

JOINT COMMITTEE ON GOVERNMENT AND FINANCE
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

POST AUDIT DIVISION

INFORMATIONAL LEGISLATIVE REPORT

Follow-Up Report on Status of Prior Post Audit Recommendations

Legislative Auditor: Aaron Allred
Post Audit Division Director: Justin Robinson



Notice of Non-GAGAS Engagement & Report Purpose

This informational report was not produced under the Generally Accepted Government Auditing Standards (GAGAS) issued by the U.S. Government Accountability Office. The work performed in compiling information for this report was done through direct inquiry with each agency and was not compiled and tested through generally accepted audit procedures. The purpose of this report is to inform the Post Audits Subcommittee of the status of implementation of audit recommendations previously made in our reporting based on the attestations provided by each responsive agency or through verification methods readily available to the auditors.

POST AUDIT DIVISION
Justin Robinson, Director

POST AUDIT DIVISION

POST AUDITS SUBCOMMITTEE MEMBERS

SENATE MEMBERS
President, Craig Blair
Jack Woodrum
Michael Woelfel

HOUSE MEMBERS
Roger Hanshaw, Speaker
Chris Phillips
Kayla Young



Follow-Up Report on Status of Prior Post Audit Recommendations

September 10, 2023

LEGISLATIVE AUDITOR'S STAFF CONTRIBUTORS

Aaron Allred.....Legislative Auditor

Justin Robinson.....Director
Adam Fridley, CGAP.....Audit Manager
Nick Hamilton.....Assistant Audit Manager
Randy Mays II.....Senior Auditor
Kelly Blunden.....Auditor
Jake Casto, CFE.....Auditor
Sarah Clere.....Auditor
Nathan Hamilton.....Referencer

Report Background: PAGE 1

West Virginia Economic Development Authority: \$25 Million Non-Recourse Loan Program (January 26, 2021): PAGE 3

State Agencies' Compliance with West Virginia Code §5A-1-12 (January 28, 2021): PAGE 5

Department of Health and Human Resources: State-Owned Hospital Purchasing (January 29, 2021): PAGE 8

Bluefield State University - Budget Process (February 4, 2021): PAGE 10

West Virginia Higher Education Institutions: Lack of Standard Policies for State Asset Management (February 9, 2021): PAGE 11

Southern West Virginia Community & Technical College: Inventory Management and Budget Process (May 10, 2021): PAGE 12

Supreme Court of Appeals of West Virginia - Inventory Management (September 14, 2021): PAGE 14

West Virginia Board of Pharmacy – Pharmacy Inspection Processes and Procedures (September 14, 2021): PAGE 15

PEIA Internal Controls Over Pharmacy Benefits Manager Contract (October 10, 2021): PAGE 16

Analysis of Compliance and Accountability for State Grants Disbursed in FY2017 (November 15, 2021): PAGE 18

West Virginia Division of Highways – Property Lease Management (January 9, 2022): PAGE 19

Consolidated Public Retirement Board (CPRB)– Internal Controls for PERS Retirement Payments (January 9, 2022): PAGE 21

Background

The Legislative Auditor's Office conducts audits, reviews programs, and issues recommendations aimed at improving the effectiveness, efficiency, and economy of state government. The benefit of this work is not in the recommendations made, but in their implementation by agency management and the Legislature. A key measure of the quality and persuasiveness of our performance audits is the extent to which these recommendations are accepted and acted upon. In conducting audits, our office takes steps to improve the likelihood that recommendations will be adopted by providing sound and reasonable proposals and following up with agency management to determine the status of each agency's response.

The Legislative Auditor's Office is regularly asked about its capacity to conduct follow-up engagements and the frequency with which they are conducted. The purpose of this report is to make public the implementation status of the recommendations made in 12 Post Audit reports issued from January 2021 through January 2022. For each report, agency management was asked to provide a detailed description of how it responded to each of the audit recommendations made in these reports (if it responded) and to provide relevant documentation where possible.

The Legislative Auditor identified the status of each recommendation using the classifications found in Figure 1.

Figure 1 Recommendation Status Categories	
Implemented	Information provided by the agency's management provides a reasonable assurance that appropriate steps were taken to respond to and/or attempt to address the audit's recommendation(s).
In Progress	The information provided indicates that the agency is in the process of fully responding to the recommendation(s) but has not yet fully implemented them.
Not Implemented	Entity management either disagrees with the recommendation(s) or has otherwise not taken actions to address the recommendation(s).
Would Require Legislation	The recommendation(s) calls for Legislative action.

In total, the Post Audit Division made 41 recommendations for the consideration of those charged with governance in response to issues identified in the audits conducted in calendar year 2021. Based upon the follow-ups conducted for each report, the Legislative Auditor's Office has determined that 23 of its recommendations have been implemented by the respondent agency, while 8 recommendations have not been implemented or acted upon. The following figure provides a full breakdown of the number of recommendations, by status.

Figure 2	
Number of 2021 Audit Recommendations by Current Status	
Status	Number of Audit Recommendations
Implemented	23
In Progress	2
Not Implemented	8
Would Require Legislation	8
Source: Agency provided information to the Legislative Auditor.	

The following sections provide a more in-depth look at each report’s findings, recommendations, and subsequent actions taken by the responsible agencies to address the audit’s findings, if any have been taken.

West Virginia Economic Development Authority: \$25 Million Non-Recourse Loan Program (January 26, 2021)

Finding: In 2002, the Legislature authorized a \$25 million nonrecourse loan to be issued from the Investment Management Board (IMB) to the Economic Development Authority (EDA) to spur industrial and economic growth in the state. The EDA did not utilize an accounting system capable of adequately and efficiently documenting the transactions for the \$25 million loan program, nor did the EDA effectively generate and maintain hardcopy source records. Further, the EDA failed to pay certain fees associated with the loan program on time (resulting in an accounts payable balance of \$59,713) and did not maintain supporting documents and general records for loan program transactions during a two-year period.

Recommendations:

1. The Legislative Auditor recommends EDA comply with W. Va. Code §5A-8-9, by maintaining adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. Further, when warranted, the Legislative Auditor recommends the EDA utilize an accounting system that is adequate to account for the financial activities of programs it operates, such as the Loan Program discussed in this report. Should additional funding be needed to do so, the EDA should communicate such needs to the Legislature and request the necessary funding.

Status: *Implemented.* In response, EDA developed a procedural document that governs the agency's accounting procedures and internal controls. Further, EDA began to utilize QuickBooks as its primary accounting system and stated that this transition would provide “a more robust platform capable of monitoring and documenting the financial activities of the agency.”

2. The Legislative Auditor recommends the EDA comply with best business practice and pay expenses within a reasonable timeframe from when they are incurred.

Status: *Implemented.* In response, EDA asserted that it would begin paying expenses the day it receives an invoice. To accomplish this, EDA ensures the invoice is date stamped upon receipt, forwarded to the accounting department to review, and then submitted to the Associate Director to certify the invoice for payment.

Finding:

Due to the limited return on investments, the EDA was unable to repay \$24,325,778 in loan principal as stipulated by W. Va. Code §12-6-9e(f). Additionally, the EDA did not collect data specific to the \$25 million loan program, which prevented the Legislative Auditor from quantifying the jobs and businesses created or retained within the state resulting from the loan program. Moreover, W.Va. Code §12-6-9e(f) lacks clear parameters outlining the expected performance of investments made pursuant to the loan program.

Recommendation:

1. The Legislative Auditor recommends the Legislature provide clear and concise statutory guidance to agencies regarding the expected outcomes of a program and guidelines to administer and monitor investments made with state funds for all programs similar to the one authorized by W. Va. Code §12-6-9e(f) that may be established in the future.

Status: *Legislative action taken.* On March 15, 2021, the Legislature passed Senate Bill 295 which amended and reenacted §12-6C-11 and requires the EDA to “keep itemized records of all transactions and agreements entered into in furtherance of the program. In administering the program, the authority shall adopt appropriate accounting practices and develop internal controls, including, but not limited to, strict compliance with the requirements of §5A-8-9 of this code.”

Additionally, the new legislation requires the EDA to submit quarterly reports to the Legislature outlining the balance of loan monies and the status of the loan, including whether the loan is in delinquent or default status.

State Agencies' Compliance with West Virginia Code §5A-1-12 (January 28, 2021)

Finding: W.Va. Code §5A-1-12 required each spending unit responsible for an exemption to the State's purchasing law (Chapter 5A of the West Virginia Code) to establish formal purchasing policies via procedural rule. Additionally, the Legislative Auditor was required to conduct an audit to determine compliance with the provisions of W.Va. Code §5A-1-12

Agencies responsible for filing procedural rules for 14 active exemptions on or before September 1, 2020, were in compliance with W.Va. Code §5A-1-12.

Twenty-five (25) agencies responsible for a purchasing exemption had not filed rules as of September 1, 2020.

Of those 25 agencies, 13 have filed rules with the West Virginia Secretary of State's Office since September 1, 2020, and were in compliance when the report was released.

Agencies responsible for the remaining 12 exemptions had not filed a rule, as required by Code, as of the date of their response to the Legislative Auditor.

Additionally, the Legislative Auditor noted that the provisions of W.Va. Code §5A-1-12 may inhibit the ability of the Governor to respond to declared states of emergency with respect to exercising his or her statutory authorities to relax purchasing requirements.

Recommendation(s):

1. The Legislative Auditor recommends the Department of Education file the appropriate procedural rule without delay, and strictly adhere to the requirements of the West Virginia Purchasing Division until compliance is achieved.

Status: *Not Implemented.* The Department of Education submitted a response on October 7, 2022, indicating that, at the time, no procedural rule has been finalized. DOE indicated that it has been working to complete its procedural rule and intended to present it to the State Board of Education at its scheduled December 2022 meeting.

Presently, no purchasing rule has been filed by the Department of Education, as required by W.Va. Code §5A-1-12. Furthermore, the Legislative Auditor reviewed meeting minutes for each meeting of the Board of Education from December 2022 to present and did not identify any evidence of the Board receiving, reviewing, discussing, or voting upon the proposed legislative rule.

The Legislative Auditor notes that W.Va. Code §5A-1-12 required spending units to have filed their rules with the West Virginia Secretary of State **no later than** September 1, 2020.

2. The Legislative Auditor recommends the Department of Environmental Protection (DEP) file the appropriate procedural rule without delay, and strictly adhere to the requirements of the West Virginia Purchasing Division until compliance is achieved.

Status: *Implemented.* The Department of Environmental Protection indicated in its response that a procedural rule was initially filed in response to the report's

recommendation on August 19, 2021. However, the rule expired before it was finalized. DEP refiled the rule on October 17, 2022. The Legislative Auditor reviewed the West Virginia Secretary of State's website and determined that the DEP's final purchasing rule became effective on June 12, 2023. Although the DEP missed the statutory deadline of September 1, 2020, it is in compliance with the requirements of W.Va. Code 5A-1-12.

3. The Legislative Auditor recommends the Department of Agriculture file the appropriate procedural rule without delay, and strictly adhere to the requirements of the West Virginia Purchasing Division until compliance is achieved.

Status: *Requires Legislative Action.* The Department of Agriculture indicated both in its initial response to the report and again upon follow-up that the purchasing exemptions under its control are outdated and have never been used. As such, the Department has not promulgated rules to establish purchasing procedures for these exemptions. The Legislature should consider eliminating unused exemptions.

4. The Legislative Auditor recommends the Department of Homeland Security file the appropriate procedural rule without delay, and strictly adhere to the requirements of the West Virginia Purchasing Division until compliance is achieved.

Status: *Implemented.* The Department of Homeland Security indicated in its response that the required procedural rules were filed on August 27, 2021, and went into effect on September 26, 2021.

5. The Legislative Auditor recommends the Department of Revenue file the appropriate procedural rule without delay, and strictly adhere to the requirements of the West Virginia Purchasing Division until compliance is achieved.

Status: *Implemented.* The Department of Revenue was responsible for two purchasing exemptions for which it had not filed the appropriate, required rules at the time of the report. The Department's response indicates that both rules were filed, as required, in February 2021.

6. The Legislative Auditor recommends the Department of Transportation file the appropriate procedural rule without delay, and strictly adhere to the requirements of the West Virginia Purchasing Division until compliance is achieved.

Status: *Not Implemented.* The Department of Transportation had not filed the required rule to govern exempt purchases by the West Virginia Parkways Authority at the time of the report. The Department's response, received on October 17, 2022, indicates that the required rule had not been filed, but would be filed "*no later than the end of October 2022. A copy of the procedural rule will be sent to you when it is officially filed with the Secretary of State.*"

Presently, the Legislative Auditor is not in receipt of any filings from the Department of Transportation. Additionally, no rule has been filed with the Secretary of State, despite statute requiring the rule to be filed by September 1, 2020.

7. The Legislative Auditor recommends the Legislature consider modifying the provisions of W.Va. Code §5A-1-12 to clarify the scope of its applicability to non-purchasing exempt agencies.

Status: *Requires Legislative Action.*

8. The Legislative Auditor recommends that the Governor's Office seek an opinion as to the applicability and effects of W.Va. Code §5A-1-12 on its special purchasing exemption powers.

Status: *Implemented.* The Governor's Office indicates that it has sought an advisory opinion, as recommended.

9. The Legislative Auditor recommends the Legislature consider clarifying W.Va. Code §5A-1-12's applicability to the Governor's special exemption powers.

Status: *Requires Legislative Action.*

Department of Health and Human Resources: State-Owned Hospital Purchasing (January 29, 2021)

Finding: The Legislative Auditor was required by West Virginia Code to conduct an audit of the purchasing procedures for the seven state-owned hospitals. The audit determined that DHHR has established and implemented new purchasing policies and procedures which borrow heavily from the Purchasing Division's Purchasing Handbook (best practices). In addition, DHHR has engaged in routine monitoring of hospitals' transactions to measure compliance with its policies.

While DHHR's policies incorporate many best practices from the Purchasing Handbook, the Legislative Auditor determined that DHHR's policy contains no provisions regarding receiving and inventory policies for purchases made by the hospitals. These omissions represent significant weaknesses in internal controls over purchasing and asset management, and taken together, increase the risk of fraud.

Since obtaining the purchasing exemption, total non-payroll expenditures for the state-owned hospitals do not suggest any overall cost-savings or a decrease in spending on contractual services. While DHHR has provided documentation of cost-savings with certain vendors, overall non-payroll expenditures have increased both in total and with most of the individual hospitals. These increases are likely the direct results of increased expenditures for contract nurses due to the state's shortage of nurses.

Recommendation(s):

1. The Legislative Auditor recommends that DHHR continue to monitor purchases on a routine basis and strive to increase compliance with its purchasing policies.

Status: *Implemented.* DHHR's Office of Purchasing has continued its practice of monitoring the purchases of the exempt hospitals by conducting document reviews and internally assessing compliance with the Department's purchasing policies. Recent internal reviews of hospital purchasing were conducted on July 1, 2022, and January 1, 2023.

2. The Legislative Auditor recommends that DHHR modify its existing purchasing policies and procedures to include appropriate procedures for receiving and inventorying purchases made at the state-owned hospitals.

Status: *Implemented.* In response to the recommendation, and effective May 17, 2021, DHHR updated its purchasing policies (§69CSR16) to include a new section entitled "*Commodity and Service Receiving Procedures.*" These new additions incorporate best practices from the West Virginia State Auditor's Office and the Purchasing Division regarding receiving and inventorying of fixed assets.

3. The Legislative Auditor recommends that DHHR modify its purchasing policies and procedures to incorporate additional best practices such as requiring Certificates of Liability Insurance and bonds, where appropriate.

Status: *Implemented.* In response to the recommendation, and effective May 17, 2021, DHHR updated its purchasing policies (§69CSR16) to include new sections entitled

“Insurance” on page 31 and *“Securities and Bonds”* on page 32 of the legislative rule to address the issues identified in the report.

4. The Legislative Auditor recommends that DHHR promulgate a procedural rule outlining its purchasing policies and procedures in compliance with W.Va. Code §5A-1-12. Until compliance is achieved, DHHR and the state-owned hospitals should comply with the requirements of the Purchasing Handbook.

Status: *Implemented.* DHHR’s Office of Purchasing promulgated §69CSR16 which became effective on December 31, 2020. The rule was further modified by DHHR in response to the audit report’s findings, effective May 17, 2021.

Bluefield State University - Budget Process (February 4, 2021)

Finding: Bluefield State University (BSU) lacked a comprehensive formal budgeting process. Formal communication was not provided to the departments/divisions advising them to align their budgets with strategic and operating objectives of both BSU central administration and the individual divisions. Additionally, BSU lacked budgetary control and review processes.

Recommendation(s):

1. The Legislative Auditor recommends BSU develop formal written budgetary policies and procedures that address the following objectives:
 - Clearly define organizational objectives and goals.
 - Require departments to provide and present documentation that demonstrates how their individual budgets align with the strategic and operating objectives for their respective areas, as well as the University as a whole.
 - Enable management to accurately forecast the resources necessary to achieve organizational goals as well as the most efficient way to allocate such resources between departments and programs.
 - Outline the formal budgetary control and review processes. This process should detail BSU's method for reporting and addressing budget variances.
 - Ensure all procedures related to the budgeting process are documented and communicated to those involved in the budgetary decision-making process.

Status: *Implemented.* In response, BSU developed and implemented the *Budget Control/Review/Adjustment Processes* document which contains, among other things, the following provisions:

- The Chief Financial Officer meets throughout the year with other cabinet officers to develop academic, administrative, athletic, and other campus unit budgets, and prepares the relevant supporting documents to support the budget proposal to the Board and, once approved, input the data into OASIS.
- Throughout the University's budget process, the Chief Financial Officer receives budget documentation from departments to justify how individual budgets align with the strategic and operating objectives for their respective areas, as well as the University as a whole. Based on the CFO's input BSU management accurately forecasts the resources necessary to achieve institutional goals and to allocate resources between departments and programs.
- Throughout the year, finance personnel, as well as departmental representatives, are responsible for monitoring each area's actual expenses versus budgeted expenses. The CFO meets frequently with other cabinet officers to assess the status of departmental budgets, identify budget variances, and determine why such variances are occurring. The CFO, Director of Accounting, and Project Coordinator Senior are responsible for monitoring and comparing actual and estimated revenues.

West Virginia Higher Education Institutions: Lack of Standard Policies for State Asset Management (February 9, 2021)

Finding: Institutions of higher education in West Virginia do not have a standardized set of policies to ensure the proper safeguarding of state-owned assets from fraud, misuse, and abuse. Currently, higher education institutions are exempt from the State Purchasing Division's requirements regarding asset inventory and management and are merely guided in their policy development by the higher education coordinating boards. Several higher education institutions have independent operational control and do not have to seek guidance from the higher education coordinating boards. Under many of the current policies used by higher education institutions, assets with a high risk of misappropriation such as laptops, desktops, iPads, video and photography equipment, scientific equipment, as well as various other electronics are not being properly safeguarded or recorded in the official inventory records.

Recommendation(s):

1. The Legislative Auditor recommends the Legislature consider modifying West Virginia Code Chapter 18b to establish minimum inventory requirements for both capital and non-capital assets for all public institutions of higher education.

Status: *Requires Legislative Action*

2. The Legislative Auditor recommends the Legislature consider modifying West Virginia Code Chapter 18b to establish requirements for surplus assets, including the implementation of an internal notification system, for all public institutions of higher education.

Status: *Requires Legislative Action*

Southern West Virginia Community & Technical College: Inventory Management and Budget Process (May 10, 2021)

Finding: Southern West Virginia Community and Technical College (Southern) lacked policies and procedures for inventory management. The processes for inventory management did not provide for effective management of state assets. In particular, the Legislative Auditor found that Southern did not:

- Record all capital assets as required by the school's procedural rule and purchasing manual;
- Maintain an inventory record or required information for surplus assets; or
- Provide guidance for determining the best method of disposition of surplus property for yielding the greatest return.

Recommendation(s):

1. The Legislative Auditor recommends Southern West Virginia Community and Technical College develop formal written policies and procedures as required by the West Virginia Council for Community and Technical College System (WVCTC) for asset management. The policies and procedures should utilize the West Virginia Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education Purchasing Procedures Manual to track and account for equipment and furnishings to protect the assets of the institution.

Status: *Implemented.* In response, Southern enacted a *Reportable Assets and Inventory Tracking Policy*. Under this policy, any asset with an acquisition cost of \$1,000 or more and a useful life of at least one year is entered into the College's official inventory system and tagged. In addition, certain non-capital assets with a high risk for misappropriation are tagged and entered into the College's inventory system. The policy also requires that a physical inventory of at least 50% of the College's inventory be performed annually.

2. The Legislative Auditor recommends Southern West Virginia Community and Technical College develop and implement written policies and procedures for surplus property that align with WVCTC Procedural Rule Title 135 Series 30 13.1. These policies and procedures should ensure the surplus items are identified, tracked, and properly accounted for during the disposition process; identifies and accounts for surplus property throughout the disposition process, allows for disposition methods that yield the greatest return, and delineates a methodology for notifying staff of surplus items available for reassignment prior to the disposal of the asset.

Status: *Implemented.* In response, Southern updated its *Disposition and Sale of Surplus/Excess Property Policy*, which now requires an inventory of surplus property to be maintained and details the specific requirements of the inventory listing.

Finding: Southern did not have a documented formal budgeting process for determining its annual budget, thereby increasing the risk for improper fiscal planning. Additionally, there were no mandatory requirements in place for West Virginia public institutions of higher education to have written policies and procedures for the budgeting process.

Recommendation(s):

1. The Legislative Auditor recommends Southern West Virginia Community and Technical College develop, document, and implement formal budgeting processes and procedures that reflect the best practices by the Government Finance Officers Association for community college budgeting.

Status: *Implemented.* In response, Southern began efforts to develop a new strategic plan that aligns the College's budget with strategic priorities. The College started to formalize and document the budgeting process. Southern indicated to the Legislative Auditor on August 28, 2023, that timelines for budgeting have been developed, tested for efficiency, and found to be fair and effective. The College is working to develop and implement a Southern Institutional Procedure (SIP), which will ensure that the newly developed and tested budget process will be followed in the future.

2. The Legislative Auditor recommends the Legislature consider requiring the West Virginia Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education establish formal requirements for all higher education institutions to develop and implement policies and procedures for the institutions' budgeting process to ensure proper fiscal stewardship and planning. The requirements of these policies and procedures should at a minimum incorporate the best practices of the Government Finance Officers Association referenced in this report.

Status: *Requires Legislative Action*

Supreme Court of Appeals of West Virginia - Inventory Management (September 14, 2021)

Finding: The Legislative Auditor performed an initial review of the Supreme Court of Appeals of West Virginia's (Court) fixed asset inventory in 2018 and found that only 26 items had been entered into wvOASIS. Ensuing analysis revealed that as of August 2019, a substantial percentage of reportable items remained unrecorded in the Court's wvOASIS fixed asset listing. However, audit procedures performed in August 2020 showed a marked improvement in the Court's wvOASIS fixed asset listing, with a sizable majority of items now documented in the wvOASIS *Fixed Asset Module*.

Recommendation:

1. The Legislative Auditor recommends the West Virginia Supreme Court of Appeals adhere to its Asset Management Policy and enter all "Reportable Assets" into the wvOASIS Fixed Asset Module. This process should include ensuring all fixed assets are permanently tagged with a unique identifying number. The number should be recorded in the Fixed Asset Module along with an item description, purchase price, and serial number, if applicable, of the item. In addition, each fixed asset's physical location or employee assignment, if applicable, should be documented and any subsequent moves within or outside the facility should be recorded. Lastly, any retirement of assets should be documented in the appropriate wvOASIS record to ensure the fixed asset inventory is current.

Status: *Implemented.* In response to the audit's recommendations, the Court developed the following standard practices regarding fixed asset inventory:

- a) Assign asset tags, when applicable, to technology assets as they are received and before being deployed to the field. For non-technology assets, asset tags are provided to the asset's custodian who is asked to apply tags once assets are in place.
- b) Record all new assets in the Fixed Asset Module along with the item's asset tag number (when applicable), description, purchase price, and serial number.
- c) Record the custodian and physical location for each fixed asset entered into the Fixed Asset Module and record all transfers and retirements of non-technology equipment, and document future location and/or status changes of technology assets in wvOASIS.

West Virginia Board of Pharmacy – Pharmacy Inspection Processes and Procedures (September 14, 2021)

Finding: The Board of Pharmacy lacked a set of formal, written policies and procedures to govern its process for the routine inspection of permit holding facilities (pharmacies, hospitals, etc.) in the state of West Virginia. National best practices indicate that occupational licensing boards should develop systematic processes for inspecting facilities to ensure they are following applicable requirements and that the public is adequately protected. Instead, the Legislative Auditor determined that the Board of Pharmacy was primarily relying on the experience and institutional knowledge of a small group of staff.

The Legislative Auditor reviewed a statistically significant sample of permit holding facilities and determined that as many as 13% had not been inspected as required.

Recommendation(s):

1. The Legislative Auditor recommends that the West Virginia Board of Pharmacy develop and implement formal, written policies, procedures, and processes, incorporating best practices for its inspection function that clearly explain how an inspection is to be scheduled, conducted, reviewed, recorded, retained, and reported.
2. The Legislative Auditor recommends that the Legislature consider authorizing the Board of Pharmacy to promulgate legislative rules to establish specific requirements related to the pharmacy inspections conducted by the Board.

Status: *Implemented.* In response to the audit’s recommendations, the Board of Pharmacy worked with key stakeholders to develop formal policies and procedures for its inspection function. As a result, the Board adopted a new rule (15CSR19) dedicated to outlining and detailing its entire inspection process.

Moreover, the board reports that *“We believe that these rules are detailed in such a manner that they can be used as the formal procedures the audit recommended. The rule reflects the current inspection process, including the inspection requirements, inspection forms, inspection frequency, inspector qualifications, and other information. These rules not only describe how the inspections are currently performed, but they also incorporate many of the NSM best practices cited in the audit report.”*

PEIA Internal Controls Over Pharmacy Benefits Manager Contract (October 10, 2021)

Finding: The West Virginia Public Employees Insurance Agency's (PEIA) internal controls for third-party risk management required improvements to allow for the agency to detect and respond to potential fraud more quickly. Moreover, implementation of internal fraud detection procedures (capable of detecting potential fraud in the Pharmacy Benefit Manager [PBM] claim data) were needed as an additional layer of fraud risk management.

Additionally, PEIA's internal audit reviews could have encompassed additional fraud detection techniques that could have identified potentially fraudulent claims more quickly and reduced the impact of the fraud.

Lastly, it was determined PEIA did not have an established fraud management framework in place until it was created by PEIA during the audit.

Recommendations:

1. The Legislative Auditor recommends PEIA develop, implement, and consistently employ third-party risk management processes to assess the adequacy of third-party internal controls in carrying out contracted services and to address risks, monitor performance, and communicate noted deficiencies in those processes to the third-party during the life of the contract. For the PBM contract, these processes should also include a type of data analysis that would allow PEIA to detect patterns of potentially fraudulent transactions that may have gone undetected by the PBM such as the Benford or Z-Score analyses discussed in this report.

Status: *Implemented.* PEIA implemented several fraud, waste and abuse (FWA) audits. PEIA uses Myers & Stauffer, LC (M&S) as their external audit team, and they are required to audit at least one PBM topic annually. PEIA has transitioned to a methodology that calculates outlier percentiles (50th to 95th) by provider type and measures that allows for a review of prescribers in excess of that level.

2. The Legislative Auditor recommends PEIA continue to develop its fraud risk management framework and employ processes and procedures designed to reduce the risks associated with its utilization of third parties to provide services that may be impacted by fraud.

Status: *Implemented.* PEIA provided a list of detailed improvements and actions for their fraud risk management framework across different aspects of the agency. Additionally, the Express Scripts (ESI) Enhanced FWA program and Performance Guarantee within PEIA's PBM contract further represent actions taken in response to Recommendation 2. (See Recommendation 4 Performance Guarantee)

3. The Legislative Auditor recommends PEIA define specific fraud prevention and internal control activities within the PBM contract that it expects its PBM or other contracted parties to perform in carrying out its contracted services.

Status: *Implemented.* PEIA enrolled in the ESI Enhanced FWA program. As part of this participation, PEIA has an ESI FWA analyst assigned to their account. Through this program there are quarterly calls to discuss any suspected fraud identified by ESI and monthly reports. The FWA program is designed to help plans to identify outliers and situations of abnormal utilization or prescribing patterns.

4. The Legislative Auditor recommends PEIA consider adding language to the PBM contract that would cause the PBM to share the financial impact of fraud occurring in the event the PBM's processing of fraudulent claims have a direct financial impact on PEIA due to a failure on the part of the PBM to properly prevent or detect such fraud under the terms of the contract.

Status: *Implemented.* The PBM contract contains a Performance Guarantee in the language provided below:

“ESI guarantees that WV PEIA’s drug spend on confirmed fraudulent claims resulting from an ESI failure to prevent or detect fraudulent claims will not exceed \$100,000 per year. This performance standard is conditioned upon WV PEIA adopting recommended FWA prevention programs.”

5. The Legislative Auditor recommends the Legislature, in conjunction with PEIA, consider amending W. Va. Code to allow PEIA to file complaints with the entities charged with oversight of the various healthcare professions, as well as the WV Attorney General’s Office, in the event of identified fraud, waste, and abuse.

Status: *Requires Legislative Action*

Recommendation 5 requires Legislative Action. PEIA stated in response:

“PEIA drafted model language in 2021 that was proposed to amend the WV Code to make it consistent with Recommendation 5. PEIA’s proposed amendments have not been made thus far, and PEIA will continue to propose such amendments to the WV Code at every opportunity to do so.”

Analysis of Compliance and Accountability for State Grants Disbursed in FY2017 (November 15, 2021)

Finding: The Legislative Auditor analyzed documentation related to all grants of state funds that were disbursed in FY 2017 (3,430 grants totaling \$219 million) to assess grant recipients' compliance with West Virginia Code's reporting requirements.

In FY 2017, W.Va. Code §12-4-14 specifically exempted state and local government entities from grant reporting requirements. As such, 2,413 state grants disbursed to state and local governments in FY 2017, totaling more than \$104 million, were not subject to the reporting requirements contained in W.Va. Code to ensure accountability.

Within the Legislative Auditor's sample of 346 state grants, 178 grants, totaling approximately \$12.8 million, or 51% were exempt from the statutory reporting requirements. Of the 168 grants in the sample that were subject to the reporting requirements in W.Va. Code §12-4-14, the Legislative Auditor determined that only 68 (approximately 40%) were in compliance.

Recommendation(s):

1. The Legislative Auditor recommends the Legislature consider modifying the reporting requirements for state grants to require more specific expenditure detail and greater assurance that state funds are properly spent.

Status: *Requires Legislative Action*

West Virginia Division of Highways – Property Lease Management (January 9, 2022)

Finding: The Legislative Auditor reviewed a sample of DOH’s current property leases and identified a number of issues which create potential liabilities to the State of West Virginia. An analysis of a sample of DOH property leases identified a myriad of issues related to the establishment of fair market rental values and the collection of stated consideration in each lease agreement.

The DOH has executed seven leases with private entities for a nominal lease amount (i.e., \$1 per year). While Legislative Rule allows the DOH to lease property to public bodies for below Fair Market Rental Value if the land is used for a public purpose, these seven entities do not appear to meet the definition of “public body” and therefore should not be receiving rental amounts below Fair Market Rental Value.

The term “public purpose” is not clearly defined in statute or legislative rule. DOH has adopted a broad and general interpretation of the term but has not clearly defined it in its internal policies.

Nine (9) of the property leases lack language that clearly indemnifies the State of West Virginia from claims, suits, or other liabilities related to the lessee’s use of the property.

Recommendation(s):

1. The Legislative Auditor recommends that the Division of Highways supplement or amend each of its property leases with public bodies to include language that indicates the public benefit provided through the lease agreement serves as consideration for the lease.

Status: *In Progress.* DOH indicates in its response that it has modified its lease form to address the public benefit of the land being leased/used and clarifies that this public benefit serves as consideration. While this revision to the standard lease form used by DOH should resolve the issue for future leases, leases already in existence should be corrected as well.

2. The Legislative Auditor recommends that the DOH formally define key terms and phrases such as “public body” and “public benefit” in its Legislative Rule and/or the DOH’s Right of Way Manual.

Status: *Not Implemented.* DOH indicated that its Legislative Rule §157CSR2 was before the Legislature and it would seek to make the recommended modifications to its rule as it makes its way through the Legislative Rulemaking Review process.

According to the West Virginia Secretary of State’s website, the DOH’s legislative rule was finalized on April 4, 2023. It does not appear that the Department included any language in its Agency Approved version to effectuate the recommendation.

3. The Legislative Auditor recommends that DOH seek to amend either all lease agreements below fair market rental value to private entities **or** the Legislative Rule to allow it more flexibility when leasing properties for public purposes.

Status: *Not Implemented.* DOH indicated that its Legislative Rule §157CSR2 was before the Legislature and it would seek to make the recommended modifications to its rule as it makes its way through the Legislative Rulemaking Review process.

According to the West Virginia Secretary of State's website, the DOH's legislative rule was finalized on April 4, 2023. It does not appear that the Department included any language in its Agency Approved version to effectuate the recommendation.

4. The Legislative Auditor recommends that the DOH supplement or amend all property leases with terms in excess of five years, which are not for utility accommodations, to facilitate the updating of leases at least every five years.

Status: *In Progress.* DOH indicated in its response that it is updating each of the 5-year leases as they come up for renewal. However, it is still reviewing its longer-term leases to determine how to proceed.

5. The Legislative Auditor recommends that the DOH ensure that all current leased property is operating on a current and unexpired lease agreement.

Status: *Not Implemented.* In response to this recommendation, the DOH outlined its existing process for updating fair market rental values on leases as they near and reach their expiration dates. The response does not address whether the DOH has remedied leases identified in the audit as having expired.

6. The Legislative Auditor recommends that the DOH ensure all property leases have current, written appraisals unless they meet the exemption stipulated in the Legislative Rule.

Status: *Not Implemented.* The DOH's response appears to indicate disagreement with the recommendation. At the time of the report's release in December 2021, the DOH indicated no disagreements or issues, and formally declined an exit conference wherein any such disagreements are traditionally discussed. DOH's response goes on to describe particulars of its processes for appraising leased properties but does not address the properties identified in the original audit report as lacking the required appraisal documentation.

7. The Legislative Auditor recommends that the DOH review all of its property leases to ensure the appropriate indemnification language is present and supplement or amend existing lease agreements that lack such language to include it therein.

Status: *Not Implemented.* DOH's response states, "*The indemnification language was added to the lease form when it was revised in 2018. Any lease agreement that was entered into prior to 2018 will not have the indemnification section.*"

Consolidated Public Retirement Board (CPRB)– Internal Controls for PERS Retirement Payments (January 9, 2022)

Finding: W. Va. Code stipulates that retirees returning to employment with a participating employer not exceed the \$20,000 wage limit and requires participating employers to notify CPRB when a retiree becomes reemployed. CPRB has developed a reporting form that allows participating employers to provide CPRB notification when a retiree returns to work with a participating employer. However, neither the method of notification nor the specific information to be provided by the participating employer is required by either W. Va. Code or Legislative Rule. Additionally, due to the inherent difficulty of preventing individuals determined to abuse the system or commit fraud, there is an increased likelihood the current system will be circumvented.

Recommendations:

1. The Legislative Auditor recommends CPRB formalize the participating employer reporting form and the required contents in a Legislative Rule.

Status: *Not Implemented.* In response to the audit recommendation, CPRB indicated that it does not consider formalizing the employer reporting form in Legislative Rule to be necessary. CPRB stated “This also provides CPRB with a continued opportunity to be proactive, flexible, and most cost effective in its identification of and response to any identified individuals per the aforementioned recently passed W.Va. Code §5-10-48(c).”

2. The Legislative Auditor recommends CPRB implement an online fraud reporting mechanism.

Status: *Implemented.* In response to the audit recommendation, CPRB implemented an online fraud reporting tool, alongside a fraud telephone hotline. Both are promoted on the CPRB’s main website and in other materials. The online fraud reporting tool and the telephone hotline are actively monitored by CPRB’s Chief Compliance Officer.



POST AUDITS SUBCOMMITTEE
MEMBERS

SENATE MEMBERS
President, Craig Blair
Jack Woodrum
Michael Woelfel

HOUSE MEMBERS
Roger Hanshaw, *Speaker*
Chris Phillips
Kayla Young



JOINT COMMITTEE ON GOVERNMENT AND FINANCE
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR
- POST AUDIT DIVISION -

Room 329 W, Building 1
1900 Kanawha Boulevard East
Charleston, West Virginia 25305
Phone: (304) 347-4880