

Preliminary Performance Review

Capitol Building Commission

**The Capitol Building Commission Is Needed
But Clarification of the Commission's
Jurisdiction Is Needed and Improved
Coordination Is Necessary Between the
Commission and the Department of
Administration**



**November 2005
PE 05-17-360**

JOINT COMMITTEE ON GOVERNMENT OPERATIONS

Senate

Edwin J. Bowman
Chair

Billy Wayne Bailey, Jr.
Vice Chair

Walt Helmick

Donna J. Boley

Sarah M. Minear

House Of Delegates

J.D. Beane
Chair

Timothy R. Ennis
Vice Chair

Joe Talbott

Craig P. Blair

Otis Leggett

**Scott G. Varner, Ex
Officio Non-Voting
Member**

Citizen Members

Dwight Calhoun

John Canfield

James Willison

W. Joseph McCoy

(Vacancy)



OFFICE OF THE LEGISLATIVE AUDITOR

Aaron Allred
Legislative Auditor

John Sylvia
Director

Brian Armentrout
Research Manager

Dusty Michelle Johnson
Research Analyst

Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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



John Sylvia
Director

November 13, 2005

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

The Honorable J.D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review on the Capitol Building Commission, which will be presented to the Joint Committee on Government Operations on Sunday, November 13, 2005. The issue covered herein is "The Capitol Building Commission Is Needed But Clarification of the Commission's Jurisdiction is Needed and Improved Coordination Is Necessary Between the Commission and the Department of Administration."

We transmitted a draft copy of the report to the Capitol Building Commission on November 2, 2005. We held an exit conference with the Commission on November 4, 2005. We received the agency response on November 9, 2005.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

Contents

Executive Summary	5
Review Objective, Scope and Methodology	7
Issue 1: The Capitol Building Commission Is Needed But Clarification of the Commission’s Jurisdiction Is Needed and Improved Coordination Is Necessary Between the Commission and the Department of Administration.....	9
 List Of Appendices	
Appendix A: Transmittal Letter to Agency.....	21
Appendix B: Agency Response.....	23

Executive Summary

Issue 1: The Capitol Building Commission is Needed But Clarification of the Commission's Jurisdiction is Needed and Improved Coordination is Necessary Between the Commission and the Department of Administration.

The Commission's fulfillment of its mandate is inhibited because its statute and rules do not clearly define the types of projects over which the Commission has authority.

The Capitol Building Commission is required to review contracts or plans that constitute substantial physical changes to the capitol building and the surrounding complex. The Commission's approval is required before changes are started. The Commission is comprised of members with expertise in historic preservation, engineering, and architecture. This expertise and the Commission's independence enables it to protect the capitol complex from inadvertent changes that could destroy the complex's structural and historical integrity. Therefore, the Legislative Auditor recommends that the Commission be continued.

There is confusion among various state agencies about the types of projects that must be submitted to the Commission. Many projects that should have been reviewed by the Commission were not submitted to the Commission for review.

The Commission's fulfillment of its mandate is inhibited because its statute and rules do not clearly define the types of projects over which the Commission has authority. Subsequently, there is confusion among various state agencies about the types of projects that must be submitted to the Commission. Many projects that should have been reviewed by the Commission were not submitted to the Commission for review. A primary source of projects that should be reviewed by the Commission come from the Department of Administration (DOA). Many projects that affect the capitol complex are performed by the General Services Division of DOA and some are contracted through the Purchasing Division of DOA. Both General Services and Purchasing have shown confusion over the types of projects that fall within the Commission's jurisdiction. Since the Secretary of the Department of Administration is an ex-officio member of the Commission, DOA could improve coordination with the Commission to ensure that the Commission is aware of DOA projects that are under the Commission's authority.

A legal opinion from the Legislative Services Division, within the Legislative Auditor's Office, indicates that there are gray areas and need of clarification to the code and rules to avoid confusion.

A legal opinion from the Legislative Services Division, within the Legislative Auditor's Office, indicates that there are gray areas and need of clarification to the code and rules to avoid confusion. It is the responsibility of the Secretary of DOA to promulgate Commission rules. The Commission and DOA should take steps to make needed changes to code and rules.

The Commission has made some improvements in response to recommendations made in former Legislative Auditor's reviews. The Legislative Auditor commends the Commission because it now sends annual letters to all state agencies on the capitol complex notifying them of

Commission review requirements. The Commission has recently begun meeting quarterly as opposed to annually. This should facilitate more projects being reviewed. For accountability reasons, the Commission should attempt to improve the documentation of its decisions in its project journal, and it needs to improve the documentation of decision letters sent to state agencies.

Recommendations

1. *The Legislative Auditor recommends that the Capitol Building Commission be continued.*
2. *The Legislative Auditor recommends that Department of Administration and the Capitol Building Commission take steps to increase communication about projects conducted by the Department of Administration on which the Capitol Building Commission has the authority to review.*
3. *The Legislative Auditor recommends that the Commission consider having at least one Capitol Building Commission member, other than ex-officio member from the Department of Administration, attend the quarterly presentations given by the Department of Administration to the Council on Finance and Administration.*
4. *The Legislative Auditor recommends that the Purchasing Division revise its Policies and Procedures Handbook to indicate that WVC §4-8 et al. refers to the Capitol Building Commission rather than the General Services Division.*
5. *The Legislative Auditor recommends that the Purchasing Division incorporate the need for pre-approval from the Capitol Building Commission into all relevant Purchasing Division checklists.*
6. *The Legislative Auditor recommends that the Department of Administration, General Services Division and the Capitol Building Commission engage in discourse about changes that need to be made to the Commission's code and rules in order to clarify the Commission's authority and avoid confusion in responsibilities among the agencies.*
7. *The Legislative Auditor recommends that the Capitol Building Commission develop a complete journal of its project decisions.*
8. *The Legislative Auditor recommends that the Capitol Building Commission maintain documentation of each decision letter that it sends.*

Review Objective, Scope and Methodology

Objective

This Preliminary Performance Review of the Capitol Building Commission is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5 of the West Virginia Code as amended. The objective of this review is to answer the following questions:

- a. Is there a continued need for the Commission?
- b. Is the Commission performing its required duties?

Scope

The scope of this report covers the time period from FY 2001 through August of 2005. Consulted resources included, but were not limited to, the Commission, its supporting agencies, and related records and data.

Methodology

Information compiled in this evaluation was acquired from West Virginia laws, interviews with Commission members, Commission records and meeting minutes, information found during internet research, and information collected from the West Virginia Department of Administration. This review was conducted in accordance with Generally Accepted Government Auditing Standards.

Issue 1

The Capitol Building Commission Is Needed But Clarification of the Commission’s Jurisdiction Is Needed and Improved Coordination Is Necessary Between the Commission and the Department of Administration.

Issue Summary

The Capitol Building Commission is required by law to review all projects that make substantial physical changes to the capitol building complex. Through a process of project review, the Commission helps to ensure that the aesthetic beauty and historical integrity of the capitol complex are maintained.

The Secretary of the DOA is an ex-officio member of the Commission. Over the last few years, many projects that have gone through the DOA should have been reviewed by the Commission, but were not. This appears to be a result of a lack of coordination between the Commission and the DOA.

The Capitol Building Commission is required by law to review all projects that make substantial physical changes to the capitol building complex. A project that is within the jurisdiction of the Commission cannot begin unless it is approved by the Commission. Through a process of project review, the Commission helps to ensure that the aesthetic beauty and historical integrity of the capitol complex are maintained. The Legislative Auditor recommends that the Capitol Building Commission be continued.

As noted in previous Legislative Auditor’s reviews, the Commission’s code and rules lack clarity and need to be amended to clarify the types of projects that fall under the Commission’s jurisdiction. The lack of clarity has resulted in many projects not being reviewed by the Commission that should have been. Furthermore, many projects that affect the capitol building complex go through the Department of Administration (DOA). The Secretary of the DOA is an ex-officio member of the Commission. Over the last few years, many projects that have gone through the DOA should have been reviewed by the Commission, but were not. This appears to be a result of a lack of coordination between the Commission and the DOA. There also is some understandable confusion within the DOA’s General Services Division in terms of what types of projects are required to be reviewed by the Commission. A legal opinion from the Legislative Services Division, within the Legislative Auditor’s Office, indicates that there are gray areas and need of clarification to the code and rules to avoid confusion.

The Commission has begun sending out annual letters to all state agencies on the capitol complex notifying them of Commission review requirements. The Legislative Auditor commends the Commission for taking that step. For accountability reasons, the Commission should attempt to improve the documentation of its decisions in its project journal, and it needs to improve the documentation of decision letters sent to state agencies. The Commission has recently begun meeting quarterly as opposed to annually. This should facilitate more projects being reviewed.

The Commission Is Needed

The Commission costs the State little money, approximately \$1,200 annually.

The Capitol Building Commission is charged with reviewing and approving or rejecting all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds, which affect the appearance thereof. Through a process of project review, the Commission helps to ensure that the historical integrity and aesthetic beauty of the capitol building and surrounding complex are maintained. The Commission is governed by WVC §4-8-1 et al., and it has adopted CSR §181-01 and §181-02, which are procedural and interpretive rules respectively. The Commission was created in 1976, terminated in 1986, and reestablished in 1990. It is composed of five voting members—one architect, one engineer, two citizen members, the Commissioner of the Division of Culture and History, and an ex-officio member from the Department of Administration (DOA). The Commission costs the State little money, approximately \$1,200 annually.

The Commission's independence and its expertise in architecture, engineering and historic preservation help it to safeguard the capitol complex from inadvertent changes that could destroy the structural and historical integrity of the capitol complex.

One of the assets of the Commission is that it is independent from the state agencies that let contracts for and perform work on the capitol complex. The Commission's independence and its expertise in architecture, engineering and historic preservation help it to safeguard the capitol complex from inadvertent changes that could destroy the structural and historical integrity of the capitol complex. **The Legislative Auditor recommends that the Capitol Building Commission be continued.**

Projects Continue to Be Performed Without Commission Approval

The Legislative Auditor published performance reviews of the Commission in May of 1998 and June of 2001. The Commission responded to some of the recommendations contained in those reports; however, as this review shows, problems remain and important changes need to take place. These problems are:

- Many projects performed in the capitol complex that should be reviewed by the Commission are not;
- The code and rules do not clearly define the Commission's jurisdiction;
- There is a lack of coordination between the Commission, the DOA, Purchasing Division, and General Services Division;
- Neither General Services Division nor Purchasing

WVC §4-8-4 states, “The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract.”

A list was provided by DOA showing 85 permanent changes made to the capitol complex from July of 2002 to August of 2005. Many of those changes should have been reviewed by the Commission, but were not.

DOA has knowledge of many projects conducted on the capitol complex. The DOA can improve its facilitation of the Commission’s review process.

Division seem to have a clear understanding of the Commission’s jurisdiction over capitol complex projects; and

- State agencies are not always submitting plans to the Commission for approval as required by code and rules.

WVC §4-8-4 states, “*The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract.*” For the most part, the agency that lets contracts for and does work on the capitol building and surrounding complex is DOA. A list was provided by DOA showing 85 permanent changes made to the capitol complex from July of 2002 to August of 2005. Many of those changes should have been reviewed by the Commission, but were not. As of June 23, 2005, the Commission had approved or denied 15 projects since the issuance of the Legislative Auditor’s June 2001 Preliminary Performance Review of the Commission. During that time, the Commission discussed other projects without making official rulings.

The Commission’s duties and DOA’s duties are closely linked. The law requires the Secretary of DOA to be an ex-officio member of the Commission and to promulgate Commission rules. Projects conducted in the judicial and legislative branches of the capitol complex are exempt from the DOA’s purchasing procedures. All other capitol building and surrounding complex projects are performed by the General Services Division of DOA, and/or contracted through the Purchasing Division of DOA. Therefore, DOA has knowledge of many projects conducted on the capitol complex. The DOA can improve its facilitation of the Commission’s review process.

DOA frequently presents upcoming capitol building projects at the quarterly meetings of the Council of Finance and Administration. Considering the fact that the Secretary of DOA is an ex-officio member of the Commission, the Commission should be aware of all projects conducted by DOA which fall under Commission jurisdiction. **The Legislative Auditor recommends that Department of Administration and the Capitol Building Commission take steps to increase communication about projects conducted by the Department of Administration on which the Capitol Building Commission has the authority to review.**

Another way that the Commission could become aware of DOA projects is by attending DOA’s quarterly presentation of capitol projects to the Council on Finance and Administration. When asked if it would be beneficial if members of the Commission attended Council meetings in order to hear the capitol building project presentations, DOA responded by saying, “[DOA has]

advised the [Commission] several times about the Council meetings and they are aware that we report projects. It would probably let them know everything that is going on so it may prove to be beneficial.” **The Legislative Auditor recommends that the Commission consider having at least one Capitol Building Commission member, other than ex-officio member from the Department of Administration, attend the quarterly presentations given by the Department of Administration to the Council on Finance and Administration.**

There has been some confusion in the Purchasing Division of DOA about the authority and role of the Commission. Most of the contracts let for capitol complex projects are let by the Purchasing Division of DOA.

Jurisdictional Confusion Between the Purchasing Division & General Services Division and the Commission Need to Be Addressed

There has been some confusion in the Purchasing Division of DOA about the authority and role of the Commission. Most of the contracts let for capitol complex projects are let by the Purchasing Division of DOA. Based on the code which states, *“The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change,”* and the role of the Purchasing Division in the letting of contracts, some communication between the Purchasing Division and the Commission would be helpful. The Division’ Director provided a statement that said, *“It was our understanding that for several years, the General Services Division performed the day to day duties of the Capitol Building Commission. Based on that understanding, our general practice has been to assure that General Services approves projects that relate to this issue.”* Furthermore, in Section 8.2 of Purchasing’s Policies and Procedures Handbook, it says,

Some communication between the Purchasing Division and the Commission would be helpful. The Division’ Director provided a statement that said, “It was our understanding that for several years, the General Services Division performed the day to day duties of the Capitol Building Commission. Based on that understanding, our general practice has been to assure that General Services approves projects that relate to this issue.”

*8.2.1 State Capitol Complex: Pursuant to the West Virginia code, §4-8-5, any contracts or purchase orders relating to renovation to any building within the Capitol Complex shall not be bid or executed until approval has been obtained by the **General Services Division** of the Department of Administration.*

*The code requires the **General Services Division** to review and either approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds which affect the appearance thereof. The surrounding complex shall include the governor’s mansion and other buildings used by the*

governor as part of his residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state capitol, and the roadways, structures and facilities which are incidental to such buildings. Substantial physical change means any permanent physical changes that alter the appearance of the public areas of the capitol building and surrounding complex.

It appears that when incorporating the code relating to the Commission into Purchasing's Policies and Procedures Handbook, the Purchasing Division substituted General Services for Capitol Building Commission.

*The approval of the **General Services Division** is mandatory [1] before any contract may be bid for work requiring a substantial physical change or [2] before changes are initiated if the work is not done under a contract. [Emphasis added.]*

It appears that when incorporating the code relating to the Commission into Purchasing's Policies and Procedures Handbook, the Purchasing Division substituted General Services for Capitol Building Commission. There is obvious confusion with regard to who is responsible for approving projects that needs to be corrected. **Therefore, the Legislative Auditor recommends that the Purchasing Division revise its Policies and Procedures Handbook to indicate that WVC § 4-8 et al. refers to the Capitol Building Commission rather than the General Services Division.**

There is no mention in the Purchasing Division Process Checklist of the need for pre-approval from the Capitol Building Commission.

Additionally, according to the Purchasing Division, “*all outside approvals are referenced generally in Purchasing Division Process Checklists that are documented and available on the Purchasing Division intranet site to all agency personnel. These checklists were prepared after the latest edition of the Handbook was published in 2000.*” One section of the checklist states, “*Pre-Approvals when applicable (AG; CTO/ISC; Design Build; Gen Ser; Prison Industries; Surplus Property).*” There is no mention of the need for pre-approval from the Capitol Building Commission. **The Legislative Auditor recommends that the Purchasing Division incorporate the need for pre-approval from the Capitol Building Commission into all relevant Purchasing Division checklists.**

Many capitol complex projects are performed by DOA's General Services Division. The 1998 and the 2001 reviews of the Commission recommended that, “*The General Services Division should make it standard procedure to inform all private vendors of their statutory responsibility to submit project plans to the CBC. General Services should also inform the CBC of any work being done by outside contractors.*” The Commission states that, “*Annually a letter is sent to General Services Division asking them to make it standard procedure to inform all private*

vendors of their statutory responsibility to submit project plans to the CBC and to inform the CBC of any work being done by outside contractors.” A statement from General Services said,

With respect to tree removal, the Commission has reviewed three projects that have involved tree removal or placement. This suggests that the Commission considers this type of project within its jurisdiction, while General Services does not.

General Services took this memo as to be any major changes to the Capitol Building must first be approved. Items such as removing walls, doors, windows and/or any items that may not be returned to its original state. However, the Capitol Building Commission has taken it to the point that any change such as tree removal and repairs or changes to any state owned building must be approved by them. We now question as to what or when we need to address issues to the Capitol Building Commission. Can we pave parking lots or demo old houses or buildings etc.?

With respect to tree removal, the Commission has reviewed three projects that have involved tree removal or placement. This suggests that the Commission considers this type of project within its jurisdiction, while General Services does not. In reference to the above statement, the Commission has authority to review significant changes that are made to any state-owned building on the capitol complex. West Virginia code§4-8-4 states that the Commission has authority over projects

General Services has some understandable confusion about the Commission’s jurisdiction. Similar instances of lack of clarity exist in Commission rules. Office space renovations, painting projects, benches in the capitol, tree removal, and statues are just a few examples of projects that are not clearly classified by current code or rule.

inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds, which affect the appearance thereof...As used in this article the surrounding complex shall include the governor’s mansion and other buildings used by the governor as part of his residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state capitol, and the roadways, structures and facilities which are incidental to such buildings.

The code is not clear whether or not the Commission has authority over tree removal; however, the code is clear that General Services is responsible for the care and control of landscaping on the capitol complex. General Services has some understandable confusion about the Commission’s jurisdiction. Similar instances of lack of clarity exist in Commission rules. Office space renovations, painting projects, benches in the capitol, tree removal, and statues are just a few examples of projects that are not clearly classified by current code or rule. According to a legal opinion offered by Legislative Services, “most of [those] projects fall into a ‘gray’ area where there is no ‘clear-cut’ answer as to who ultimately has the authority to

approve projects.” Additionally, the legal opinion stated,

The statute or rules governing the Commission’s authority would probably benefit if the Commission’s role in these situations was more clearly delineated. In particular, clarifying the terms ‘substantial physical changes’ and ‘renovations or repairs needed to maintain the capitol building and surrounding complex’ would help to resolve many of the ‘jurisdiction issues’.

A legal opinion stated, The statute or rules governing the Commission’s authority would probably benefit if the Commission’s role in these situations was more clearly delineated. In particular, clarifying the terms ‘substantial physical changes’ and ‘renovations or repairs needed to maintain the capitol building and surrounding complex’ would help to resolve many of the ‘jurisdiction issues’.

The Legislative Auditor recommends that the Department of Administration, General Services Division and the Capitol Building Commission engage in discourse about changes that need to be made to the Commission’s code and rules in order to clarify the Commission’s authority and avoid confusion in responsibilities among the agencies.

State Agencies Must Submit Relevant Capitol Complex Projects To the Commission Before Approaching DOA

The 1998 PERD review stated, “Some agencies do not know that projects involving major changes to the Capitol Complex require CBC approval.” The review went on to recommend that, “The Capitol Building Commission should inform state agencies at least annually of their statutory responsibility to submit projects to the CBC before work is started.” In the 2001 update to that review, the Commission was found to be in non-compliance with that recommendation; however, the Commission has since come into compliance. When new procedural rule amendments were adopted in 2004, new language was added to CSR §188-1-3.1 which says, “The Commission shall see that all state agencies are annually notified, by any means it feels expedient, of their statutory responsibility to submit projects to the Commission before work is started.” The Commission provided the Legislative Auditor with a copy of the notice sent to state agencies and provided a statement saying,

Since the Capitol Building Commission was audited in 2001,...it has been and will remain the policy of the Capitol Building Commission to send a Notice as well as a Memorandum regarding Rules for Capitol Complex Alterations to all state agencies located within the Capitol Complex. This notice and memorandum contain information regarding the statutory responsibility of agencies to submit projects to the Commission for approval before proceeding with any work.

Since the Capitol Building Commission was audited in 2001,...it has been and will remain the policy of the Capitol Building Commission to send a Notice as well as a Memorandum regarding Rules for Capitol Complex Alterations to all state agencies located within the Capitol Complex. This notice and memorandum contain information regarding the statutory responsibility of agencies to submit projects to the Commission for approval before proceeding with any work.

The Legislative Auditor commends the Commission for taking steps to increase agency awareness of Commission requirements. According to a legal opinion issued by Legislative Services,

The statutes or rules do not specifically address who has the responsibility to submit the contracts to the Commission for approval, but presumably the duty to submit the contracts would fall on the agency making the changes to the capitol or capitol complex... (and presumably the agency should have already received approval from the Commission before proceeding with the Purchasing Division process of letting contracts).

Agencies must seek approval from the Commission before submitting plans to DOA whenever the work falls under Commission jurisdiction.

The Legislative Auditor commends the Commission for taking steps to meet more often, and encourages the Commission to meet quarterly as its procedural rules stipulate. The increase in meetings should help to increase the number of projects reviewed and ensure that the Commission reviews projects in a timely manner.

Agencies must seek approval from the Commission before submitting plans to DOA whenever the work falls under Commission jurisdiction. It is not the responsibility of the General Services or Purchasing Divisions of DOA to submit projects to the Commission. However, as code states, it would be helpful if supporting agencies checked for Commission approval, “before a contract [is] let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract.” Since the Purchasing Division of DOA lets contracts for capitol complex work, and the General Services Division performs much of the work done on the capitol complex, it would be helpful to the Commission if the Purchasing and General Services Divisions would check for Commission approval before letting contracts or beginning work on projects over which the Commission clearly has authority.

The Commission Now Meets Quarterly

In 2004, CSR §188-1-3.5 was amended to require the Commission to meet quarterly rather than annually. This is a significant amendment because in order to review the number of projects that can occur in the capitol building complex, the Commission needs have more time to review them. So far in 2005, the Commission has met quarterly; however, prior to the rule change, the Commission was meeting only one to two times per year. Most likely, the low number of Commission meetings contributed to the low number of projects reviewed by the Commission. The Legislative Auditor commends the Commission for taking steps to meet more often, and encourages the Commission to meet quarterly as its procedural rules stipulate. The increase in meetings should help to increase the number of projects reviewed and ensure that the Commission reviews projects in a timely manner.

Documenting Final Decisions is Necessary for Accountability

Accountability of the Commission's final decision is important. There should be record of important elements that were involved in making final decisions. This is an ongoing issue that was mentioned in both the 1998 and 2001 PERD reviews. CSR §188-1-3.10 states, "All final actions of the Commission shall be journalized." Prior to 1998, the Commission intended its meeting minutes to serve as a journal of projects. The 1998 report noted,

Accountability of the Commission's final decision is important. There should be record of important elements that were involved in making final decisions.

[There are] numerous projects in which documentation of the final actions are not clear. In many cases, it is impossible to identify one or more important facts, namely:

- *The date a project was first submitted for review;*
- *The date a final decision was made;*
- *Was the decision made within the statutory 90 day decision period?;*
- *Were there any dissenting votes?;*
- *If there were dissenting votes, what were the areas of concern?; and*
- *If a project was denied, what was the final vote and what were the reasons the project was denied?*

Upon reviewing the newly created journal, the Chairman of the Commission acknowledged that the journal, "does not provide accurate accounts of our projects." Some entries only indicate that discussions were held, but do not indicate whether or not any official decision was made. Overall the journal language and format do not provide accountability if a decision were challenged.

In a 2001 update to the 1998 report, the Legislative Auditor found that the Commission had taken steps to improve documentation by creating a separate journal of projects. However, upon reviewing the newly created journal, the Chairman of the Commission acknowledged that the journal, "does not provide accurate accounts of our projects." The 2001 review further noted that the Commission provided a copy of a new journal that showed that the Commission had begun tracking information according to the six areas originally suggested by the Legislative Auditor. Unfortunately, the Commission is not tracking those six areas of information in its journal now. The current journal is arranged alphabetically and each entry is set up with a project title, the date of the meeting in which it was discussed, and miscellaneous information about the project following each date. In some entries it is clear what decisions have been made and in others it is not. Some entries indicate that a decision letter was sent, and others do not. Some entries only indicate that discussions were held, but do not indicate whether or not any official decision was made. Overall the journal language and format do not provide accountability if a decision were challenged. **The Legislative Auditor recommends that the Capitol Building Commission develop a complete journal of its project decisions.**

Approval and Denial Letters

In the Legislative Auditor's 1998 review of the Commission, it was recommended, "*The Capitol Building Commission should inform State agencies of its approval or rejection of projects in writing as required by law.*" In the 2001 update to that review, the Legislative Auditor noted that the Commission was in compliance with that recommendation as of its last meeting, but prior to its last meeting had only sent out 4 decision letters during the course of its last 22 decisions. Since the 2001 audit, the Commission has improved in this area. The project journal now has notes included indicating that letters have been sent. Furthermore, copies of some notification letters are filed within Commission logs. The Legislative Auditor commends the Commission for its continued compliance in this area. However, it is unclear if letters were sent for some of the Commission's final decisions, and copies of all decision letters were not included in Commission records. **The Legislative Auditor recommends that the Capitol Building Commission maintain documentation of each decision letter that it sends.**

Conclusion

The Capitol Building Commission is needed. Because of its independence and expertise, the Commission has the ability to protect the capitol complex from inadvertent changes that could destroy the structural and historical integrity of the capitol complex. The Commission does not review all projects that fall under its jurisdiction. The following steps would enhance the Commission's performance:

The Commission's success is contingent on the cooperation of supporting state agencies. If coordination were enhanced, the Commission's ability to protect the capitol complex would improve.

- Commission code and rules should be amended to clearly define the types of projects that are under the Commission's jurisdiction;
- The Commission, DOA, the General Services Division, and Purchasing Division should improve their coordination on Commission issues and capitol complex projects;
- State agencies located on the capitol complex should submit all relevant projects to the Commission for review;
- The Commission should improve its methods of documenting and notifying agencies of its decisions; and
- The Commission should continue to meet quarterly.

As this review has shown, the Commission's success is contingent on the cooperation of supporting state agencies. The General Services and

Purchasing Divisions of the DOA play a large role in capitol complex projects. The Secretary of DOA is an ex-officio member on the Commission and is responsible for promulgating Commission rules. DOA can improve its coordination with the Commission. State agencies are not complying with Commission review requirements. If coordination were enhanced, the Commission's ability to protect the capitol complex would improve.

Recommendations

1. *The Legislative Auditor recommends that the Capitol Building Commission be continued.*
2. *The Legislative Auditor recommends that Department of Administration and the Capitol Building Commission take steps to increase communication about projects conducted by the Department of Administration on which the Capitol Building Commission has the authority to review.*
3. *The Legislative Auditor recommends that the Commission consider having at least one Capitol Building Commission member, other than ex-officio member from the Department of Administration, attend the quarterly presentations given by the Department of Administration to the Council on Finance and Administration.*
4. *The Legislative Auditor recommends that the Purchasing Division revise its Policies and Procedures Handbook to indicate that WVC § 4-8 et al. refers to the Capitol Building Commission rather than the General Services Division.*
5. *The Legislative Auditor recommends that the Purchasing Division incorporate the need for pre-approval from the Capitol Building Commission into all relevant Purchasing Division checklists.*
6. *The Legislative Auditor recommends that the Department of Administration, General Services Division and the Capitol Building Commission engage in discourse about changes that need to be made to the Commission's code and rules in order to clarify the Commission's authority and avoid confusion in responsibilities among the agencies.*
7. *The Legislative Auditor recommends that the Capitol Building Commission develop a complete journal of its project decisions.*

8. *The Legislative Auditor recommends that the Capitol Building Commission maintain documentation of each decision letter that it sends.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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



John Sylvia
Director

November 2, 2005

Commissioner Troy Body, Chairman
Capitol Building Commission
The Cultural Center
1900 Kanawha Boulevard East
Charleston WV 25305-0300

Dear Commissioner Body:

This is to transmit a draft copy of the Preliminary Performance Review of the Capitol Building Commission. This report is scheduled to be presented Sunday, November 13, 2005, during the interim meeting of the Joint Committee on Government Operations, which begins at 4 p.m. The location of the meeting will be in the Senate Judiciary Committee room, W-208 of the capitol building. 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 committee may have.

An exit conference has been scheduled for Friday, November 4, 2005, at 10:30 a.m. Commission member, Chad Proudfoot is currently scheduled to attend. In addition, we need your written response by noon on Wednesday, November 9, 2005, 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, November 10, 2005, 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,


John Sylvia

Enclosure

c: Robert W. Ferguson, Jr., Secretary of DOA

_____ *Joint Committee on Government and Finance* _____

Appendix B: Agency Response



West Virginia Capitol Building Commission
Chad N. Proudfoot, Vice-Chairman
2 West Greene Dr. Morgantown, WV 26508 (304) 282-1201
chad.proudfoot@mail.wvu.edu

Mr. John Sylvia
Director, Performance Evaluation & Research Division
Joint Committee on Government & Finance
Building 1, Room W-314
1900 Kanawha Blvd. East
Charleston, WV 25305-0610

R E C E I V E D
NOV 09 2005

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

November 9, 2005

VIA FACSIMILE

Dear Mr. Sylvia:

In accordance with your transmittal notification of November 2, 2005, this letter shall serve as the written response to the Preliminary Performance Review (PPR) of the Capitol Building Commission which has been conducted by your office.

The Capitol Building Commission is very pleased with the results of the PPR, and all members are quite happy to have been recommended for renewal. With the exception of two minor concerns that I will discuss later in this letter, the Commission is quite happy to concur with the results of the PPR, and it will take all necessary steps to implement its recommendations.

Specifically, recommendations two and six ask for communication between the Capitol Building Commission and the Department of Administration. The Commission will take all necessary steps to initiate this communication in hopes that the underlying issues of these recommendations can be resolved. Along with this communication, the Commission will also work to try and ensure that the Department of Administration carries out recommendations four and five.

In accordance with recommendation three, the Capitol Building Commission will consult with the Secretary of Administration to see that a representative is now sent to the meetings of the Council on Finance & Administration. The Commission will also pursue a change in its procedural rules to add a statement regarding this recommendation, in order to try and alleviate problems in the future.

The Capitol Building Commission recognizes the need for a complete and accurate journal of its project decisions. Since the last performance review, great strides have been made in this area, but it is clear that there is more work to be done. The Commission will work to develop guidelines and clear policies regarding the journal, and it will try and implement a uniform record keeping system so that, in the future, the journal will serve as a readily accessible and easy-to-use resource for the Commission, other agencies, and the public. As part of the journal, the Commission will work to

maintain complete documentation of every decision letter that is sent. These actions should bring the Commission into compliance with recommendations seven and eight.

There are two areas of concern that the Capitol Building Commission would like to bring to light. Although these issues are referred to in the PPR, there were no recommendations made regarding these subjects, and the Commission would like for these to be considered as part of the review.

First, the law establishing the Capitol Building Commission charges it with an important service to the state. The regulation of the physical aspects of the Capitol Complex places the Commission in a position to have great effects upon one of our state's most valuable resources and symbols of citizen pride. For this reason, the Commission is disheartened that the law does not provide for any means of enforcement of Commission decisions. As the law now stands, no substantial physical changes can be made to the complex without Commission approval, but there is no recourse for the Commission to see that this law is obeyed. As the PPR shows, there have been numerous occasions when projects were done without the Commission having been notified. This tends, however unintentionally, to undermine the intent of the law. If this pattern continues, it could have disastrous effects upon the Capitol Complex. Therefore, the Commission requests that consideration be given to amending Chapter 4, Article 8 of the Code to give the Commission some power to enforce its decisions and perpetuate compliance.

Second, the Commission has attempted, within the past year, to adopt legislative rules to try and facilitate compliance and eliminate much of the confusion regarding its laws and purposes. This attempt could not come to fruition because the Secretary of Administration is required to promulgate all rules for the Capitol Building Commission, and he refused to submit these. The PPR clearly states that one of the most important aspects of the Commission is its independence within the executive branch of government, and also many of the problems of the Commission deal with its relationship with the Department of Administration. For these reasons, the Commission feels that it is unfairly constrained because it does not possess the ability to promulgate its own rules like that of other independent boards and commissions. Also, to truly implement the spirit of the PPR, rules should be made with the expedience that the normal rule-making process would delay for over a year. The ability to promulgate emergency rules would eliminate this problem. Therefore, the Commission requests that consideration be given to amending Chapter 4, Article 8, Section 4 of the Code to give the Commission the authority to promulgate its own rules, as well as emergency rules to properly administer its purpose.

The Commission recognizes the fact that such recommendations may seem somewhat arbitrary and time consuming to executives charged with keeping the Capitol Complex running. Consequently, the Commission wants to reiterate, though, that it is committed to working with the Department of Administration to ensure timeliness, ease, and good stewardship of state funds with these projects. The Commission would like to add that it has not completely denied any project since the last performance review. Therefore, the Commission sees itself not as a barrier to progress, but as a facilitator to ensure the safe

and regulated transition of a living, breathing, and changing complex for future generations of West Virginians.

With the exception of these concerns, the Commission is happy to concur with the results and recommendations of the PPR. The Commission has enjoyed working with the PERD staff, and it looks forward to implementing these recommendations in the near future.

Thank you for giving the Commission the opportunity to file this response. With kindest regards, I am...

Sincerely yours,



Chad N. Proudfoot
Vice-Chairman
Agency Liaison for PPR

