

STATE OF WEST VIRGINIA
AUDIT REPORT
OF
WEST VIRGINIA DIVISION OF HIGHWAYS
SPECIAL REPORT ON OVERTIME AND
ADDITIONAL COMPENSATION

FOR THE PERIOD

JULY 1, 2003- JUNE 30, 2006



OFFICE OF THE LEGISLATIVE AUDITOR
CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA 25305-0610

WEST VIRGINIA DIVISION OF HIGHWAYS
SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION
FOR THE PERIOD
JULY 1, 2003 - JUNE 30, 2005

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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CHARLESTON, WEST VIRGINIA 25305-0610

To the Joint Committee on Government and Finance:

The objectives of this Special Report were to understand and evaluate the Division of Highways (DOH) policies and procedures relating to overtime and additional compensation in order to determine if they were consistent with the directives conveyed in the Federal Fair Labor Standards Act (FLSA), the West Virginia Code and other governing rules and regulations. We also culminated the totals of overtime and additional compensation paid to exempt employees for the two-year period ended June 30, 2005.

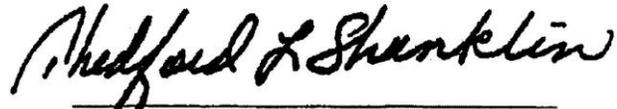
In order to achieve the objectives noted above, we performed the following:

- Obtained and reviewed all the DOH policies concerning overtime and additional compensation, applicable sections of the FLSA, the West Virginia Code, the DOH's Legislative Rules and Regulations, as well as other governing rules, regulations, policies, and procedures as they pertain to overtime and additional compensation.
- Obtained and reviewed employee overtime and additional compensation hours worked and paid as recorded on the DOH's electronic REMIS files for the period of July 1, 2003 through June 30, 2005;
- Conducted interviews with various DOH personnel to determine how overtime and additional compensation pay was calculated, how management determined those situations where overtime was warranted, the processes involved in determining those employees offered overtime work, and the internal controls in place monitoring overtime and additional compensation;
- Documented the DOH overtime and additional compensation procedures and obtained DOH approval of the documented procedures to ensure accuracy;
- Determined if management reports related to overtime and additional compensation worked were generated and, if so, how the reports were used by management;
- Determined the Division of Personnel (DOP) employee classifications of those employees that received overtime and additional compensation pay and ascertained if the DOH paid overtime and additional compensation to employees in excess of the DOP's determination of the FLSA overtime requirements;

- Conducted tests to determine if overtime and additional compensation calculations conformed with the FLSA, the West Virginia Code, DOH policies and procedures, and other governing rules and regulations.

Our report covers the period of July 1, 2003 through June 30, 2005. The results of our determination and evaluation are set forth on the following pages of this report.

Respectfully submitted,



Theoford L. Shanklin, CPA, Director
Legislative Post Audit Division

October 5, 2005

Auditors: Michael A. House, CPA, Assistant Director
Stanley D. Lynch, CPA, Auditor-in-Charge
Derek A. O'Neal
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WEST VIRGINIA DIVISION OF HIGHWAYS
SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION

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WEST VIRGINIA DIVISION OF HIGHWAYS
SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION
EXIT CONFERENCE

We held an exit conference on July 19, 2006 with the Director of Human Resources Division for the Division of Highways (DOH). All findings and recommendations contained in the Special Report on Overtime and Additional Compensation were reviewed and discussed. The above official's responses are included in bold and italics in the Executive Summary and after our findings in the General Remarks section of this report.

WEST VIRGINIA DIVISION OF HIGHWAYS
SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION
EXECUTIVE SUMMARY

I. Exempt Employees Received Overtime and/or Additional Compensation

For the period of July 1, 2003, through June 30, 2005, the DOH paid 441 employees \$2,023,922.27 in overtime and additional compensation in excess of what was required by the FLSA, State law or by Department of Transportation policy. Of this amount, \$1,133,409.13 was paid at an overtime rate (one and one-half times an employee's regular hourly rate multiplied by extra hours worked) and \$890,513.14 was paid at a straight time rate (an employee's regular hourly rate multiplied by extra hours worked). Most of this overtime and additional compensation was paid to employees classified as either Highway Engineers (\$1,024,006.05, 50.60% of total) or Highway Administrators (\$807,592.99, 39.90% of total).

Auditor's Recommendation

We recommend the DOH adopt a policy dealing with the conditions in which exempt employees receive overtime and the records to be maintained.

Agency's Response

We will comply with the recommendation. (See pages 4-8)

II. Management Approval of Overtime and Additional Work Hours

Overtime and additional compensation in excess of regular employee pay and the additional employment costs for the employer share of retirement, social security and medicare insurance totaled approximately \$36.65 million for fiscal years 2004 and 2005. According to DOH policy, scheduled overtime is to have the prior personal approval of the appropriate District Engineer or Division Director and emergency overtime should be reported to the appropriate office on the first working day after the incident. We tested 310 of these overtime and additional compensation disbursements totaling \$139,804.90; however, the DOH was unable to provide pre-approvals for scheduled extra work hours, or justification reports for emergency work hours for 199, or 64% of these payments totaling \$92,526.45.

Auditor's Recommendation

We recommend the DOH strengthen internal controls requiring management preapproval for scheduled work in excess of a regular workweek and the submission to management of reports with justifications for hours worked for emergency situations in compliance with DOH policy.

Agency's Response

We will comply with the recommendation. (See pages 8 - 10)

III. Reconciling Approved Excess Work Hours to Hours Paid

As stated above, overtime and additional compensation and the employer costs for social security, medicare, and retirement associated with it totaled approximately \$36.65 million for fiscal years 2004 and 2005. With the exception of DOH District Nine, overtime and additional compensation work hours were not reconciled to overtime and additional work hours approved by DOH District Engineers/Managers or Division Directors in as require by DOH policy.

Auditor's Recommendation

We recommend the DOH reconcile pre-approved scheduled additional work hours and reported emergency additional work hours to actual additional work hours entered into the REMIS system as required by the July 9, 1997 DOH policy memorandum.

Agency's Response

We will comply with the recommendation. (See pages 11 - 13)

IV. Employee Time Records

Of the 588 employee time records requested for our test of overtime and additional compensation, 104 could either not be located or were missing one or more of the required signatures. Signatures on these time records were required by DOH from the employee who prepared the time record, the employee's manager who approved the record, and the employee who entered DOH workers and their respective work hours into the computerized payroll accounting system.

Auditor's Recommendation

We recommend the DOH comply with Title 29, Part 516 of the Code of Federal Regulations and maintain all payroll records at least three years. We also recommend the DOH strengthen internal controls over approval signatures on employee time records.

Agency's Response

We will comply with the recommendation. (See pages 13 and 14)

WEST VIRGINIA DIVISION OF HIGHWAYS
SPECIAL REPORT ON OVERTIME AND ADDITIONAL COMPENSATION
GENERAL REMARKS

Objectives

The objectives of this special report were to understand and evaluate the Division of Highways (DOH) policies and procedures relating to overtime and additional compensation paid to DOH employees in order to determine if they were consistent with the directives conveyed in the Federal Fair Labor Standards Act (FLSA), the West Virginia Code, and other governing rules and regulations. This special report covers the period July 1, 2003 through June 30, 2005.

Exempt Employees Received Overtime And/or Additional Compensation

For the period of July 1, 2003 through June 30, 2005, the DOH paid 441 employees \$2,023,922.27 in overtime and/or other additional payments not required by either Federal or State law or by Department of Transportation (DOT) policy. Section 7, "Maximum Hours" of the FLSA requires employers to pay overtime for employees who work in excess of 40 hours per workweek as follows:

- A. . .SEC.7.35* (1) Except as otherwise provided in this section, no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. . . ."

In Section 13, "Exemptions" of the FLSA, certain types of employees are exempt -- based on job duties performed -- from the provisions in Section 7 as follows:

"SEC 13. . . . The provisions of... [section] 7 shall not apply to... any employee in a **bona fide executive, administrative, or professional capacity...**" (Emphasis added)

Section 5 of the DOT's Employee Handbook, which governs DOH employees, states in part:

“...Overtime must be authorized and approved in advance by proper authority. **Employees in executive, administrative, or professional positions are generally exempt from the overtime provisions under the Fair Labor Standards Act (FLSA).** Employees are required to pay overtime wages to eligible employees at a rate of time and one half their regular rate of pay for time worked beyond 40 hours in a work week.” **(Emphasis added)**

The West Virginia Division of Personnel (DOP) had listed these 441 employees' DOP job classifications as exempt from the FLSA overtime requirements. According to the Assistant Director of DOP's Classification and Compensation Division, the determination of the FLSA exempt/non-exempt guidelines for DOP job classifications was made with the assistance of the local district office of the United States Department of Labor's (DOL) Wage and Hour Division.

The DOP Assistant Director told us the DOL's Wage and Hour Division added the standard caveat that FLSA exempt/non-exempt designations for DOP job classifications were only guidelines; FLSA coverage of a position must be determined based on duties performed by an employee. Our analysis of employee duties, as denoted on DOH employee job descriptions and DOH employee performance evaluations for our test sample, were entirely consistent with FLSA exempt/non-exempt status guidelines determined by the DOP and the DOL.

Some of the more common classifications of exempt employees receiving pay in addition to their regular salaries and the amount of overtime and additional compensation received per classification for the two-year test period are detailed in the following table:

<u>Exempt Employee Classifications *</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>TOTALS</u>	<u>Amount as a Percentage of all Exempt Classifications**</u>
Highway Engineers 1-6	\$453,886.92	\$ 570,119.13	\$1,024,006.05	50.60%
Highway Administrators 1-4	414,950.04	392,642.95	807,592.99	39.90%
Admin.Service Managers 1-4	26,500.89	33,825.97	60,326.86	2.98%
Other Exempt Classifications	<u>67,538.43</u>	<u>64,457.94</u>	<u>131,996.37</u>	<u>6.52%</u>
TOTALS	<u>\$962,876.28</u>	<u>\$1,061,045.99</u>	<u>\$2,023,922.27</u>	<u>100.00%</u>

* As determined by the Division of Personnel and the Federal DOL Wage and Hour Division

** Percentages based on totals for Fiscal Years 2004 and 2005

According to data provided by the DOH, the total cost of the overtime and additional compensation paid to these FLSA exempt employees, including the employer share of social security, medicare and additional retirement, was approximately \$2.58 million.

Some of these FLSA exempt employees were paid hours worked over 40 in a workweek at one and one-half times their regular hourly rate (overtime) while other exempt employees received additional compensation at their regularly hourly rate (straight time). We selected 310 overtime and additional compensation payments and found 88 exempt employees were paid a total of \$32,981.14 in payments for overtime and additional compensation. Of this amount, 31 employees were paid \$12,058.43 at an overtime rate and 57 employees were paid \$20,922.21 at a straight-time hourly rate. We were able to determine from data provided by the DOH a breakdown of overtime and additional compensation paid to all exempt employees at each rate, as shown below:

<u>Hourly Pay Rate</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>Both Fiscal Years</u>
Overtime Hourly Rate	\$519,015.97	\$ 614,393.16	\$1,133,409.13
Straight-Time Hourly Rate	<u>450,820.51</u>	<u>439,692.63</u>	<u>890,513.14</u>
TOTALS	<u>\$969,836.48</u>	<u>\$1,054,085.79</u>	<u>\$2,023,922.27</u>

According to DOH personnel, the DOH compensates some employees who are classified by DOP as exempt at the overtime hourly rate because these employees may be performing duties that would not exempt them from FLSA overtime requirements. However, as stated earlier, our analysis of employee job descriptions and performance evaluations for our test sample agreed with the FLSA exempt/non-exempt status guidelines determined by the DOP with the assistance of the DOL's Wage and Hour Division. The DOH also paid many employees they determine to be exempt from FLSA additional compensation for hours worked in excess of a regular workweek at a straight-time hourly rate. We were unable to find any State, Federal or DOT statute or rule that required the DOH to pay "straight time" to these employees. Of the employees selected for testing, we saw no documentation supporting overtime payments made to exempt employees for performing non-exempt duties.

If the DOH had not paid overtime and additional compensation in excess of regular employee pay to FLSA exempt employees, the DOH would have had approximately \$2.58 million in additional funds available for other uses during the period of July 1, 2003 through June 30, 2005. The former District Engineer/Manager for DOH District Two told us that he has always viewed overtime as the means through which employees were able to supplement their income and "make-up" for their low pay.

We recommend the DOH adopt a policy dealing with the conditions in which exempt employees receive overtime and the records to be maintained.

Agency's Response

- *The nature of the agency's mission requires hours of work beyond the normal 40 hours per week for exempt employees. For example:*
 - *the current push for design work on the U. S. 35 project*
 - *contract administration and inspection during the construction season; the contractors work long hours which require our employees to do the same.*
- *The agency feels it is unacceptable to require exempt employees to consistently work excess hours without any form of additional compensation.*
- *Pay for excess hours makes agency employment attractive to professionals who can make a higher salary in the private sector. This a more accurate reflection of the concept embodied in the quote attributed to [former District Engineer/Manager for DOH District Two].*
- *If the agency were to contract out, or hire additional employees to perform, those activities being accomplished by exempt employees working excess hours, the cost would be greater to the agency.*
- *The agency intends to implement a formal policy on identification of exempt/non exempt personnel and payment for excess hours.*

Management Approval of Overtime and Additional Work Hours

According to records provided by the DOH, overtime and additional compensation in excess of regular employee pay and the additional employment costs for the employer share of

retirement, social security and medicare insurance totaled approximately \$36.65 million for fiscal years 2004 and 2005. We tested 310 of these disbursements totaling \$139,804.90; however, the DOH was unable to provide pre-approvals for scheduled extra work hours, or justification reports for emergency work hours for 199, or 64%, of these payments totaling \$92,526.45, as shown in the following table:

	<u>Number</u>	<u>Overtime or Additional Compensation Paid</u>
No Approval or Emergency Reports Available	199	\$ 92,526.45
Report Forms Approved by Organizational Supervisor	75	37,728.57
Amount Approved Less than Hours Paid	5	1,397.79
Properly Approved by or Reported to District/Division Engineer/Manager	<u>31</u>	<u>7,431.69</u>
TOTAL	<u>310</u>	<u>\$139,084.50</u>

The DOT and the DOH apply the term “overtime” in reference to all extra work performed in excess of a regular work week -- regardless of whether those excess hours are paid at straight-time rate or an overtime rate. As quoted earlier in this special report, Section 5 of the DOT Employee Handbook states that:

“...Overtime must be authorized and approved in advance by proper authority....”

However, Section 1 of the DOT handbook states, in part:

“...this handbook is presented as a matter of information only and is not a contract of employment. Each department, division, agency, board, commission, or spending unit reserves the right to exercise its judgement depending on each particular situation. **Adherence to the guidelines in this handbook is not to be considered binding....**” (Emphasis added)

Therefore, the DOH has issued policy memorandums regarding hours worked in overtime and additional compensation. In these policy memorandums, DOH classifies this overtime and additional work time as either “scheduled” (non-emergency) or “emergency” overtime. A DOH “Policy Memorandum” dated July 9, 1997 and directed to all District Managers/Engineers and all Division Directors defines emergency overtime as follows:

“...The term emergency is to be broadly defined and is to include but not be limited to those things that endanger the lives and/or property of the public, the removal of public nuisances like dead animals along highly traveled highways or near residences, and in response to requests for assistance by those responsible for public safety....”

This same memorandum required all scheduled additional work hours be approved in advance and all emergency additional work hours be reported by the next work day as follows:

“ . . . All scheduled overtime is to have the prior personal approval of the appropriate District Engineer or Division Director...Each District Engineer or Division Director is to have all emergency overtime reported to their office on the first working day after the incident for their review and concurrence . . .” (Emphasis added).

We recommend the DOH strengthen internal controls requiring management pre-approval for scheduled work in excess of a regular work week and the submission to management of reports with justifications for hours worked for emergency situations in compliance with DOH policy.

Agency’s Response

- *The agency will review its policy statements regarding overtime approval to ensure they are reasonable and enforceable.*
- *The agency will utilize its internal audit staff to help ensure the policies are being followed.*

Reconciling Approved Excess Work Hours to Hours Paid

As stated earlier in this report, overtime and additional compensation and the employer costs for social security, medicare, and retirement associated with it totaled approximately \$36.65 million for fiscal years 2004 and 2005. With the exception of DOH District Nine, the pay for excess work hours has not been reconciled to the overtime approved by DOH District Engineers/Managers or Division Directors as required by DOH policy.

A DOH "Policy Memorandum" directed to all District Managers/Engineers and all Division Directors and dated July 9, 1997 states in part:

". . . there must be a reconciliation between the overtime hours requested and those worked. Each District Comptroller will provide the District Engineer with a list of those individuals who have overtime hours in excess of those approved. This list will be provided no later than one week after the week it was incurred. . . . District Engineers and Division Directors shall determine the reasons . . . for variances and take disciplinary action where justified ". (Emphasis added)

Work hours are recorded daily into the Remote Entry Management Informational System (REMIS) from daily time records (DOT-12s) prepared by DOH supervisors. REMIS establishes a computerized time record for each employee. Employee work hours are generally entered into REMIS at the DOH organizational level. There are numerous DOH organizations and, as a result, several DOH employees are responsible for entering payroll information. It is the REMIS time record, in conjunction with the wage rate, overtime eligibility and pay period information that determines the amount of pay, including overtime and additional straight-time pay, for each employee.

Since the recording of payroll is a decentralized procedure, a reconciliation of additional work hours entered into REMIS to those hours reported to management would

strengthen internal controls over hours reported and paid. During the period of our special report on DOH overtime and additional compensation, the majority of the hours worked in excess of a regular 40-hour workweek were either not pre-approved by the proper level of DOH management or, as in the case with emergency situations, not reported to the proper level of DOH management after being worked. A reconciliation between additional work hours reported to management and hours actually paid would disclose discrepancies between hours reported and paid. Some DOH District representatives told us the employees and hours entered into REMIS computerized system were “spot checked” for unusual or inconsistent entries, although no documentation supporting these spot checks was generated.

According to the Central Office Deputy State Highway Engineer, who is assigned the responsibility for monitoring and tracking DOH extra work hours, a REMIS report can be printed from the DOH intranet site that lists extra pay received by DOH employees. Division Directors and District Managers/Engineers or their representatives have the ability to compare and reconcile these reports to those employees and their respective excess work hours listed on DOH approval sheets. Even though the policy quoted above requires such a reconciliation, the Deputy State Highway Engineer stated that such a cross check is not a DOH policy and he is unsure if anyone is actually reconciling extra work hour approvals to REMIS reports.

We recommend the DOH reconcile pre-approved scheduled additional work hours and reported emergency additional work hours to actual additional work hours entered into the REMIS system, as required by the July 9, 1997 DOH policy memorandum.

Agency's Response

- ***The agency will reinforce the policy of reconciling scheduled overtime approved and emergency overtime reported to actual hours of overtime paid.***

- *The agency will utilize its internal audit staff to help ensure reconciliation is being performed.*

Employee Time Records

Title 29, Part 516 of the Code of Federal Regulations, “Records To Be Kept By Employers” states in part:

“...Every employer shall maintain and preserve payroll or other records containing the following information...(7) Hours worked each workday and total hours worked each workweek... Each employer shall preserve for at least 3 years.... (a) *Payroll records....*”

For our test of extra compensation payments, we requested DOH provide us with daily time records (DOT-12's) for those employees selected in our sample. However, of the 588 employee DOT-12's requested, 104 could either not be located or were missing one or more of the required signatures. Signatures on these time records were required by DOH from the employee who prepared the time record, the employee's manager who approved the record, and the employee who entered DOH workers and their respective work hours into the computerized payroll accounting system. The following table provides details as to the number of missing DOT-12's and the omitted signatures on DOT-12's for our sample:

<u>Description</u>	<u>Number of Instances</u>
DOT-12's Could Not Be Located	10
DOT-12's Without Preparer's Signature	34
DOT-12's Without Supervisory Approval Signature	30
DOT-12's Without Data Entry Signature	9
DOT-12's Without Preparer's Signature and Without Supervisory Approval Signature	19
DOT-12's Without Preparers Signature and Without Data Entry Signature	1
DOT-12's Without Supervisory Approval Signature and Data Entry Signature	<u>1</u>
TOTAL	<u>104</u>

Without properly approved time records, there is little assurance that work hours entered into the DOH payroll system (REMIS) and paid to employees were for legitimate hours of work.

We recommend the DOH comply with Title 29, Part 516 of the Code of Federal Regulations and maintain all payroll records for three years. We also recommend the DOH strengthen internal controls over approval signatures on employee time records.

Agency's Response

- *DOT's records retention schedule requires DOT-12 forms to be maintained for 15 years.*
- *The audit found 10 instances out of 588 samples (1.7%) in which a DOT-12 could not be located.*
- *A 1.7% error rate does not reasonably constitute a failure to comply with the Fair Labor Standards Act requirements on records retention.*
- *The agency will reinforce to managers the need for appropriate signatures.*
- *The agency will utilize its internal audit staff to help ensure DOT-12's are properly signed and documented.*

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 7TH day of August, 2006.



Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Division of Highways; Department of Transportation; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.