revenue) with Mr. Gregory A. Burton, Cabinet Secretary for the Department of Administration, and his staff in a formal budget hearing to request additional funding to provide sick and annual leave for our per diem employees. This is in reference to a finding in the "Update of the Preliminary Performance Review of the West Virginia Racing Commission".

On behalf of the West Virginia Racing Commission, thank you for the opportunity to present this information and thank you for the courtesies extended to us by you, Mr. Mullins, and Ms. Riley.

Sincerely,



Linda L. Lacy
Executive Secretary

JFC/sp

Attachments

cc: Mr. Brian M. Kastick
Cabinet Secretary
Department of Tax and Revenue

LINDA L. LACY
EXECUTIVE SECRETARY

106 Dee Drive
Charleston, WV 25311



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STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
WEST VIRGINIA RACING COMMISSION

Bob Wise
Governor

October 24, 2001

Mr. Brian M. Kastick
Cabinet Secretary
Capitol Complex
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Dear Mr. Kastick:

In a recent Legislative Auditor's Report, the following finding was set forth:

"The Racing Commission lacks the necessary controls for revenues and expenditures for the West Virginia Breeder's Classic".

During its meeting on Friday, October 12, 2001, the Racing Commission approved the following in order to effect controls:

(1). Chapter 19, Article 23, Section 13c (b) (1) of the West Virginia Code be amended to add this paragraph:

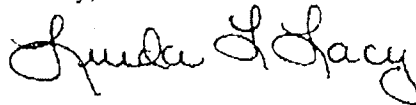
"Provided, that beginning with fiscal year two thousand and three and in each fiscal year thereafter in which the Racing Commission anticipates spending any money from the account, the Racing Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of promotional activities, advertising, administrative costs, and stakes purses for the West Virginia Thorough Breeders Classic".

Page 2
Memorandum
October 24, 2001

We are submitting this proposed language to you as a legislative request to be sponsored by the Governor for enactment into the statute. The Racing Commission currently has four (4) special revenue budgets. Adopting this language would give us a fifth special revenue budget as well as provide control over revenue and expenditures for the West Virginia Breeders Classics through executive department and legislative oversight as is the situation involving our current special revenue funds 7300, 7304, 7305, and 7307.

If any other information is needed, please contact this office.

Sincerely,



Linda L. Lacy
Executive Secretary

JFC/III

pc: Mr. John Sylvia, Director
Performance Evaluation and Research Division
Joint Committee on Government and Finance
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610