



May 2010  
PE 10-01-468

## Compliance Review

# DEPARTMENT OF COMMERCE DIVISION OF TOURISM

## AUDIT OVERVIEW

The Division of Tourism Has Promulgated Legislative Rules for the Disbursement of Direct Advertising Grants From the Tourism Promotion Fund

The Tourism Commission Is in Compliance With Requirements in West Virginia Code §12-4-14

The Tourism Commission Has Developed a Plan for Funding Projects Under a Reduced Revenue Scenario and Maintains Records of Grant Funding Decisions as Required by the Records Management and Preservation Act

The Tourism Commission Has Made Changes to the Audit Process



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## EXECUTIVE SUMMARY

This review is a Compliance Review of the December 2004 Performance Evaluation of the West Virginia Division of Tourism (Division). The purpose of this review is to determine whether the Division has complied with recommendations made in that report. Compliance with seven recommendations was evaluated, of which six required action by the Tourism Commission and one required legislation. As recommended in the previous report, the Commission has developed legislative rules in compliance with West Virginia Code §5B-2-12(c) and maintains records of grant funding decisions as required by the Records Management and Preservation Act. The Commission also notifies grantees of independent audit requirements and sanctions grantees for noncompliance as required by West Virginia Code §12-4-14.

In response to the Legislative Auditor's recommendation, the Legislature added a stipulation to West Virginia Code requiring the Legislative Auditor to develop a state debar list of organizations sanctioned from receiving state grants. The Legislative Auditor also recommended in the 2004 report that the Commission maintain a database to track whether grant recipients comply with the audit requirements in §12-4-14. Although the Commission does not have a separate database for tracking compliance, by using the Legislative Auditor's database, the Commission complies with the intent of the recommendation.

The 2004 report found that the process by which the Commission's audit committee audited grant recipients was not conducted legally. The Commission has since made changes to the audit process and now the committee notifies the full Commission of audit findings in compliance with the law and the Commission notifies CSI of all cases of potential fraud as recommended by the Legislative Auditor.

This review uses the following designations for compliance with previous recommendations made by the Legislative Auditor:

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The Legislative Auditor finds that the Division is in full compliance with all recommendations of the 2004 Performance Review.

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<b>Table 1 Levels of Compliance</b>	
In Compliance	The Division has corrected the problem(s) identified in the previous report.
In Compliance with Updated Code Requirements	The Division is in compliance with statutory changes that have occurred since the release of the previous report.
Partial Compliance	The Division has partially corrected the problem(s) identified in the previous report.
Planned Compliance	The Division has not corrected the problem(s) identified in the previous report, but has provided sufficient documentation that the agency will do so in the future.
In Dispute	The Division does not agree with either the problem identified or the proposed solution.
Non-Compliance	The Division has not corrected the problem(s) identified in the previous report.
Requires Legislative Action	The recommendation was intended to call the attention of the Legislature to one or more issues that may or may not require statutory changes.
Legislation Enacted	The Legislature took legislative action to issues raised by the Legislative Auditor in the 2004 report.

## OBJECTIVE, SCOPE & METHODOLOGY

### **Objective**

This Compliance Review of the West Virginia Division of Tourism was conducted as part of the Departmental Review of the West Virginia Department of Commerce mandated by West Virginia Code §4-10-8(b)(3). The objective of this review was to determine the Division's compliance with recommendations made in a 2004 Performance Evaluation of the Division by the Legislative Auditor.

### **Scope**

The scope of this report was actions taken by the Division since the release of the Legislative Auditor's report in December 2004 as they pertain to recommendations in the report.

### **Methodology**

In order to determine the Division's compliance with previous recommendations, the Legislative Auditor interviewed Division staff, assessed information provided by the Division, and reviewed information found in the West Virginia Code of State Rules, Tourism Commission meeting minutes, and grant application documentation.





## ISSUE 1

### **The Division of Tourism Has Promulgated Legislative Rules for the Disbursement of Direct Advertising Grants From the Tourism Promotion Fund.**

#### **Recommendation 2**

*The Legislative Auditor recommends that the Tourism Commission propose legislative rules in compliance with West Virginia Code §5B-2-12.*

#### **Level of Compliance: In Compliance**

The Tourism Promotion Fund was created in 1995. An amount of \$4,700,000 is transferred from the Tourism Promotion Fund to the Courtesy Patrol Fund for the courtesy patrol program, which assists motorists on the state's highways. If there are funds remaining, a minimum of five percent is to be used for direct advertising for state travel and tourism. No less than 20 percent of these advertising funds are to be used to promote and market state parks, forests, recreation areas, and wildlife recreational resources.

West Virginia Code §5B-2-12(c) specifically requires that these funds be used pursuant to legislative rules promulgated by the Tourism Commission (Commission). In a report published in December 2004, the Legislative Auditor pointed out, rather than promulgating legislative rules for the use of advertising funds, the Commission had developed administrative rules. This denied the Legislature appropriate oversight of how fund benefits were to be granted or denied and made it uncertain whether or not legislative intent was being followed. Based on this information, the Legislative Auditor recommended that the Tourism Commission propose legislative rules in order to comply with West Virginia Code §5B-2-12.

On May 8, 2009 the Division of Tourism filed Legislative Rule Title 144, Series 1, which governs the Direct Advertising Grants Program funded by the Tourism Promotion Fund.

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In a report published in December 2004, the Legislative Auditor pointed out that, rather than promulgating legislative rules for the use of advertising funds, the Commission had developed administrative rules. This denied the Legislature appropriate oversight of how fund benefits were to be granted or denied and made it uncertain whether or not legislative intent was being followed.

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On May 8, 2009 the Division of Tourism filed Legislative Rule Title 144, Series 1, which governs the Direct Advertising Grants Program funded by the Tourism Promotion Fund.

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## Issue 2

### **The Tourism Commission Is in Compliance With Requirements in West Virginia Code §12-4-14.**

#### **Recommendation 5**

*The Legislative Auditor recommends that the Tourism Commission notify grantees receiving over \$15,000 of the independent audit requirements stated in West Virginia Code §12-4-14.*

#### **Level of Compliance: In Compliance with Updated Code Requirements**

In 2005, the Legislature passed Senate Bill 4006, which changed the reporting requirements found in West Virginia Code §12-4-14. These changes include the following:

- The amount that would require a report was changed from \$15,000 aggregate in a calendar year to \$50,000 aggregate in a fiscal year.
- A stipulation was included to allow an audit of grant funds to be substituted for a compliance attestation engagement.
- Persons receiving grants less than \$50,000 are required to file a sworn statement of expenditures. Like the report required by grant recipients receiving more than \$50,000, this sworn statement must be submitted within two years of the disbursement of funds.

Grantors are still required to notify grantees of the reporting requirements. The Commission indicates compliance with these requirements as follows:

*Applicants must certify in their original application that they are in compliance with 12-4-14. Applicants are also notified of the reporting requirements in their approval letter. They are informed and educated on this requirement during trainings that have been held in various parts of the state, and the Internal Auditor works with applicants to ensure that Reports and Sworn Statements of Expenditures are received by the deadlines.*

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In 2005, the Legislature passed Senate Bill 4006, which changed the reporting requirements found in West Virginia Code §12-4-14. The Commission is in compliance with these updated code requirements.

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## Recommendation 6

*The Legislative Auditor recommends that the Tourism Commission require grantees to provide the Commission with a copy of independent audits and that the Commission sanction grantees who do not comply with §12-4-14 as required by code.*

### **Level of Compliance: In Compliance with Updated Code Requirements**

As mentioned above, West Virginia Code §12-4-14 was amended in 2005; however, grantors are still required to report noncompliant grantees to the Legislative Auditor for debarment from future grant receipt. The Commission indicates that:

*...Applicants who are found not to be in compliance are reported to the Legislature and disbarred from further grants and reimbursements until in compliance.*

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Grant applicants who are not in compliance with West Virginia Code §12-4-14 are reported to the Legislature and disbarred from further grants and reimbursements until in compliance.

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## Recommendation 7

*The Legislative Auditor recommends that the Tourism Commission maintain a database to track whether or not grant recipients have complied with the audit requirements of §12-4-14.*

### **Level of Compliance: In Compliance**

As discussed in further detail below, following the release of the 2004 report, the State Agency Grant Awards system (SAGA) was created to help agencies comply with reporting requirements. In a report issued in January 2008, the Legislative Auditor found that the Division of Tourism was 1 of only 12 state agencies that were updating the SAGA database as required. In addition to using the WVFIMS commitment module/SAGA, the Division indicates:

*For older grants which were issued prior to WV Division of Tourism's use of the Commitment Module within FIMS, a log is maintained of incoming Reports and Sworn Statements of Expenditure.*

Although the Division does not have a separate database for tracking recipient compliance, the Legislative Auditor finds that, by using the SAGA system for new grant recipients and maintaining a log of required information for grants issued prior to the creation of SAGA, the Division of Tourism complies with the intent of the recommendation made in the 2004 report.

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Although the Division does not have a separate database for tracking recipient compliance, the Legislative Auditor finds that, by using the SAGA system for new grant recipients and maintaining a log of required information for grants issued prior to the creation of SAGA, the Division of Tourism complies with the intent of the recommendation made in the 2004 report.

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## Recommendation 8

*The Legislative Auditor recommends that the Legislature consider the development of a state debar list which would include all organizations sanctioned from receiving grants from state agencies.*

### Level of Compliance: Legislation Enacted

In addition to amending report requirements for grantees, Senate Bill 4006 added stipulations to West Virginia Code §12-4-14 requiring that a list be maintained of persons sanctioned for not complying with report requirements. West Virginia Code §12-4-14(e)(3) states:

*The Legislative Auditor shall maintain a list identifying persons who have failed to file reports and sworn statements required by this section. The list may be in the form of a computerized database that may be accessed by state agencies over the internet.*

In response to this change in code, the West Virginia Financial Information Management System (WVFIMS) Commitment module was updated to include State Agency Grant Awards (SAGA), which became fully operational in October 2006, in order to help agencies comply with report requirements. Agencies are able to consult the list of grantees available online at <http://www.legis.state.wv.us/SAGA/Agency.cfm> in order to verify that potential grantees are not disqualified from receiving grant funds due to past noncompliance.

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Senate Bill 4006 added stipulations to West Virginia Code §12-4-14 requiring that a list be maintained of persons sanctioned for not complying with report requirements.

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In response to this change in code, the West Virginia Financial Information Management System (WVFIMS) Commitment module was updated to include State Agency Grant Awards (SAGA), in order to help agencies comply with report requirements.

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## Issue 3

### **The Tourism Commission Has Developed a Plan for Funding Projects Under a Reduced Revenue Scenario and Maintains Records of Grant Funding Decisions as Required by the Records Management and Preservation Act.**

#### **Recommendation 9**

*The Legislative Auditor recommends that the Tourism Commission develop a plan on funding projects under a reduced revenue scenario.*

#### **Level of Compliance: In Compliance**

In the 2004 Performance Evaluation of the Tourism Division, the Legislative Auditor pointed out that the passage of SB 197 and the resulting reallocation of video lottery revenue greatly decreased the availability of funds for grants under the Tourism Promotion Fund and recommended the Commission reevaluate its method of funding projects in response to these changes. In its Legislative Rule, the Division of Tourism addressed this issue with the following stipulation:

*CSR §144-1-4.4 Grants will be awarded on a competitive basis, in accordance with program priorities established by section 4.3 above. The Commission anticipates that the demands on the tourism promotion fund will soon exceed the available monies in that fund. In the event that the fund does not have sufficient monies to fund the grants seeking funding, the Commission will award grants based on how successfully the grants meet the evaluation criteria. The Commission reserves the right to award some grants and deny others, as well as the right to fund grants at a level less than the 50% match.*

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The Tourism Commission includes stipulations in its Legislative Rule for funding projects under a reduced revenue scenario.

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#### **Recommendation 10**

*The Legislative Auditor recommends that documentation supporting funding decisions be retained in accordance with the Records Management and Preservation Act.*

#### **Level of Compliance: In Compliance**

At the time of the 2004 Performance Evaluation, the Commission was utilizing a scoring system to evaluate applications and award grants based on criteria laid out in CSR §144-02-5, which has since been eliminated. No documentation was retained regarding these funding

decisions, which was a violation of the Records Management and Preservation Act. The Commission has since changed its procedure as follows:

*The current procedure is on a pass/fail basis as recommended by the Grants Committee to the full Commission. All grant funding decisions are reflected in the minutes of the Tourism Commission meetings which are all kept on file at the Division of Tourism.*

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The Commission retains records of funding decisions in compliance with the Records Management and Preservation Act.

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## Issue 4

### **The Tourism Commission Has Made Changes to the Audit Process.**

#### **Recommendation 11**

*The Legislative Auditor recommends that the audit committee notify the full commission of all audit findings and make recommendations to the full commission for disposition.*

#### **Level of Compliance: In Compliance**

In its Legislative Rule governing the Direct Advertising Grants Program from the Tourism Promotion Fund, the Division specifies that agencies receiving grant funds may be subject to audit, stating:

§144-1-8.1. *The state reserves the right to review/audit an applicant's and/or partner's records, including financial statements and supporting records, relating to the project. Records, including financial statements and supporting records, must be retained by the applicant and all partners for a minimum of three years after the close of the project.*

§144-1-8.2. *Upon discovery of any violation of the terms of the agreement, these rules, or state or federal law by the applicant or by any partner to the grant application, the state may terminate any project agreement and/or reject any future applications from such applicant or any partner to the grant application.*

The Legislative Auditor commends the Division and Commission for recognizing the need for fiscal responsibility and for establishing an audit process in order to ensure compliance and accountability. At the time of the 2004 performance evaluation of the Division of Tourism, however, it was found that the audit process was not conducted legally. Although the official audit process required the Audit Committee to communicate all audit findings and recommendations to the full Commission, in practice the Committee only notified the full Commission of findings in two of five audits that were in noncompliance. A legal opinion obtained by the Legislative Auditor found that the Commission could not legally:

*...delegate to a subcommittee any responsibility that requires Commission action, nor may one of its subcommittees take any action that would bind the*

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The Legislative Auditor commends the Division and Commission for recognizing the need for fiscal responsibility and for establishing an audit process in order to ensure compliance and accountability.

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*Commission, unless authorized by law or valid rule.*

Since January 2005, 70 audits have been completed by the internal auditor. The Commission indicates that, in that time, all issues of noncompliance were reported to the Audit Committee, but not all were reported to the full Commission. However, since the appointment of the current Tourism Commission Chairman in February 2009, there have been changes to the audit process. Under the leadership of the previous Chairman, the role of the audit committee was *to determine the significance of non-compliance and recommend the proper course of action*. In cases where potentially fraudulent activity occurred, the Committee would report the instance to CSI. The current Chairman believes *that all significant non-compliance should go before the full Commission as well as allowing the applicant an opportunity to appear, particularly in defense of a negative audit outcome*. The Commission states that the audit process currently consists of the following:

*The audit committee is composed of the Tourism Commission Chairman, legal counsel, internal auditor, Director of Administration, and the Commissioner of the Division of Tourism. Internal Audits are conducted by the agencies' Internal Auditor. Audit Reports are then provided to the Director of Administration, who notifies the Chairman. The Chairman convenes the audit committee. If audit findings exist, the Chairman will notify the Commission and request an appearance by the applicant before the Commission. The Commission will decide the final course of action. CSI is notified when instances of potential fraudulent activity have been discovered.*

As a result of changes to the audit process since February 2009, the Committee is now notifying the full Commission of audit findings.

## **Recommendation 12**

*The Legislative Auditor recommends that the Tourism Commission notify CSI about all instances of potential fraudulent activity for investigation and resolution.*

## **Level of Compliance: In Compliance**

The 2004 report found that two cases of noncompliance involved potential fraudulent activity which should have been referred to the Commission on Special Investigations (CSI) for investigation and determination of the need for prosecution. Instead, the Commission settled these issues without referring the matters to CSI. Four of the 70 audits completed by the internal auditor since January 2005 have revealed potentially fraudulent activity. The Tourism Commission indicates that all four cases were referred to CSI.

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As a result of changes to the audit process since February 2009, the Committee is now notifying the full Commission of audit findings.

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All cases since January 2005 that have revealed potentially fraudulent activity have been referred to CSI.

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## Appendix A: Transmittal Letter

### WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

May 4, 2010

Betty Carver, Commissioner  
West Virginia Division of Tourism  
90 MacCorkle Avenue, SW  
South Charleston, WV 25303

Dear Commissioner Carver:

This is to transmit a draft copy of the Compliance Review of the 2004 Performance Evaluation of the Division of Tourism. This report is scheduled to be presented during the May interim meetings of the Joint Committee on Government Operations and the Joint Committee on Government Organizations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule a conference to discuss any concerns you may have with the report, please notify us by May 7, 2010. We need your written response by noon on May 12, 2010 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, May 20, 2010 to make arrangements.

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

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

c: Kelley Goes, Cabinet Secretary, WV Department of Commerce

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*Joint Committee on Government and Finance*

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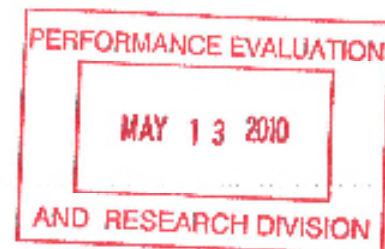


## Appendix B: Agency Response



May 12, 2010

Mr. John Sylva, Director  
Performance Evaluation and Research Division  
State Capitol Complex  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610



Dear Mr. Sylva:

We have received a draft copy of the report on the Compliance Review of 2004 Performance Evaluation of the Division of Tourism. We are in agreement with your conclusions and will have personnel available at the interim meeting to answer any questions by the committee members.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Betty B. Carver".

Betty B. Carver  
Commissioner





WEST VIRGINIA LEGISLATIVE AUDITOR

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