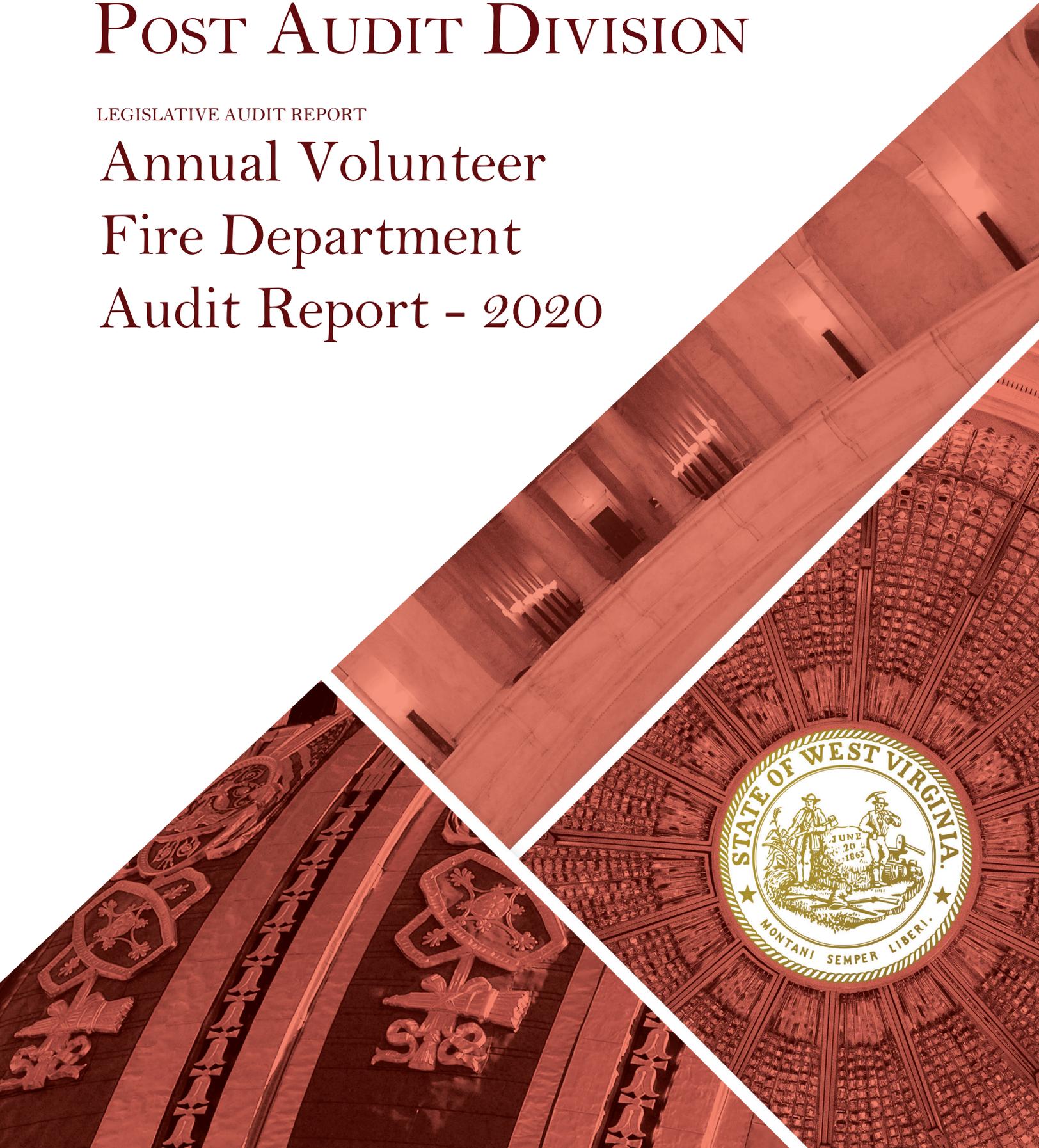


JOINT COMMITTEE ON GOVERNMENT AND FINANCE
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

Annual Volunteer Fire Department Audit Report - 2020



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

POST AUDIT DIVISION

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Legislative Audit Report

June 7, 2021

Annual Volunteer Fire Department Audit Report - 2020

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Background—State Funding of Volunteer and Part Volunteer Fire Departments

Every year, the State distributes millions of dollars to hundreds of West Virginia volunteer and part volunteer fire departments (VFD) for the purpose of providing funding for firefighting equipment, training, and maintenance. Established by W.Va. Code §33-3-33 and collected by the Insurance Commission, one source of the money is a 0.55 percent surcharge imposed on fire and casualty insurance policies issued in West Virginia. Also, W.Va. Code §33-3-14d established an additional premium tax equal to one percent of taxable premiums on fire insurance and casualty insurance policies to be collected by the Insurance Commission. Finally, W.Va. Code §29-3E-7 created a fireworks safety fee of twelve percent of all retail sales of consumer fireworks in the state. All money collected from the surcharge established in W.Va. Code §33-3-33, as well as twenty-five percent of the amount collected from the additional premium established in W.Va. Code §33-3-14d and twenty-five percent of the amount collected from the fireworks safety fee established in W.Va. Code §29-3E-7 comprises the Fire Protection Fund. The amount collected annually is subsequently distributed among qualifying departments through quarterly payments. These funds are to be used on specific items outlined in W.Va. Code §8-15-8b, such as protective equipment, rescue equipment, utilities for the fire stations, fire fighter training costs, insurance on buildings and automobiles, fuel, and workers’ compensation premiums. Table 1 below shows the amounts distributed and the number of departments that benefited from these distributions over the last eight years.

Table 1 – Distribution of State Funds for Volunteer and Part Volunteer Fire Departments - 2013 to 2020					
Year of Distribution	Number of Departments	Received Full Distribution	Did Not Receive Full Distribution*	Received No Funding	Total Amount Distributed
2013	439	373	65	1	\$18,184,727.75
2014	430	420	8	2	\$19,696,194.49
2015	430	410	19	1	\$19,896,613.74
2016	431	402	29	0	\$20,198,716.58
2017	428	400	27	1	\$20,600,530.71
2018	428	421	7	0	\$22,453,199.93
2019	428	410	18	0	\$22,663,900.23
2020	427	421	5	1	\$22,561,109.69

Data Obtained from W.Va. State Treasurer’s Office website.

**A VFD may lose its quarterly distribution if specific conditions are not met, such as not filing bank statements and check images for the previous calendar year for its state bank account(s) with the Legislative Auditor’s Office, not cooperating with an audit, having monetary findings from an audit, being out of compliance with the State Fire Marshal, or being out of compliance with a DHHR grant.*

In addition, it should be noted that the amount of each fire department’s quarterly allotment distributed by the W.Va. State Treasurer’s Office varies depending on whether the fire department is a fully-volunteer department or a part volunteer department. Further, the amount distributed to a part volunteer department varies based upon a calculation made by the State Treasurer’s Office with information from the Municipal Pensions Oversight Board.

By February 1st, all departments are required to file copies of the bank statements and check images for their state bank account(s) for the previous calendar year with the Legislative

Auditor's Office. In January, the Post Audit Division mailed a letter to each of the departments to remind them of the deadline and instructions on how to file the required documents.

The Legislative Auditor is granted the authority to withhold a department's state funding if the department fails to meet certain requirements stipulated in W.Va. Code. Scenarios that would cause a department to have its funding withheld include the following:

- If an audit of a department results in monetary findings, such as for expenditures not allowed by W.Va. Code §8-15-8b and/or expenditures not properly supported by a receipt or invoice;
- If a department fails to cooperate with an audit by not providing documents such as bank statements or invoices;
- If a department fails to respond to the Legislative Auditor's correspondence; and/or
- If a department does not file bank statements and check images for its state bank account(s) for the preceding year by April 1st.

Additionally, the State Fire Marshal also has the authority to withhold a department's state funding if the department fails to meet the standards of the State Fire Marshal. Funds withheld from non-compliant VFDs are held in escrow.

After one year of non-compliance, a department forfeits one quarter of its funding for each quarter it remains non-compliant. For example, if a department became non-compliant due to not filing its bank statements and check images by April 1, 2020, and remained non-compliant for the entire year, it would lose its first quarterly distribution that was withheld from the April 1, 2020 funding on April 1, 2021. If the department was still non-compliant at the beginning of the next quarter, it would lose the next quarterly distribution that was withheld and so on, until it became compliant. Funds forfeited by non-compliant VFDs are paid by the State Treasurer into the Fire Service Equipment and Training Fund created in W.Va. Code §29-3-5f.

W.Va. Code §12-4-14 grants the Legislative Auditor the authority to conduct audits of the state funding received by VFDs. An audit determines if the department has maintained its state money in a separate account and has spent the money on allowable items. The audit is limited to a review of the bank account in which the department deposits its state funds, commonly referred to as the department's "state account." There are three typical findings that can result from the VFD audits:

- Unallowable Expenditures (when the money is spent on items not allowed by Code);
- Lack of Supporting Documentation (when the VFD has not provided a proper invoice, receipt, or other documentation to support its assertion that an expenditure is allowable and for the benefit of the department); and
- Commingled Funds (when the VFD has mixed state funds with funds from other sources such as by transferring funds from its state account to its non-state or "general" account, thereby making it difficult to trace the money).

Objective

The objective of the audit of volunteer fire departments is to evaluate compliance with W.Va. Code §8-15-8b which states, in part:

Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

*Funds received from the state for volunteer and part volunteer fire companies and departments, pursuant to sections fourteen-d and thirty-three, article three, and section seven, article twelve-c, all of chapter thirty-three of this code, **may not be commingled with funds received from any other source.***

*Revenues allocated to volunteer and part volunteer fire companies and departments **may be expended only for the items listed in subdivisions (1) through (15) of this section**¹. (Emphasis Added)*

Scope

Pursuant to the authority granted by W.Va. Code §12-4-14, the Legislative Auditor conducted a compliance audit for the following volunteer and part volunteer fire departments in 2020:

- Clear Creek
- Jumping Branch-Nimitz
- Kingwood
- Lakewood
- Leading Creek
- Logan County #2
- Patterson Creek
- Princeton
- Racine
- Rowlesburg
- Trap Hill
- Tyler Mountain
- Valley Head

Some audits were conducted for years prior to 2019 because they were from a sample drawn in a previous year but not completed during that year. Therefore, they were carried over and completed in 2020. Finally, a subset of the audits was conducted for multiple years due to assessed risk.

Methodology

Post Audit management examined data from previous audits and identified potential indicators for a high-risk of noncompliance. The generalized categories associated with a high assessed level of risk include:

1. Departments that had not had an audit;
2. Departments that had not had a recent audit;
3. Departments that had an audit with large discrepancies; and
4. The Department was delinquent in financial filings.

Additionally, we considered other factors such as communication of possible concerns from members of the Legislature and the general public. The VFD Auditor begins with the department with the highest assessed level of risk and proceeds down the list completing as many departments as possible within the year before updating the risk assessment and beginning with a new list in January of the next year. Any audits that remain incomplete from the preceding year are completed prior to beginning audits from the new list.

¹ Subdivisions 1 through 15 can be found in Appendix A of this report.

Summary of 2020 VFD Audits

Of the 13 volunteer and part volunteer fire departments that were audited, 10 were not in compliance with W.Va. Code. Table 2 below groups these 10 non-compliant departments into categories of findings.

Table 2 – Type of Finding(s) Noted for Non-Compliant Fire Departments	
Type of Finding	Number of Departments
Commingled Funds Only	2
Commingled Funds and Unallowable Expenditures	1
Commingled Funds and Unsupported Expenditures	1
Commingled Funds, Unallowable Expenditures, and Unsupported Expenditures	4
Unallowable Expenditures Only	1
Unsupported Expenditures Only	0
Unallowable Expenditures and Unsupported Expenditures	<u>1</u>
Total	<u>10</u>

The figures on the next two pages illustrate the amounts audited for each department and the total amount that was found to be out of compliance, if applicable. Previous reports are available at http://www.legis.state.W.Va.us/Joint/postaudit/vfd_audits.cfm.

A summary of VFDs found to be in compliance begins on page 5. Beginning on page 9, the results of the audits of the 10 VFDs found to be in non-compliance are summarized, including the findings and recommendations.

Volunteer Fire Departments in Compliance with W.Va. Code

The following VFDs were audited for compliance with W.Va. Code §8-15-8b and had no findings to report. Table 3 below notes the department, county in which the department is located, and the total funds audited.

Table 3 – Volunteer Fire Departments in Compliance with W.Va. Code		
Department	County	Total Funds Audited
Leading Creek	Randolph	\$151,419.99
Patterson Creek	Mineral	\$147,275.99
Valley Head	Randolph	\$82,477.85
Total:		<u>\$381,173.83</u>

The results of the completed audits have been discussed with each respective department. The following report sections detail the results for each department audited found to be in compliance as listed in Table 3.

LEADING CREEK VOLUNTEER FIRE DEPARTMENT

Leading Creek VFD, in Randolph County, began 2019 with a balance of \$97,150.98 in its state account. The Department received additional funds from the State in the amount of \$54,269.01 during 2019. Therefore, the audited funds totaled \$151,419.99.

The Department's financial activity in its state account during the audit period, including amount audited, accounted for, and in compliance with W.Va. Code is summarized in the table below.

Table 4 – LEADING CREEK VFD State Funds Audited - Calendar Year 2019		
State Account		
Beginning Balance	\$97,150.98	
State Treasurer Deposits	\$54,269.01	
Additional Deposits	\$0.00	
Transferred Funds	<u>\$0.00</u>	
Total Funds Audited		\$151,419.99
Expenditures		
Proper Expenditures	<u>\$111,446.00</u>	
Total Expenditures		<u>\$111,446.00</u>
Balance Remaining in Account		<u>\$39,973.99</u>

PATTERSON CREEK VOLUNTEER FIRE DEPARTMENT

Patterson Creek VFD, in Mineral County, began 2017 with a balance of \$43,846.02 in its state account. The Department received additional funds from the State in the amount of \$103,334.72 and earned \$95.25 in interest on the state account during 2017 and 2018. Therefore, the audited funds totaled \$147,275.99.

Included in the audited expenditures for the Department was the purchase of an umbrella insurance policy for the Department. There is some ambiguity in the permissibility of this type of insurance policy. Due to this lack of clarity in the Code, the Legislative Auditor has not classified this expenditure as unallowable pending clarification from the Legislature².

The Department's financial activity in its state account during the audit period, including amount audited, accounted for, and in compliance with W.Va. Code is summarized in the table below.

Table 5 – PATTERSON CREEK VFD State Funds Audited - Calendar Years 2017 - 2018		
State Account		
Beginning Balance	\$43,846.02	
State Treasurer Deposits	\$103,334.72	
Additional Deposits	<u>\$95.25</u>	
Total Funds Audited		\$147,275.99
Expenditures		
Proper Expenditures	<u>\$110,446.97</u>	
Total Expenditures		<u>\$110,446.97</u>
Balance Remaining in Account		<u>\$36,829.02</u>

² See Legislative Auditor's comment on umbrella insurance policies on page 33 of this report.

VALLEY HEAD VOLUNTEER FIRE DEPARTMENT

Valley Head VFD, in Randolph County, began 2019 with a balance of \$27,050.84 in its state account. The Department received additional funds from the State in the amount of \$54,269.01 and had additional deposits of \$1,158.00 during 2019. Therefore, the audited funds totaled \$82,477.85.

The Department's financial activity in its state account during the audit period, including amount audited, accounted for, and in compliance with W.Va. Code is summarized in the table below.

Table 6 – VALLEY HEAD VFD State Funds Audited - Calendar Year 2019		
State Account		
Beginning Balance	\$27,050.84	
State Treasurer Deposits	\$54,269.01	
Additional Deposits	<u>\$1,158.00</u>	
Total Funds Audited		\$82,477.85
Expenditures		
Proper Expenditures	<u>\$61,971.53</u>	
Total Expenditures		<u>\$61,971.53</u>
Balance Remaining in Account		<u>\$20,506.32</u>

Volunteer Fire Departments Not in Compliance with W.Va. Code

The following VFDs were audited and found not to be in compliance with W.Va. Code §8-15-8b. Table 7 below notes the department, county in which the department is located, the total funds audited, and the total amount not in compliance with W.Va. Code.

Table 7 - Departments Not in Compliance with W.Va. Code			
Department	County	Total Funds Audited	Amount Not in Compliance
Clear Creek	Raleigh	\$57,516.07	\$6,459.57
Jumping Branch-Nimitz	Summers	\$61,947.95	\$22,197.95
Kingwood	Preston	\$155,176.47	\$685.46
Lakewood	Kanawha	\$159,113.79	\$4,725.92
Logan County #2	Logan	\$213,827.62	\$69,093.91
Racine	Boone	\$90,123.46	\$98.33
Rowlesburg	Preston	\$146,226.41	\$8,000.12
Trap Hill	Raleigh	\$73,974.03	\$473.04
Princeton	Mercer	\$307,293.87	Commingled Funds
Tyler Mountain	Kanawha	<u>\$57,848.49</u>	Commingled Funds
Total:		<u>\$1,323,048.16</u>	<u>\$111,734.30</u>

The results and recommendations of the completed audits have been discussed with each respective department. The following report sections detail the results for each department audited and found to be non-compliant as listed in Table 7.

CLEAR CREEK VOLUNTEER FIRE DEPARTMENT

The Clear Creek VFD, in Raleigh County, **was not in compliance with W.Va. Code.**

Of the total amount of \$6,459.57 not in compliance with W.Va. Code, \$636.84 was not in compliance due to these purchases being for items or services not permissible under W.Va. Code §8-15-8b. Items or services the Department purchased that are not permissible included: a printer to make decals for equipment identification and inventory control, late fees, logo recreation, and service fee for eBay seller's account.

The remaining amount of \$5,822.73 was for expenditures that had insufficient supporting documentation to determine either the items purchased or the intent of the purchase. This prevents a determination being made as to the compliance of the purchase with W.Va. Code.

Additionally, the Department commingled \$500.00 of funds from other sources by writing a check to itself for this amount.

The Department began with a balance of \$746.01 in its state account on January 1, 2019. During the period audited, the Department received \$56,269.01 in quarterly allotments disbursed by the W.Va. State Treasurer, earned \$1.05 in interest, and wrote a check to itself for \$500.00. Thus, the total amount of funds audited for the period was \$57,516.07.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in the table below.

Table 8 – CLEAR CREEK VFD		
State Funds Audited - Calendar Year 2019		
State Account Deposits		
Beginning Balance	\$746.01	
State Treasurer Deposits	\$56,269.01	
Additional Deposits	\$1.05	
Transferred Funds	<u>\$500.00</u>	
Total Funds Audited		\$57,516.07
State Account Expenditures		
Proper Expenditures	\$49,163.51	
Inadequate Expenditure Documentation	\$5,822.73	
Unallowable Expenditures	<u>\$1,136.84</u>	
Total Expenditures		<u>\$56,123.08</u>
Balance Remaining in State Account		<u>\$1,392.99</u>

Pursuant to W.Va. Code §8-15-8b(b) the Legislative Auditor formally notified the W.Va. State Treasurer to withhold a total of \$6,459.57 from the Department's future quarterly distribution(s) for the expenditures found to be not in compliance with the provisions of W.Va. Code §8-15-8b.

Additionally, the Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommended the Department cease expending monies from the state account for items or services not permitted by W.Va. Code §8-15-8b(a).
2. The Legislative Auditor recommended the Department maintain supporting documentation for the expenditures of state monies in accordance with W.Va. Code §8-15-8b(d) that is sufficient enough to be able to determine the specific item or service purchased as well as the total cost, purchase date, and permissibility under W.Va. Code §8-15-8b(a).
3. The Legislative Auditor recommended the Department cease writing checks to itself.

JUMPING BRANCH-NIMITZ VOLUNTEER FIRE DEPARTMENT

The Jumping Branch-Nimitz VFD, in Summers County, **was not in compliance with W.Va. Code.**

During the course of the audit of the Jumping Branch-Nimitz VFD, the Post Audit Division uncovered multiple instances of potentially fraudulent transactions. These transactions were referred to the Legislative Commission on Special Investigations (CSI) for investigation. During the investigation, the audit process was halted to prevent any interference with law enforcement activities. Through the investigation performed by CSI, the questionable transactions were verified to have been fraudulent activity undertaken by the then Fire Chief James Jeffries.

As a result of the audit and the investigation performed by CSI, Mr. Jeffries was arrested by State Police on February 20, 2019. On July 16, 2020, the Summers County Grand Jury indicted Mr. Jeffries for embezzlement, fraudulent schemes, computer fraud, and falsifying accounts. Ultimately, Mr. Jeffries confessed to investigators and entered a guilty plea to felony embezzlement on August 14, 2020.

Of the total amount of \$22,197.95 not in compliance with W.Va. Code, \$19,927.53 was not in compliance due to these purchases being for items or services not permissible under W.Va. Code §8-15-8b. At least \$17,000 of the total amount not in compliance with W.Va. Code is directly attributable to the fraudulent activity of Mr. Jeffries. Items or services the Department purchased that are not permissible included: ATM withdrawals and service fees spent on gambling, food and beverages, a reimbursement to the driver for an accident, late payment fees and charges, paid item fees, bottled water, postage for a mass mailing, donation cards, and an uninsured period fine from the Insurance Commissioner.

The remaining amount of \$2,270.42 was for expenditures that had insufficient supporting documentation to determine either the items purchased or the intent of the purchase. This prevents a determination being made as to the compliance of the purchase with W.Va. Code.

Additionally, the Department commingled \$8,906.32 of funds from other sources by making twelve deposits and transfers from other sources to the state account.

The Department began with a balance of \$4,087.61 in its state account on January 1, 2016. During the period audited, the Department received \$48,687.15 in quarterly allotments disbursed by the W.Va. State Treasurer, and made deposits and transfers, and received refunds, in the state account in the amount of \$9,173.19. Thus, the total amount of funds audited for the period was \$61,947.95.

Included in the audited expenditures for the Department was the purchase of an umbrella insurance policy for the Department. There is some ambiguity in the permissibility of this type of insurance policy. Due to this lack of clarity in the Code, the Legislative Auditor has not classified this expenditure as unallowable pending clarification from the Legislature³.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in the table below.

³ See Legislative Auditor's comment on umbrella insurance policies on page 33 of this report.

**Table 9 – JUMPING BRANCH-NIMITZ VFD
State Funds Audited - Calendar Year 2016**

State Account Deposits		
Beginning Balance	\$4,087.61	
State Treasurer Deposits	\$48,687.15	
Additional Deposits	\$9,173.19	
Transferred Funds	<u>\$0.00</u>	
Total Funds Audited		\$61,947.95
State Account Expenditures		
Proper Expenditures	\$38,321.27	
Inadequate Expenditure Documentation	\$2,270.42	
Unallowable Expenditures	<u>\$19,927.53</u>	
Total Expenditures		<u>\$60,519.22</u>
Balance Remaining in State Account		<u>\$1,428.73</u>

Pursuant to W.Va. Code §8-15-8b(b) the Legislative Auditor formally notified the W.Va. State Treasurer to withhold a total of \$22,197.95 from the Department's future quarterly distribution(s) for the expenditures found to be not in compliance with the provisions of W.Va. Code §8-15-8b.

Additionally, the Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommended the Department cease expending monies from the state account for items or services not permitted by W.Va. Code §8-15-8b(a).
2. The Legislative Auditor recommended the Department maintain supporting documentation for the expenditures of state monies in accordance with W.Va. Code §8-15-8b(d) that is sufficient enough to be able to determine the specific item or service purchased as well as the total cost, purchase date, and permissibility under W.Va. Code §8-15-8b(a).
3. The Legislative Auditor recommended the Department cease depositing and transferring non state funds into its state bank account.

KINGWOOD VOLUNTEER FIRE DEPARTMENT

The Kingwood VFD, in Preston County, **was not in compliance with W.Va. Code.**

The total amount of \$685.46 not in compliance with W.Va. Code was not in compliance due to these purchases being for items or services not permissible under W.Va. Code §8-15-8b. Items or services the Department purchased that are not permissible included: a “24hr AD&D” insurance policy and a “Death and Specific Loss” insurance policy.

Additionally, the Department commingled \$88,376.91 of funds from other sources by making several transfers from its general account to the state account to maintain a minimum balance in the state account and by making one transfer from the general account to the state account to cover a large check.

The Department began with a balance of \$500.00 in its state account on January 1, 2018. During the period audited, the Department received \$53,353.05 in quarterly allotments disbursed by the W.Va. State Treasurer and made additional deposits of \$101,323.42 into the state account. Thus, the total amount of funds audited for the period was \$155,176.47.

Included in the audited expenditures for the Department was the purchase of an umbrella insurance policy for the Department. There is some ambiguity in the permissibility of this type of insurance policy. Due to this lack of clarity in the Code, the Legislative Auditor has not classified this expenditure as unallowable pending clarification from the Legislature⁴.

The Department’s financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in the figure below.

State Account Deposits		
Beginning Balance	\$500.00	
State Treasurer Deposits	\$53,353.05	
Additional Deposits	\$101,323.42	
Transferred Funds	<u>\$0.00</u>	
Total Funds Audited		\$155,176.47
State Account Expenditures		
Proper Expenditures	\$153,991.01	
Inadequate Expenditure Documentation	\$0.00	
Unallowable Expenditures	<u>\$685.46</u>	
Total Expenditures		<u>\$154,676.47</u>
Balance Remaining in State Account		<u>\$500.00</u>

Pursuant to W.Va. Code §8-15-8b(b) the Legislative Auditor formally notified the W.Va. State Treasurer to withhold a total of \$685.46 from the Department’s future quarterly

⁴ See Legislative Auditor’s comment on umbrella insurance policies on page 33 of this report.

distribution(s) for the expenditures found to be not in compliance with the provisions of W.Va. Code §8-15-8b.

Additionally, the Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommended the Department cease expending monies from the state account for items or services not permitted by W.Va. Code §8-15-8b(a).
2. The Legislative Auditor recommended the Department cease depositing funds from other sources in its state bank account.

LAKEWOOD VOLUNTEER FIRE DEPARTMENT

The Lakewood VFD, in Kanawha County, **was not in compliance with W.Va. Code.**

The total amount of \$4,725.92 not in compliance was for expenditures that had insufficient supporting documentation to determine either the items purchased or the intent of the purchase. This prevents a determination being made as to the compliance of the purchase with W.Va. Code.

Additionally, the Department commingled \$20,000.00 of funds from other sources by writing checks to itself totaling this amount.

The Department began with a balance of \$85,469.86 in its state account on January 1, 2018. During the period audited, the Department received \$53,353.05 in quarterly allotments disbursed by the W.Va. State Treasurer, earned \$290.88 in interest, and wrote checks to itself totaling \$20,000.00. Thus, the total amount of funds audited for the period was \$159,113.79.

Included in the audited expenditures for the Department was the purchase of an umbrella insurance policy for the Department. There is some ambiguity in the permissibility of this type of insurance policy. Due to this lack of clarity in the Code, the Legislative Auditor has not classified this expenditure as unallowable pending clarification from the Legislature⁵.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in the table below.

Table 11 – LAKEWOOD VFD		
State Funds Audited - Calendar Year 2018		
State Account Deposits		
Beginning Balance	\$85,469.86	
State Treasurer Deposits	\$53,353.05	
Additional Deposits	\$290.88	
Transferred Funds	<u>\$20,000.00</u>	
Total Funds Audited		\$159,113.79
State Account Expenditures		
Proper Expenditures	\$35,561.32	
Inadequate Expenditure Documentation	\$4,725.92	
Unallowable Expenditures	\$0.00	
Self-Written Checks Accounted For	<u>\$20,000.00</u>	
Total Expenditures		<u>\$60,287.24</u>
Balance Remaining in State Account		<u>\$98,826.55</u>

Pursuant to W.Va. Code §8-15-8b(b) the Legislative Auditor formally notified the W.Va. State Treasurer to withhold a total of \$4,725.92 from the Department's future quarterly distribution(s) for the expenditures found to be not in compliance with the provisions of W.Va. Code §8-15-8b.

⁵ See Legislative Auditor's comment on umbrella insurance policies on page 33 of this report.

Additionally, the Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommended the Department maintain supporting documentation for the expenditures of state monies in accordance with W.Va. Code §8-15-8b(d) that is sufficient enough to be able to determine the specific item or service purchased as well as the total cost, purchase date, and permissibility under W.Va. Code §8-15-8b(a).
2. The Legislative Auditor recommended the Department cease writing checks to itself.

LOGAN COUNTY #2 VOLUNTEER FIRE DEPARTMENT

The Logan County VFD #2, in Logan County, **was not in compliance with W.Va. Code.**

Of the total amount of \$69,093.91 not in compliance with W.Va. Code, \$18,394.31 was not in compliance due to these purchases being for items or services not permissible under W.Va. Code §8-15-8b. Items or services the Department purchased that are not permissible included: a loan payment on a loan for “general bills” where the bills were from the non-state bank account, improvements for fundraising purposes, a payment to the spouse of the former Fire Chief/President, and paid item fees.

The remaining amount of \$50,699.60 was for expenditures that had insufficient supporting documentation to determine either the items purchased or the intent of the purchase. This prevents a determination being made as to the compliance of the purchase with W.Va. Code.

Additionally, the Department commingled \$5,053.70 of funds from other sources by using state funds to pay for a loan that was then used to pay bills from its non-state account. In addition, the Department had \$413.70 in interest from Certificates of Deposits (CDs) deposited in 2017, made a \$23,000 miscellaneous deposit and had \$546.38 in CD interest deposited in 2018, and had \$491.44 in CD interest deposited in 2019.

The Department began with a balance of \$31,772.37 in its state account on January 1, 2017. During the period audited, the Department received \$157,603.73 in quarterly allotments disbursed by the W.Va. State Treasurer and made additional deposits of \$24,451.52 into the state account. Thus, the total amount of funds audited for the period was \$213,827.62.

Included in the audited expenditures for the Department was the purchase of an umbrella insurance policy for the Department. There is some ambiguity in the permissibility of this type of insurance policy. Due to this lack of clarity in the Code, the Legislative Auditor has not classified this expenditure as unallowable pending clarification from the Legislature⁶.

The Department’s financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in Table 12.

⁶ See Legislative Auditor’s comment on umbrella insurance policies on page 33 of this report.

**Table 12 – LOGAN COUNTY VFD #2
State Funds Audited - Calendar Years 2017 - 2019**

State Account Deposits		
Beginning Balance	\$31,772.37	
State Treasurer Deposits	\$157,603.73	
Additional Deposits	\$24,451.52	
Transferred Funds	<u>\$0.00</u>	
Total Funds Audited		\$213,827.62
State Account Expenditures		
Proper Expenditures	\$141,321.53	
Inadequate Expenditure Documentation	\$50,699.60	
Unallowable Expenditures	<u>\$18,394.31</u>	
Total Expenditures		<u>\$210,415.44</u>
Balance Remaining in State Account		<u>\$3,412.18</u>

Pursuant to W.Va. Code §8-15-8b(b) the Legislative Auditor formally notified the W.Va. State Treasurer to withhold a total of \$69,093.91 from the Department’s future quarterly distribution(s) for the expenditures found to be not in compliance with the provisions of W.Va. Code §8-15-8b.

Additionally, the Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommends the Logan County Volunteer Fire Department #2 cease using Certificates of Deposit purchased with state funds to obtain loans, in accordance with W.Va. Code §8-15-8(b)(e).
2. The Legislative Auditor recommends the Logan County Volunteer Fire Department #2 cease using state funds to make loan payments for loans obtained for purchases not allowed by W.Va. Code §8-15-8(b)(a).
3. The Legislative Auditor recommends the Logan County Volunteer Fire Department #2 consider withdrawing the funds from any outstanding Certificates of Deposit upon maturity and use the funds to payoff any outstanding loans.
4. The Legislative Auditor recommends the Department cease expending monies from the state account for items or services not permitted by W.Va. Code §8-15-8b(a).
5. The Legislative Auditor recommends the Department maintain supporting documentation for the expenditures of state monies in accordance with W.Va. Code §8-15-8b(d) that is sufficient enough to be able to determine the specific item or service purchased as well as the total cost, purchase date, and permissibility under W.Va. Code §8-15-8b(a).
6. The Legislative Auditor recommends the Department cease depositing non-state monies into the designated state bank account unless the monies were originally state funds, and, if necessary, setup another bank account for funds not provided by the State.

PRINCETON PART VOLUNTEER FIRE DEPARTMENT

The Princeton FD, in Mercer County, **was not in compliance with W.Va. Code.**

The Department commingled \$130,730.56 of funds by transferring this amount from its state account to a non-state account. However, the Department was able to provide supporting documentation to account for proper expenditures exceeding this amount.

The Department began with a balance of \$152,661.13 in its state account on January 1, 2019. During the period audited, the Department received \$23,893.57 in quarterly allotments disbursed by the W.Va. State Treasurer. The Department also earned \$8.61 on the funds in its state account and transferred \$130,730.56 from its state account. Thus, the total amount of funds audited for the period was \$307,293.87.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, are summarized in the table below.

Table 13 – PRINCETON FD		
State Funds Audited - Calendar Year 2019		
State Account Deposits		
Beginning Balance	\$152,661.13	
State Treasurer Deposits	\$23,893.57	
Additional Deposits	\$8.61	
Transferred Funds	<u>\$130,730.56</u>	
Total Funds Audited		\$307,293.87
State Account Expenditures		
Proper Expenditures	\$130,730.56	
Inadequate Expenditure Documentation	\$0.00	
Unallowable Expenditures	\$0.00	
Transferred Funds Accounted For	<u>\$130,730.56</u>	
Total Expenditures		<u>\$261,461.12</u>
Balance Remaining in State Account		<u>\$45,832.75</u>

The Legislative Auditor made the following recommendation to the Department:

1. The Legislative Auditor recommended the Department cease transferring state funds from its state account.

RACINE VOLUNTEER FIRE DEPARTMENT

The Racine VFD, in Boone County, **was not in compliance with W.Va. Code.**

Of the total amount of \$98.33 not in compliance with W.Va. Code, \$93.56 was not in compliance due to these purchases being for items or services not permissible under W.Va. Code §8-15-8b. Items or services the Department purchased that are not permissible included: Frontier long distance calls that were unallowable due to the Department already paying for AT&T long distance service.

The remaining amount of \$4.77 was for expenditures that had insufficient supporting documentation to determine either the items purchased or the intent of the purchase. This prevents a determination being made as to the compliance of the purchase with W.Va. Code.

The Department began with a balance of \$36,770.41 in its state account on January 1, 2018. During the period audited, the Department received \$53,353.05 in quarterly allotments disbursed by the W.Va. State Treasurer. Thus, the total amount of funds audited for the period was \$90,123.46.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in the table below.

Table 14 – RACINE VFD		
State Funds Audited - Calendar Year 2018		
State Account Deposits		
Beginning Balance	\$36,770.41	
State Treasurer Deposits	\$53,353.05	
Additional Deposits	\$0.00	
Transferred Funds	<u>\$0.00</u>	
Total Funds Audited		\$90,123.46
State Account Expenditures		
Proper Expenditures	\$52,467.35	
Inadequate Expenditure Documentation	\$4.77	
Unallowable Expenditures	<u>\$93.56</u>	
Total Expenditures		<u>\$52,565.68</u>
Balance Remaining in State Account		<u>\$37,557.78</u>

The Legislative Auditor did not notify the W.Va. State Treasurer to withhold any funds from the Department's future quarterly distribution(s) as the Department deposited \$98.33 in its state account. This situation occurred due to the timing of the effective date of completed legislation and the change from the previous methodology for rectifying state account expenditure issues. The Department has been made aware that the action taken does not align with the requirements of W.Va. Code §8-15-8b(b) and will not be permissible in the future.

Additionally, The Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommended the Department cease expending monies from the state account for items or services not permitted by W.Va. Code §8-15-8b(a).
2. The Legislative Auditor recommended the Department maintain supporting documentation for the expenditures of state monies in accordance with W.Va. Code §8-15-8b(d) that is sufficient enough to be able to determine the specific item or service purchased as well as the total cost, purchase date, and permissibility under W.Va. Code §8-15-8b(a).

ROWLESBURG VOLUNTEER FIRE DEPARTMENT

The Rowlesburg VFD, in Preston County, **was not in compliance with W.Va. Code.**

Of the total amount of \$8,000.12 not in compliance with W.Va. Code, \$2,023.77 was not in compliance due to these purchases being for items or services not permissible under W.Va. Code §8-15-8b. Items or services the Department purchased that are not permissible included: electrical equipment for a stage to be used for Department events, electricity for a kitchen used for fundraisers, parades, and activities to sell food for, metal for a roof for a stage to be used for Department events, and late charges and fees.

An additional \$824.97 was for expenditures that had insufficient supporting documentation to determine either the items purchased or the intent of the purchase. This prevents a determination being made as to the compliance of the purchase with W.Va. Code.

Finally, the Department commingled \$13,000 of funds from other sources by writing checks to its Operating Account for this amount. Of the \$13,000 total, \$5,151.38 was not supported by allowable expenditures with adequate supporting documentation.

The Department began with a balance of \$78,103.62 in its state account on January 1, 2019. During the period audited, the Department received \$54,269.01 in quarterly allotments disbursed by the W.Va. State Treasurer. In addition, the Department earned \$178.78 in interest, made \$675 in miscellaneous deposits, and wrote \$13,000 in checks to itself. Thus, the total amount of funds audited for the period was \$146,226.41 which includes the \$13,000 of comingled funds not reflected in Table 16.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, are summarized in the figure below.

Table 16 – ROWLESBURG VFD		
State Funds Audited - Calendar Year 2019		
State Account Deposits		
Beginning Balance	\$78,103.62	
State Treasurer Deposits	\$54,269.01	
Additional Deposits	<u>\$853.78</u>	
Total Funds Audited		\$133,226.41
State Account Expenditures		
Proper Expenditures	\$53,871.97	
Inadequate Expenditure Documentation	\$5,976.35	
Unallowable Expenditures	<u>\$2,023.77</u>	
Total Expenditures		<u>\$61,872.09</u>
Balance Remaining in State Account		<u>\$71,354.32</u>

Pursuant to W.Va. Code §8-15-8b(b) the Legislative Auditor formally notified the W.Va. State Treasurer to withhold a total of \$8,000.12 from the Department's future quarterly

distribution(s) for the expenditures found to be not in compliance with the provisions of W.Va. Code §8-15-8b.

Additionally, the Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommended the Department cease expending monies from the state account for items or services not permitted by W.Va. Code §8-15-8b(a).
2. The Legislative Auditor recommended the Department maintain supporting documentation for the expenditures of state monies in accordance with W.Va. Code §8-15-8b(d) that is sufficient enough to be able to determine the specific item or service purchased as well as the total cost, purchase date, and permissibility under W.Va. Code §8-15-8b(a).
3. The Legislative Auditor recommended the Department cease writing checks to its Operating Account.

TRAP HILL VOLUNTEER FIRE DEPARTMENT

The Trap Hill VFD, in Raleigh County, **was not in compliance with W.Va. Code.**

The total amount of \$473.04 not in compliance with W.Va. Code was due to these purchases being for items or services not permissible under W.Va. Code §8-15-8b. Items or services the Department purchased that are not permissible included: a cooler, late fees, tv related charges, and video taxes and fees.

The Department began with a balance of \$19,705.02 in its state account on January 1, 2019. During the period audited, the Department received \$54,269.01 in quarterly allotments disbursed by the W.Va. State Treasurer. Thus, the total amount of funds audited for the period was \$73,974.03.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in the table below.

Table 17 – TRAP HILL VFD		
State Funds Audited - Calendar Year 2019		
State Account Deposits		
Beginning Balance	\$19,705.02	
State Treasurer Deposits	\$54,269.01	
Additional Deposits	\$0.00	
Transferred Funds	<u>\$0.00</u>	
Total Funds Audited		\$73,974.03
State Account Expenditures		
Proper Expenditures	\$27,466.20	
Inadequate Expenditure Documentation	\$0.00	
Unallowable Expenditures	<u>\$473.04</u>	
Total Expenditures		<u>\$27,939.24</u>
Balance Remaining in State Account		<u>\$46,034.79</u>

Pursuant to W.Va. Code §8-15-8b(b) the Legislative Auditor formally notified the W.Va. State Treasurer to withhold a total of \$473.04 from the Department's future quarterly distribution(s) for the expenditures found to be not in compliance with the provisions of W.Va. Code §8-15-8b.

Additionally, the Legislative Auditor made the following recommendations to the Department:

1. The Legislative Auditor recommended the Department cease expending monies from the state account for items or services not permitted by W.Va. Code §8-15-8b(a).

TYLER MOUNTAIN VOLUNTEER FIRE DEPARTMENT

The Tyler Mountain VFD, in Kanawha County, **was not in compliance with W.Va. Code.**

The Department commingled \$9,110.53 of funds by writing checks totaling this amount to itself. However, the Department was able to provide supporting documentation to account for proper expenditures matching this amount.

The Department began with a balance of \$4,492.41 in its state account on January 1, 2018. During the period audited, the Department received \$53,353.05 in quarterly allotments disbursed by the W.Va. State Treasurer. The Department also earned \$3.03 on the funds in its state account. Thus, the total amount of funds audited for the period was \$57,848.49.

The Department's financial activity in the state account during the audit period, including amount audited, accounted for, and not in compliance with W.Va. Code, is summarized in the table below.

Table 18 – TYLER MOUNTAIN VFD State Funds Audited - Calendar Year 2018		
State Account Deposits		
Beginning Balance	\$4,492.41	
State Treasurer Deposits	\$53,353.05	
Additional Deposits	<u>\$3.03</u>	
Total Funds Audited		\$57,848.49
State Account Expenditures		
Proper Expenditures	\$54,737.02	
Inadequate Expenditure Documentation	\$0.00	
Unallowable Expenditures	<u>\$0.00</u>	
Total Expenditures		<u>\$54,737.02</u>
Balance Remaining in State Account		<u>\$3,111.47</u>

The Legislative Auditor made the following recommendation to the Department:

1. The Legislative Auditor recommended the Department cease writing checks to itself.

Logan VFD #2 Certificates of Deposit and Loan Activities

In the 2019 Legislative Session HB4859 was passed which addressed an issue that was detected by the Post Audit Division in conducting its audits of state volunteer fire departments. The issue this legislation addressed concerned volunteer fire departments using state formula distributions to obtain Certificates of Deposit and then subsequently using those CDs as collateral to obtain loans. Once loan funds were obtained, it effectively removed the restriction placed on the state funds when they were originally distributed to the VFDs. These restrictions, set forth in W.Va. Code §8-15-8(b)(a), establish parameters for allowable expenditures to ensure that state fund distributions are used for their intended purpose. After identifying this, HB4859 amended W.Va. Code §8-15-8(b)(e), adding language that made the practice of using invested state funds as collateral to obtain a loan impermissible.

Information was reported to the Legislative Auditor concerning potential improper activity at the Logan County Volunteer Fire Department #2 regarding the use of CDs to obtain loans and the subsequent use of those loan funds. Through a review of past financial information reported to the Legislative Auditor, it was confirmed that the Department had reported state funds invested in CDs in 2010, however stopped reporting this on subsequent statements until 2017. Based on the information obtained, it appears the practice of investing state fund distributions into CDs at the Department began several administrations prior to those currently in charge of the volunteer fire department's finances. The act of using state fund distributions to invest in CDs was and is currently still a permitted activity within W.Va. Code §8-15-8(b); provided, the state funds are not commingled with non-state funds. The Legislative Auditor did not obtain any evidence to indicate that the Department commingled its state funds with non-state funds in the CD investments.

The Legislative Auditor then attempted to audit the CD investment activity of the Department that occurred from 2010 through 2019. During that period, the Department invested in a total of 32 CDs at a local bank using funds from the state disbursement account. Fourteen (14) of these CDs were subsequently used as collateral to obtain nine loans. Due to record retention policies, the bank was not able to furnish records sufficient for an audit for any activity prior to 2013 which includes 6 CDs that as a result were unable to be audited. The bank was able to provide sufficient documentation for the 26 CD investments obtained from 2013 through 2019.

Summary of CD Investment and Loan Activity

Based on the records provided to the Legislative Auditor, the Department has used over \$300,000 in state funds to invest in 26 CDs from 2013 through 2019. Upon maturity, these CDs have continued to be reinvested in additional CDs, or renewed, and had various redemption dates occurring within the audit period. Table 19 provides an overview of the 26 CDs.

**Table 19 - Overview of CD Activity at Logan County VFD #2
January 1, 2013 – December 31, 2019**

CD Number	Original Amount	Term	Redemption Date	Original APY
1	\$5,500.00	36 months	11/27/2013	0.44%
2	\$5,000.00	36 months	11/27/2013	0.44%
3	\$5,000.00	12 months	11/26/2013	0.15%
4	\$5,000.00	24 months	8/30/2018	0.25%
5	\$5,000.00	24 months	8/30/2018	0.25%
6	\$5,000.00	24 months	8/30/2018	0.25%
7	\$5,000.00	24 months	No Date Listed	0.25%
8	\$2,500.00	24 months	No Date Listed	0.25%
9	\$7,500.00	12 months	7/16/2018	0.15%
10	\$8,000.00	12 months	8/30/2018	0.15%
11	\$7,500.00	12 months	7/24/2018	0.15%
12	\$11,000.00	60 months	No Date Listed	0.60%
13	\$10,000.00	12 months	No Date Listed	0.15%
14	\$7,500.00	24 months	8/6/2018	0.25%
15	\$13,000.00	24 months	No Date Listed	0.25%
16	\$10,000.00	12 months	No Date Listed	0.15%
17	\$20,000.00	12 months	1/13/2016	0.15%
18	\$12,000.00	12 months	No Date Listed	0.15%
19	\$10,000.00	12 months	No Date Listed	0.15%
20	\$15,000.00	12 months	No Date Listed	0.15%
21	\$10,000.00	12 months	11/27/2013	0.15%
22	\$11,000.00	12 months	No Date Listed	0.15%
23	\$45,000.00	12 months	3/18/2016	0.15%
24	\$25,500.00	12 months	11/17/2018	0.15%
25	\$19,592.94	12 months	3/20/2018	0.15%
26	\$19,592.94	24 months	No Date Listed	1.31%
Total	<u>\$300,185.88</u>			

Source: Data compiled by auditor from documents provided by the VFD from the holding bank.

During the same period of January 1, 2013 through December 31, 2019, the Department obtained nine different loans from the bank using these 26 CDs as collateral, borrowing approximately \$267,000 in total. Like the CDs, some of these loans were modified beyond the original terms. Table 20 provides an overview of the loans obtained by the Department during the audit period.

**Table 20 - Overview of Loan Activity at Logan County VFD #2
January 1, 2013 – December 31, 2019**

Loan	Loan Amount	Loan Date	Int. Rate	Term	Monthly Payment	Balloon Payment⁷
1	\$10,000.00	11/15/2012	2.248%	12 months, 11 days	\$218.32	\$7,808.16
2	\$20,000.00	12/3/2013	2.151%	12 months, 10 days	\$218.32	\$18,024.84
3	\$25,250.00	7/1/2015	4.000%	4 months	Interest	\$25,250.00*
4	\$45,000.00	9/17/2015	3.250%	6 months	Interest	\$45,000.00*
5	\$50,100.00	9/14/2016	4.375%	3 months	Interest	\$50,100.00*
6	\$5,000.00	4/11/2017	2.753%	35 months	\$150.00	\$110.75
7	\$32,565.34	9/1/2017	2.650%	36 months	\$200.00	\$28,008.22
8	\$55,500.00	3/20/2018	2.651%	36 months	\$200.00	\$55,433.89
9	\$23,500.00	5/16/2018	2.753%	24 months	\$200.00	\$21,933.62
Total	\$266,915.34					

*Each loan required a monthly payment of accrued interest and a balloon payment of the principal and final month of interest.

Source: Data compiled by auditor from documents provided by the VFD from the holding bank.

From January 1, 2013 to December 31, 2019, the annual percentage yield on the CDs ranged from as high as 2.213% to as low as 0.14%, with an average annual percentage yield of 0.2612%. With these varied yields on the investments made in the CDs, the Department earned interest as high as \$634.82 in 2014, with the lowest interest earned of \$234.14 in 2013. During the entire seven-year audit period, the Department earned a total of \$3,219.83 from its investments in the CDs.

Based on the information provided by the Department, many of these CDs were used as collateral to obtain nine different loans from 2013 through 2019 that totaled \$267,000 in aggregated principal. While not every CD held by the Department was used as collateral for obtaining loans from the bank, all of the loans were secured with a CD as collateral. To secure the nine loans, five loans used a single CD for collateral, two loans used two CDs for collateral, and two loans used four CDs for collateral. Some CDs were used as collateral for more than one loan. Simply comparing the highest interest rate of any of the CDs used as collateral, 1.30%, to the lowest interest rate incurred on the loan, 2.151%, the Department was paying more in interest for the loans than it earned in interest for the CDs. Table 21 gives a comparison of the interest rates on the loans and the CDs used as collateral.

⁷ A balloon payment is a large payment due at the end of a balloon loan, such as a mortgage, a commercial loan, or another type of amortized loan.

Table 21 - Comparison of Interest Rates for Loans and CDs Used as Collateral

Loan Number	Loan Amount	Loan Interest Rate Charged	Range of CD Interest Rate Earned
1	\$10,000.00	2.2480%	0.1510% - 0.2800%
2	\$20,000.00	2.1510%	0.1510% - 0.2480%
3	\$25,250.00	4.0000%	0.1510% - 0.2800%
4	\$45,000.00	3.2500%	0.1510% - 0.4490%
5	\$50,100.00	4.3750%	0.1510% - 1.3000%
6	\$5,000.00	2.7530%	0.2530% - 0.3720%
7	\$32,565.34	2.6500%	0.1510% - 0.2800%
8	\$55,500.00	2.6510%	0.1510% - 0.2550%
9	<u>\$23,500.00</u>	2.7530%	0.1510% - 0.2710%
Total	<u>\$266,915.34</u>	2.9812% Avg.	0.2612% Avg.

Source: Data compiled by auditor from documents provided by the VFD from the holding bank.

From a purely practical perspective, the practice of using CDs as collateral to obtain a loan with a higher interest rate results in a negative return on investment from the CDs. The Legislative Auditor attempted to compare the total interest earned on the CDs to the total fees charged and interest paid on the loans that used these CDs as collateral; however, record keeping issues at the Department prohibited a complete analysis of the total costs associated with the loans. According to the Department’s current fire chief, “...all this lack of record keeping is the result of a previous administration and we are making every attempt we can to provide all information requested.” After several attempts, the current fire chief was unable to provide sufficient data to allow for a precise analysis to be performed.

Concerning the computation of interest paid on the loans, the loan documentation was missing complete payment histories, and when combined with loans not always reaching maturity or being modified, the Legislative Auditor did not have reliable data to calculate the total interest. The Notice of Loan Maturity statement for one loan indicated that no principal had been paid on a loan, four loans were paid off early, and two loans were modified. Additionally, we were forced to rely on handwritten notes on the loan documentation and CD printouts as to the purpose of the loans and the exact CD account numbers used as collateral for each loan.

The Legislative Auditor attempted to calculate the approximate amount of the interest charges incurred on the nine loans with the information that was available (see Appendix A). The Legislative Auditor estimates that the minimum amount the Department paid in interest charges was at least \$7,500. Based on IRS 1099-INT forms for the CDs used as collateral, the Department earned approximately \$1,000 in interest on the CDs while they were used as collateral. According to the promissory notes for the two loans that were modified, the Department incurred \$1,500 in modification fees. Therefore, when accounting for the \$7,500 in minimum interest charges, as well as the \$1,500 in modification fees, the Department incurred at least \$9,000 in expenses for the loans, or nine times the interest the collateral CDs earned in the same period.

Of the nine loans identified by the Legislative Auditor, two were still active at the end of our audit period. When these issues and the concerns of the Legislative Auditor were communicated to the current fire chief on November 30, 2020, he stated, “I have spoke [sic] with

the financial institution and currently working to cash in said CD's in compliance with the advice from your office..." Upon completion of this process, the Department will not have any loans outstanding using CDs as collateral.

If properly managed, investing in a CD can generate a small positive net cash flow. In many cases, the practice of a VFD investing state distributions into CDs is not to reap the benefits of the interest but to hold those funds in an interest-bearing account to be used for a future purpose such as a large equipment purchase. In response to a January 8, 2020 letter from the Legislative Auditor, the previous fire chief stated, "This letter is to inform you in writing that we will be using the Certificates of Deposit (CD's) in order to purchase new and updated equipment...". However, in most cases noted above where CDs were used as collateral to obtain a loan, the amounts of the CDs used as collateral equaled the amount of the loans. Therefore, had these funds not been invested in CDs, the Department could have had enough funds to make these purchases without obtaining the loans, which ultimately caused the Department to incur additional expenses in the form of fees and interest charges from the loans. The nominal interest being earned on the CDs was quickly negated, and the purpose of using CDs to obtain a loan of an equal amount to then make purchases does not make much practical sense. Based on this analysis, the Legislative Auditor is unable to determine a logical business rationale to justify the financial actions taken by the previous administration of the Department.

Items Purchased with Loans Would have been Unallowable by W.Va. Code

When a VFD receives a quarterly formula distribution from the Municipal Pensions and Protection Fund, these deposits are made into the account designated by the VFD as its state account. This account is designated as such to comply with W.Va. Code §8-15-8(b)(a) which requires state funds to not be commingled with funds from any other non-state source. Once these funds are deposited in the designated account, the VFD may use these funds only for expenses that meet one of the 15 categories for allowable expenditures described in W.Va. Code §8-15-8(b)(a). Any VFD expenses that do not meet one of the categories cannot be paid for with the funds deposited into the state account. Expenses that are not permitted to be paid for with the quarterly distributions are typically paid for from other VFD funding sources including county funds, bonds, tax levies, donations, fundraisers, etc., monies of which are maintained in accounts separate from the state account. Expenditures made from the state account are subject to a compliance audit performed by the Post Audit Division to provide oversight of the VFD's financial activities regarding compliance with restricted categories of expenditures.

Per the Department's assertion regarding the purpose of the loans obtained using CDs as collateral, the Legislative Auditor determined that two of the loans were used to make expenditures not permissible by W.Va. Code §8-15-8(b). These two loans indicated a purpose involving Christmas expenses. Additionally, a third loan may also have been used for expenses not permitted by W.Va. Code, but due to insufficient information, the Legislative Auditor is unable to determine its allowability. This third loan was for the stated purpose of general bills, which depending upon the specific bills paid, may or may not have been unallowable. However, the Department could provide little to no documentation to support these assertions, with the exception of the loans paid for from 2017 through 2019. Table 22 provides an overview of the intended purpose of the nine loans per the Department and the allowability of that expenditure.

Table 22 - Overview of the Allowability of Loans According to the Stated Purpose			
Loan Number	Loan Amount	Purpose Stated on Loan Documents	Allowable Per W.Va. Code §8-15-8(b)
1	\$10,000.00	Christmas Gifts for Children	NOT ALLOWABLE
2	\$20,000.00	Refinance Loan & (Illegible) Christmas	NOT ALLOWABLE
3	\$25,250.00	Purchase Utility Vehicle for fire station	ALLOWABLE
4	\$45,000.00	Utility Vehicle for Fire St.	ALLOWABLE
5	\$50,100.00	Purchase Fire Truck	ALLOWABLE
6	\$5,000.00	General Bills	POSSIBLY UNALLOWABLE
7	\$32,565.34	Paying for tools	ALLOWABLE
8	\$55,500.00	Purchase Fire Truck	ALLOWABLE
9	<u>\$23,500.00</u>	ATV for Fire Department	ALLOWABLE
Total	<u>\$266,915.34</u>		
<i>Source: Auditor analysis based on loan amount and purpose obtained from documents provided by the VFD from the holding bank.</i>			

By placing restricted state funds into CDs and then using the CDs to obtain loans, the Department effectively stripped the restrictions placed by the Legislature on those funds. This is because the funds the Department expended on unallowable purchases were the funds loaned by the bank, not state funds. Since the state funds were secured in the CDs, this action placed the expenditures outside the Legislative Auditor’s statutory authority; thus, effectively nullifying Legislative oversight of the expenditures.

While the financial activities examined during the audit period of the previous Department administration, which resigned in April 2020, are questionable, the act of using state funds secured in CDs as loan collateral, was not a prohibited activity at the time the loans examined in this audit were secured. As a result of concerns raised by the Legislative Auditor regarding the ability of some VFDs to potentially convert restricted state funds to unrestricted loan proceeds, the Legislature addressed the issue. During the 2020 Legislative session, HB4859 was passed, which added the following language to W.Va. Code §8-15-8(b)(e), “...[Departments] shall not use the invested money as collateral or security for any loan...”, thus closing the loophole that allowed state funds to be manipulated in this manner.

The Legislative Auditor informed the current chief of the Department, who took over in April 2020, of the new restrictions placed upon the investments made by all VFDs with state funds. According to the fire chief, they are taking steps to end the practice of securing loans with state funded investment CDs. He stated, “...We are having a bylaw meeting as well in two weeks so we can add to our financial section that will prevent any future issues with this in compliance with the bill that was passed to be in compliance with W.Va. Code section 8-15-8b(e).” As a result of the issues discovered during the audit of the CD activity, the Legislative Auditor conducted a compliance audit of the expenditures from the state account of the Department for a three-year period from 2017 through 2019.

Legislative Auditor's Comments Regarding Umbrella Insurance Policies

The Post Audit Division of the Legislative Auditor's Office has called into question the purchase of umbrella insurance policies with state funds by volunteer and part volunteer fire departments. The inquiry arose upon review of the types of insurance coverage included under Lakewood VFD's umbrella insurance policy discovered during a routine audit.

The term "umbrella insurance policy" does not have the same components comprising the entirety of the policy between different insurers. Generally, umbrella insurance policies incorporate multiple types of coverages into a single comprehensive policy combining standard business insurance policies with additional coverage in relation to excess liability and additional policy limits for a catastrophic loss. The umbrella insurance policy provides additional coverage over the general liability, business auto liability, and employers liability policies. The different policies are incorporated into an umbrella insurance policy with a single rate based upon the collective coverage and the associated risks.

A major benefit of umbrella insurance policies is the typical inexpensive nature of the policy in relation to the amount of coverage received. However, there are several other advantages to a VFD carrying an umbrella insurance policy. The first among these advantages is coverage up to a large amount of potential damages if a VFD causes an accident or incurs some other liability to a person or entity outside of the fire department. For example, if a firefighter from the VFD caused a multivehicle accident while responding to a fire call and the VFD's vehicle insurance property damage coverage was not enough to cover the damages to each vehicle, the umbrella insurance policy could be structured to cover the remaining damages. Secondly, umbrella insurance policies could include specifications to cover the fire department if a person is injured on the VFD's property if the property liability insurance did not cover the entire liability. In the event of a lawsuit the umbrella insurance policy could cover the damages.

There is a question that arises concerning the permissibility of the umbrella insurance coverage under currently authorized VFD expenditures depending on the circumstances. For instance, VFDs are not permitted to buy food or conduct fundraising activities using state funds. In the event a VFD served food to the public as part of a fundraiser and several community members developed food poisoning and then sued the department, the umbrella insurance policy could cover the damages. However, it is unclear if such coverage should be permissible using state funds if a lawsuit is born from activities that are not allowed by state code to be funded with state monies.

If a VFD purchases an umbrella insurance policy to reduce the cost of their insurance premium, it is possible to include insurance types not specifically permissible in W.Va. Code. In the past multiple VFD's have purchased accident & sickness insurance and accidental death and dismemberment insurance, neither of which are permissible in W.Va. Code. It is this incorporation of various insurance types within a single payment amount that represents a risk of a VFD running afoul of the intentions of the Legislature.

W.Va. Code §8-15-8b, which outlines allowable expenditures for the state funding, provides for several types of insurance VFDs may purchase. More specifically, W.Va. Code §8-15-8b(a)(10) allows for the purchase of property/casualty insurance premiums for protection and indemnification against loss or damage or liability. W.Va. Code §8-15-8b(a)(13) provides for workers' compensation premiums and W.Va. Code §8-15-8b(a)(14) allows expenditures for life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters.

According to Legislative Services, it is generally accepted that “if the statutory language is plain and does not lend itself to multiple constructions, the statute's plain language must be applied as it is written. *Tribeca Lending Corp. v. McCormick*, 231 W. Va. 455, 460, 745 S.E.2d 493, 498 (2013). Additionally, the primary object in construing a statute is to ascertain and give effect to the intent of the Legislature. Syllabus Point 1, *Smith v. State Workmen's Comp.* Comm'r, 159 W.Va. 108, 219 S.E.2d 361 (1975). Therefore, we may look to the plain language of this subsection and the language of the section as a whole to ascertain the meaning of this allowable expenditure.”

Additionally, Legislative Services states that on its face, the phrase “insurance premiums for protection and indemnification against loss or damage or liability” is broad. There is no limiting language to what type of loss, damage, or liability coverage that the volunteer fire departments may purchase. Meaning, any policy which covers a loss, damage, or liability—within the plain meaning of those terms—on behalf of the volunteer fire department is allowable.

When an audit of a VFD occurs, any expenses made from state funds must be accounted for in accordance with W.Va. Code §8-15-8b. If a VFD is found to have made impermissible expenditures, the amount that is impermissible is withheld from future funding. Ultimately, the amounts withheld are transferred to the Fire Service Equipment and Training Fund created in W.Va. Code §29-3-5f for redistribution.

The Legislative Auditor has several limitations to determining the allowability of umbrella insurance policies purchased by VFDs. The primary limitation is that the auditor does not always have the entire umbrella insurance policy or at least an overview of the policy. Secondly, each fire department’s umbrella insurance policy can be structured differently. While one policy may be completely allowable, a different VFD’s policy could contain a provision(s) that is unallowable. Lastly, all that is available is an invoice for the total amount of the umbrella insurance policy, without any specific costs assigned to each insurance type contained within the umbrella insurance policy by the insurance company. This lack of delineation of each component piece of the policy prohibits a fair and equitable proration of the impermissible insurance policies from the permissible policies. The consequence would be the entire amount of the policy premium being allowed or result in an audit finding for which the fire department will have a portion of its future quarterly state distribution(s) withheld.

The potential for VFD’s to reduce expenses associated with funds allocated by the Legislature is in the best interest of the state. One method VFD’s have attempted to reduce costs is by purchasing umbrella insurance policies. However, given the nature of umbrella insurance policies and its one set price for the package of insurance selected, the Legislative Auditor is unable to determine a fair and equitable method for allocating the impermissible amount of funds that were expended for the umbrella insurance policy. The Legislative Auditor is also unable to determine the Legislative intent regarding the permissibility of umbrella insurance policies, due to the lack of specific language in W.Va. Code §8-15-8b, and the issues mentioned above.

According to Legislative Services, “Based on plain interpretation and legislative intent, any policy which covers loss, damage, or liability, is allowable, including umbrella coverages as defined *supra*. If the legislature intends to limit the scope of this subsection, or W. Va. Code §8-15-8b generally, to prohibit the expenditure of state funds for these types of coverages, they should amend this section to make such limitation.”

The Legislative Auditor recommends the following:

Recommendation

1. The Legislature consider clarifying the categories of allowable insurance coverages and specifically umbrella insurance policies in W.Va. Code §8-15-8b.

Appendix A – Allowable VFD Expenditures Per W.Va. Code §8-15-8b

West Virginia Code §8-15-8b describes the authorized expenditures that may be made with the money distributed from the fire protection fund to the volunteer fire departments. Expenditures that may be made are in Code as follows:

- (1) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;*
- (2) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;*
- (3) Compliance with insurance service office recommendations relating to fire departments;*
- (4) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;*
- (5) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;*
- (6) Retirement of debts;*
- (7) Payment of utility bills;*
- (8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood borne pathogens: Provided, That the vaccine shall be purchased through the state immunization program or from the lowest cost vendor available: Provided, however, That volunteer and part volunteer fire companies and departments shall seek to obtain no cost administration of the vaccinations through local boards of health: Provided further, That in the event any volunteer or part volunteer fire company or department is unable to obtain no cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;*
- (9) Any filing fee required to be paid to the Legislative Auditor's Office under section fourteen, article four, chapter twelve of this code relating to sworn statements of annual expenditures submitted by volunteer or part volunteer fire companies or departments that receive state funds or grants;*
- (10) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;*
- (11) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage and accounting costs;*
- (12) Dues paid to national, state and county associations;*
- (13) Workers' Compensation premiums;*

(14) Life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters; and

(15) Educational and training supplies and fire prevention promotional materials, not to exceed \$500 per year.



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