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PERFORMANCE REVIEW

PUBLIC PORT AUTHORITY

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

AUDIT OVERVIEW

The Legislature Should Consider Terminating the West Virginia Public Port Authority Because It Receives No Funding, Has No Employees or Future Projects, and It Does Not Benefit the State.



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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted an Agency Review of the Department of Transportation (DOT) pursuant to West Virginia Code §4-10-8. As part of this process, a Performance Review of the West Virginia Public Port Authority (Port Authority) was conducted. The objectives of this review were to determine whether the agency provides a level of benefit to the state of West Virginia that would require a continued need for its existence. The issues of this report are highlighted below.

Frequently Used Acronyms and Definitions in This Report:

PERD – Performance Evaluation and Research Division

DOT – Department of Transportation

OASIS - Our Advanced Solution with Integrated Systems (the system used by state agencies to upload financial information, documentation, and pay vendors)

NSR – Norfolk Southern Railway

RTI - Rahall Transportation Institute

HIG – Heartland Intermodal Gateway

Intermodal - the transfer of a shipment from one transportation mode to another as the shipment moves from origin to destination.

Report Highlights:

Issue 1: The Legislature Should Consider Terminating the West Virginia Public Port Authority Because It Receives No Funding, Has No Employees or Future Projects, and It Does Not Benefit the State.

- The Port Authority is currently inactive, does not implement key duties and responsibilities designated by the W. Va. State Code, and has incurred more expenditures than revenue in recent years.
- Since 2005, the Port Authority pursued two major projects that did not benefit the state or achieve target goals. One of these projects continues to generate expenses for the State, and is scheduled to be sold in an auction.
- The Port Authority does not actively oversee local port authority districts. The agency has not authorized the creation of a new district since 2014, and does not share the revenue of the local entities.

-
- The Port Authority has been defunded, has not received a federal grant since FY 2015, and the Board of Directors does not meet regularly. The agency’s website is also outdated, which risks providing the public with misinformation.

PERD’s Response to the Agency’s Written Response

On May 29, 2020, PERD received a written response to the report from the agency’s Cabinet Secretary, which can be found in Appendix C. The agency generally agrees with the overall findings of the report. However, one caveat is that it may be desirable for DOT in some way to certify port districts, if the need arises, and perhaps also serve as a conduit for grants and other “passthroughs” that may become available.

Recommendations

1. *The Legislative Auditor recommends that the Port Authority continue to oversee the process of selling the HIG facility to the highest bidder, as currently scheduled.*
2. *The Legislative Auditor recommends that the agency confirm the existence of any legally-binding operator agreement between the Port Authority and any active local port authority district. In the event such an agreement exists and is legally valid, the Legislative Auditor recommends that full and absolute independence be granted to the local port authority, so that the district may continue to operate as an individual, self-sustaining entity.*
3. *The Legislative Auditor recommends the elimination of the Port Authority once outstanding invoices are paid, and the HIG facility has been sold.*

ISSUE 1

The Legislature Should Consider Terminating the West Virginia Public Port Authority Because It Receives No Funding, Has No Employees or Future Projects, and It Does Not Benefit the State.

Issue Summary

The West Virginia Public Port Authority (Port Authority) was primarily established to facilitate economic transportation opportunities, foster the development of intermodalism, authorize the establishment of local port authority districts, and promote tourism. Over the past five years, however, the agency has become increasingly dormant and fallen short of fulfilling the various purposes for which it was created. The Port Authority does not currently demonstrate a benefit to the state of West Virginia, or a need for continued existence. The agency is currently inactive, does not receive state or federal funding, does not generate revenue, has no full-time or part-time employees, and no longer oversees any local port districts. Furthermore, the last two major projects pursued by the Port Authority either failed or were cancelled. Based on these factors and a lack of any foreseeable future contribution by the agency, the Port Authority should be terminated.

The Port Authority does not currently demonstrate a benefit to the state of West Virginia, or a need for continued existence.

The Port Authority Has Statutory Duties That It Cannot Perform.

Pursuant to W. Va. Code §17-16B-1, the Port Authority was established by the West Virginia Legislature in 1989 as an agency within the West Virginia Department of Transportation (DOT). The Port Authority Port Procedures Manual states that West Virginia has over 420 miles of navigable rivers, and the agency was formed “...to capitalize on the availability of this resource, in conjunction with other transportation modes.” According to the DOT Budget Presentation for fiscal year (FY) 2021, the primary mission of the Port Authority is to address transportation needs by providing services, infrastructure, and facilities to improve the efficiency of transporting people, goods and services; work to stimulate economic development by promoting the expansion of West Virginia’s trade with foreign and domestic markets; and foster and participate in partnerships with private industry and state and local governments for the benefit of West Virginia citizens. The agency is additionally tasked with developing “intermodal” (two or more modes of transportation) networks, such as a facility that ships products from semi-truck to railroad track, or vice-versa. The Port Authority also has the authority to establish local port districts.

The Port Authority’s enabling statute (17-16B) has 22 sections, none of which address, involve, or relate to national security, border security, or any type of law-enforcement activity. However, the Secretary of Transportation states, “*The Authority does have powers and duties in Code that, at this juncture, the Department has no resources to meet.*” Notable sections of Code currently not exercised by the Port Authority include:

- W. Va. Code §17-16B-6(b)(18): Issue revenue bonds to finance projects.
- W. Va. Code §17-16B-6(b)(19): Assist the West Virginia railroad maintenance authority to purchase railroad tracks.
- W. Va. Code §17-16B-12(a): Promote tourist transportation as part of the division of tourist trains and transportation, as established under the purview of the Port Authority.
- W. Va. Code §17-16B-17: Charge and collect tolls for the use of each public port project.

The Secretary of Transportation states, “The Authority does have powers and duties in Code that, at this juncture, the Department has no resources to meet.”

The Port Authority Has Incurred More Expenditures Than Revenue, a Decrease in Cash Balance, and a Reduction of Full-Time Employees.

Funding for the Port Authority comes from general revenue, appropriated special revenue, and federal revenue. The agency’s most recent financial and employment statistics reflect a decreasing cash balance, heightened expenses, and a reduction of full-time employees. The Port Authority was not included in the Legislature’s Enrolled Budget for FY 2021, and the Governor’s Executive Budget for FY 2020 and FY 2021 recommended no funding for the agency. As a result, key personnel have been eliminated from employment within the Port Authority.

The Port Authority was not included in the Legislature’s Enrolled Budget for FY 2021, and the Governor’s Executive Budget for FY 2020 and FY 2021 recommended no funding for the agency.

Table 1 shows the trend in revenue, expenditures, and employment for FY 2015 – FY 2020. As Table 1 demonstrates, total expenditures out-paced the Port Authority’s revenue stream as it transitioned into dormancy. This is mostly due to the lack of projects that could generate revenue, coupled with the fact that the only major project pursued by the agency during this timeline failed to establish economic viability. The table also conveys how the Port Authority did not employ staff for half of the years within the specific timeline.

Fiscal Year	Beginning Cash Balance	Expenditures*	Revenue*	Ending Cash Balance	Full Time Employees
2015	\$16,710,263	\$14,782,877	\$6,760,418	\$8,687,804	3
2016	\$8,687,804	\$7,967,209	\$2,150,259	\$2,870,854	1
2017	\$2,870,854	\$2,416,904	\$0	\$453,950	0
2018	\$453,950	\$0	\$0	\$453,950	0
2019	\$453,950	\$0	\$0	\$453,950	2
2020	\$453,950**	Not finalized			0

*Sources: Our Advanced Solution Integrated Systems (OASIS), Executive Budget Operating Details.
*Expenditures and revenue are based on Consolidated Federal Funds and the Special Railroad and Intermodal Enhancement Fund created by the Legislature. The Port Authority is also subject to the General Revenue Fund, but it did not receive a significant amount of revenue from the agency.
**According to the Secretary of Transportation, \$451,743 of the total cash balance is held by the Port Authority as a fiduciary agent for the Area Maritime Security Committee for security at the Port of Huntington.*

W. Va. Code §17-16B-2 designates the Port Authority to have an 11-member Board of Directors that includes the Secretary of Transportation. The Board appoints an Executive Director who is responsible for managing the daily functions of the Port Authority. Because the most recent Executive Director was released from employment due to funding constraints, the Secretary of Transportation currently serves the dual role of Port Authority Director and Chairperson of the Port Authority Board.

Because the most recent Executive Director was released from employment due to funding constraints, the Secretary of Transportation currently serves the dual role of Port Authority Director and Chairperson of the Port Authority Board.

Since 2005, the Port Authority Pursued Two Major Projects That Did Not Benefit the State or Achieve Target Goals.

In an effort to fulfill agency objectives and exercise the powers designated by W. Va. State Code, the Port Authority actively pursued two major projects over the last 15 years. Both undertakings incurred expenditures, failed to generate revenue, attracted negative publicity, and fell short of achieving their target economic goals.

The Port Authority’s most significant project in recent years was the construction and establishment of a 100-acre intermodal facility in the unincorporated town of Prichard, WV, in Wayne County.

Heartland Intermodal Gateway (2005 – 2020)

The Port Authority’s most significant project in recent years was the construction and establishment of a 100-acre intermodal facility in the unincorporated town of Prichard, WV, in Wayne County. The site is located next to US-52 and the Prichard Industrial Park, directly

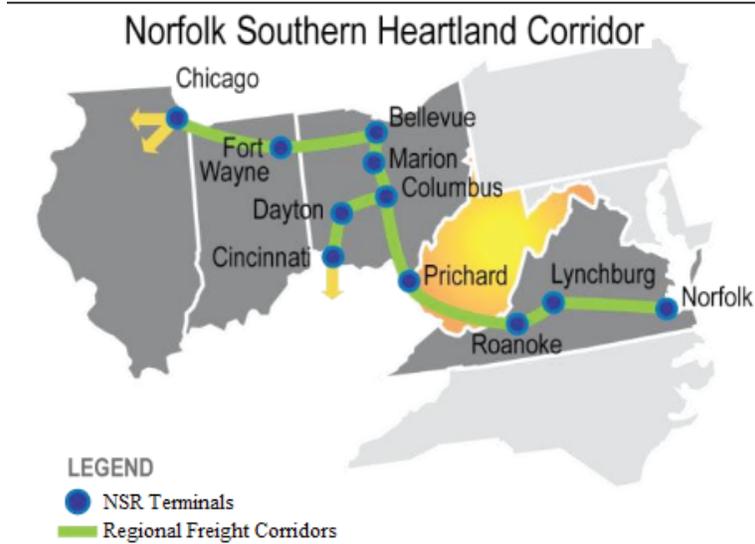
east of the Big Sandy River. During a December 2019 meeting of the Legislative Oversight Commission on DOT Accountability, the Secretary of Transportation summarized the project, stating, *“It was to have containers that come in, mainly through Norfolk. The Norfolk port would load these containers on railroad cars, ship them to Prichard, off-load those containers, and put them on trucks for distribution in the area. It was probably a good idea. It did not work...at all.”*

The project’s conception was prefaced by the 2010 completion of the Heartland Corridor Project, a \$320 million public-private partnership between the Norfolk Southern Railway (NSR), the Federal Highway Administration, and three U.S. states (Ohio, Virginia, and West Virginia) that included a railway stretching from the Port of Virginia, through West Virginia, to prime commerce destinations such as Columbus and Chicago. The Heartland Corridor also involved the \$169 million “Central Corridor Double-Stack Project,” which raised clearances of 28 West Virginia tunnels to allow the transport of double-stacked trains between major shipping locations.

The idea for the project was originally suggested by a 1999 commodity flow study conducted by the Rahall Transportation Institute (RTI), which asserted that a lack of intermodal access was a disadvantage to Appalachian communities. A feasibility analysis conducted by RTI in 2003 narrowed the site location to Prichard. The area was considered a logical position for an intermodal site due to:

- the NSR already owned much of the necessary property,
- the location’s access to mainline track,
- the close proximity to I-64 and US-23, and
- the limited number of nearby residential structures.

Figure 1 visualizes West Virginia’s location, subject to NSR shipping routes. As the figure illustrates, the Heartland Corridor extended a shipping route directly through southern West Virginia. The Wayne County location was thought to fill a major hole in the U.S. intermodal network.

Figure 1

Source: Rail Service Cost Analysis, Parsons Brinckerhoff

A focus group sponsored by RTI inspired the Port Authority to officially select “The Heartland Intermodal Gateway at Prichard” (HIG) as the name for the facility. As the research and development phase progressed, early economic and market analyses submitted to the Port Authority indicated the following HIG benefits:

- the creation of between 700 and 1,000 jobs,
- the statewide benefit of \$47-69 million by 2025,
- a cost savings of \$500-\$900 per container for shippers,
- the revitalization of the local economy (which has endured recent coal mine closures),
- the potential to make West Virginia shippers more competitive, and
- an estimated increase of 15,000 - 45,000 container lifts per year after business stabilizes.

After multiple feasibility studies, NSR entered a joint venture with the state of West Virginia. In a December 2005 letter addressed to the West Virginia Department of Commerce, NSR made the following commitments to HIG:

- the donation of 78 acres of real estate at Prichard to the State of West Virginia,
- the promise to initially serve the Prichard facility with six trains per week,
- the pledge to increase service once the facility generated a certain number of container lifts,

After multiple feasibility studies, NSR entered a joint venture with the state of West Virginia.

- a \$9 million loan for construction of the facility to be repaid over a five-year period, and
- assistance from the NSR Industrial Development Department to market HIG.

In March 2007, the West Virginia Legislature passed Senate Bill 569, establishing a Special Railroad and Intermodal Enhancement Fund to finance HIG. The bill also tasked the Port Authority with conducting a “study relating to the feasibility of the planning, development, construction and operation of the intermodal facility at Prichard.”

Table 2, taken from a 2015 Cost Analysis Final Report, shows the projected savings customers would potentially enjoy by using the HIG facility to ship products compared to the costlier methods of all-truck transportation or the intermodal facility in Rickenbacker, Ohio (located further from the Port of Virginia’s originating shipping site). As the table conveys, most customers located in major industrial areas within the surrounding region were projected to save at least \$500 per container by using HIG when shipping products to or from the Port of Virginia.

In March 2007, the West Virginia Legislature passed Senate Bill 569, establishing a Special Railroad and Intermodal Enhancement Fund to finance HIG. The bill also tasked the Port Authority with conducting a “study relating to the feasibility of the planning, development, construction and operation of the intermodal facility at Prichard.”

Destinations		Parkersburg, WV	Williamstown, WV	Buffalo, WV	Huntington, WV	Charleston, WV	Lexington, KY
Relative Cost of Service through HIG	vs. All Truck Service	+ \$571	+ \$475	+ \$670	+ \$891	+ \$504	+ \$938
	vs. Service Through Rickenbacker	+ \$148	+ \$73	+ \$540	+ \$681	+ \$665	+ \$421

Source: HIG Rail Service Cost Analysis Final Report by Parsons Brinckerhoff.

While pursuing funding and construction contracts, the Port Authority had to re-advertise HIG’s Request for Proposals in 2010 after struggling to find private investors, which delayed development. In any event, NSR donated the promised acreage to the Port Authority in November 2011. Construction broke ground in 2013, eventually generating a total cost of approximately \$32 million. State funding accounted for \$18 million and a federal Transportation Investment Generating Economic Recovery grant allotted \$12.7 million. NSR contributed \$1 million to construction costs and signed an agreement with the State promising to service HIG for at least five years. Part of the funding was used to build a road and bridge to connect the property with the highway. In total, the facility was built to contain 18,000 feet of on-site rail, with direct access to US-52, I-64, and US-23.

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In September 2015, Cincinnati-based Parsec Inc., a terminal management services provider, became the HIG facility operator under contract with the Port Authority. HIG opened for business in December 2015, but never achieved the level of business predicted by stakeholders and feasibility reports. Figure 2 is an aerial view of HIG, with the Big Sandy River on the right.

HIG opened for business in December 2015, but never achieved the level of business predicted by stakeholders and feasibility reports.

Figure 2
Aerial View of the HIG Facility



Source: Joe R. Pyle Complete Auction & Realty Service.

Eleven thousand (11,000) containers were originally projected to pass through HIG after its initial opening. Predictive analytics suggested that business would increase to 30,000 annual containers over time. For FY 2019, however, the facility received only 579 total container lifts. NSR stopped using HIG in October 2019, informing the State they would not service it as an intermodal facility. HIG has incurred utility and security expenses of at least \$10,000 per month since that time. During a meeting held by the Oversight Commission on DOT Accountability in January 2020, the Secretary of Transportation testified, “The expense in 2016 of running the facility was...\$659,000. Since then the expenses have run over \$500,000 a year.... Our total revenue, since inception, is \$30,797.31. That’s since it started until end of fiscal ’19.”

During a meeting held by the Oversight Commission on DOT Accountability in January 2020, the Secretary of Transportation testified, “The expense in 2016 of running the facility was...\$659,000. Since then the expenses have run over \$500,000 a year.... Our total revenue, since inception, is \$30,797.31. That’s since it started until end of fiscal ’19.”

The Secretary of Transportation told PERD in April 2020, “I do not think that there is any one reason [why HIG failed] and I was not here at the time. When I was appointed as Secretary of Transportation, the Authority was not funded and was losing approximately \$500,000 a year. With no money, no employees and Norfolk Southern giving notice that they would not serve the facility as an Intermodal, I recommended to the Board that it be sold and they decided to do just that.” HIG is currently leased to an outside firm that is on the premises primarily for upkeep and security purposes. The facility is scheduled to be sold in an auction on June 4, 2020.

A Lack of Marketing Likely Contributed to HIG's Decline

HIG most likely did not attract a sufficient customer pool due to a lack of marketing by the Port Authority. Multiple sources have indicated that a proper marketing and advertisement plan was crucial for the success of the HIG facility. The following examples illustrate instances of emphasis on marketing strategy:

- Economic and Market Analysis by AECOM (2007):
 - *“Terminal will sustain average market growth rates for the foreseeable future, although projected volumes remain subject to...marketing efforts of Norfolk Southern and the [Port Authority].”*
 - *“Conceiving a marketing plan is “...recommended to advance the development” of HIG.*
- Marketplace Strategy Contract by RTI (2014):
 - *“Stakeholders will be asked to help spread the word about the facility to those who do business at their ports via the most effective communication channels, which may include an email list, mailing addresses, posting flyers in common areas and/or sharing the HIG web site, among others.”*
 - *Stated an agreement between parties to “cooperate in the development and implementation of the appropriate marketing materials on both a National and Global level.”*
- Intermodal Impacts Study by AECOM (2014):
 - *“The marketing strategy must not only raise awareness of the intermodal facility to existing businesses in and around the region, it must also address potential competition.”*
- Cost Analysis by Parson Brinckerhoff (2015):
 - *“In order to ensure the success of the terminal, it is important that the terminal be marketed, that businesses within the terminal’s service area be made aware of the terminal and the potential cost savings of using the terminal.”*

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During a Joint Legislative Oversight Commission on DOT Accountability meeting in January 2020, lawmakers and the Wayne County Commission commented on the Port Authority’s lack of marketing outreach. The Wayne County Commissioner criticized the State’s handling of the facility, testifying,

“Not only do they not have customers, they never even contacted customers in the Prichard Industrial Park, and local businesses that would use this facility were never

contacted. So there has been no marketing activity of any level.”

A member of the Wayne County Economic Development Authority also testified,

“[HIG] was operated by the West Virginia Port Authority. They own it. They are responsible for marketing. They have done a very poor job of marketing this facility and bringing in any business.”

In collaboration with RTI, the Port Authority originally devised a multi-year marketing plan for HIG. The campaign was designed to cover promotional efforts for parts of FY 2014 and FY 2015 to preface the facility’s grand opening. Promotional and advertising methods discussed included:

- establishing a HIG website;
- sharing promotional letters, videos, flyers, and packets;
- creating a facility logo;
- conducting webinar and in-person presentations;
- distributing rack cards; and
- issuing press releases, social media posts, and advertisements in trade journals.

The marketing plan also included promotional expense recommendations, as replicated in Table 3. These amounts are reflective of the proposed marketing budget for January 2014 – January 2015 only.

Table 3 Proposed HIG Marketing Budget January 2014 – January 2015	
Action Item	Amount
Promotional Materials & Items	\$69,425
Outreach	\$80,600
Travel	\$11,569
Software & Subscriptions	\$6,890
Advertising	\$83,625
Total	\$252,109
<i>Source: Heartland Intermodal Gateway Marketing Plan.</i>	

A member of the Wayne County Economic Development Authority also testified, “[HIG] was operated by the West Virginia Port Authority. They own it. They are responsible for marketing. They have done a very poor job of marketing this facility and bringing in any business.”

The total recommended cost for the marketing plan leading up to the opening year for the HIG facility totaled over \$200,000. The advertising and promotional components of that budget totaled over \$150,000 alone.

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initially directed to be a joint effort between the Port Authority, West Virginia Department of Commerce, NSR, and the Port of Virginia.

Table 4 shows the combined total amount spent on the HIG marketing campaign by two different West Virginia state agencies over a period of three years. Newspaper advertising, digital promos, and print materials comprised the majority of promotional methods purchased by the State. As the table conveys, the Port Authority and Development Office spent a combined total of \$12,855 on promotional and marketing materials for HIG between FY 2015-2017. The Port of Virginia additionally printed promotional flyers advertising HIG’s gate schedule, location, and benefits. HIG was also subject to an operational website, blog, and social media posts by the State. However, the budget dedicated to the HIG marketing campaign appears to have fallen short of original recommendations. An October 2017 blog post by the Port Authority Director at the time stated, “I wish we had more of a budget for marketing.”

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FY	Agency	Services Billed	Amount
2015	Port Authority	Charleston Newspapers	\$2,902
2016	Port Authority	Multiview Inc. (digital media company)	\$665
2017	Department of Commerce, Development Office	Flyer printing, logo design, business cards, shirts, fact sheets	\$9,288
2018	No HIG marketing transactions found		
2019			
2020			
Total			

Source: PERD analysis of OASIS data for the Port Authority, and the West Virginia Development Office.

The appendix of a 2007 economic report for the Port Authority features a 10-page list of identified shippers and receivers in the area surrounding Prichard, suggesting a potentially healthy variety of customers for the HIG facility. Nevertheless, HIG struggled to acquire a diverse pool of customers, and the necessary volume required to stay in business. The facility’s business was dwindling by late 2019, and it continues to generate utility and security expenses. **Therefore, the Legislative Auditor recommends that the Port Authority continue to oversee the process of selling the HIG facility to the highest bidder, as currently scheduled.**

HIG struggled to acquire a diverse pool of customers, and the necessary volume required to stay in business. The facility’s business was dwindling by late 2019, and it continues to generate utility and security expenses.

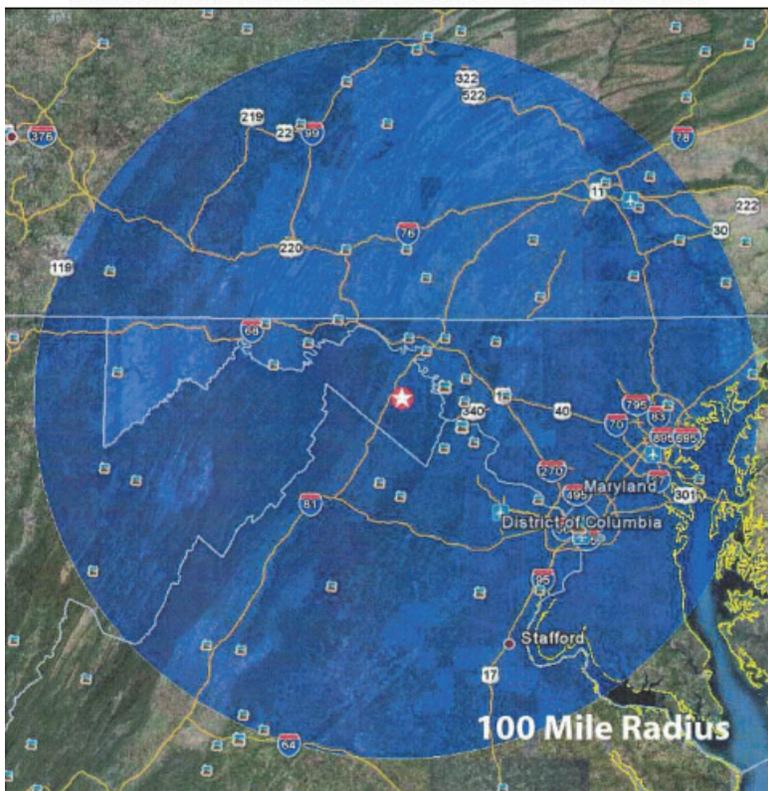
Eastern Panhandle Inland Port (2010 – 2012)

In December 2009, the Port Authority authorized the creation of the Eastern Panhandle Inland Port Coalition (Eastern Coalition), a

conglomerate comprised of members from several Berkeley County community affiliates, the Eastern Regional Airport Authority, Martinsburg City Council, and the Port Authority. The Eastern Coalition was tasked with investigating the possibility of establishing an inland port in Martinsburg, WV, that would ideally serve as an economic complement to the nearby Eastern West Virginia Regional Airport. The targeted site included 291 acres already owned by Berkeley County. According to the Eastern Coalition-funded Port Master Plan, the main goal was “to increase jobs and stimulate economic growth in WV by establishing the Eastern Panhandle as a multi-modal hub for national and international trade, product distribution, and manufacturing.” The Master Plan calculated “for every \$1 spent in creating an inland port...more than \$25 will be returned to the immediate region through various economic development efforts.”

The Eastern Coalition received responses to an Expression of Interest in June 2010, indicating entities were willing to develop the project. Figure 3, taken from the Port Master Plan overseen by the Eastern Coalition, maps the proposed area for the inland port site and surrounding area within a 100-mile radius. The figure demonstrates the proposed port’s proximity to key metropolitan areas; however, the location ultimately became a detriment to the project’s feasibility.

Figure 3
Eastern Panhandle Inland Port Catchment Area



Source: Eastern Panhandle Inland Port Master Plan.

The Eastern Coalition was tasked with investigating the possibility of establishing an inland port in Martinsburg, WV, that would ideally serve as an economic complement to the nearby Eastern West Virginia Regional Airport.

The Master Plan calculated “for every \$1 spent in creating an inland port... more than \$25 will be returned to the immediate region through various economic development efforts.”

In November 2012, a study conducted by the Moreland Property Group of Richmond, Virginia, estimated that the construction cost for the general site combined with construction of the intermodal facility would total more than \$110 million. Conclusively, the study did *“not find it feasible to advance the development of an inland port at this location”* for the following reasons:

- The proposed location was within the catchment areas of three pre-existing, competitive intermodal facilities in Front Royal, Virginia (owned by the Port of Virginia), Chambersburg, Pennsylvania (owned by CSX Railroad), and Greencastle, Pennsylvania (owned by NSR).
- The products moving through the proposed Martinsburg area are not ideal for intermodal transportation because *“...the vast majority of these goods are heavy, bulk commodity type items.”*
- The lack of an anchor tenant, or main customer to kickstart and facilitate business, had not been identified *“...and it is unclear where the facility demand will come from.”*

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Prior to the feasibility study, the Eastern Coalition raised several thousand dollars on behalf of the project, in addition to a \$150,000 Governor’s Community Participation Grant facilitated by the West Virginia Commerce Department’s Development Office. **As a result of the study, however, the Eastern Coalition cancelled the original inland port project, shifted attention to natural gas development, reduced meeting frequency, and became barely operational.**

The lack of an anchor tenant, or main customer to kickstart and facilitate business, had not been identified “...and it is unclear where the facility demand will come from.”

The Port Authority No Longer Oversees Any Local Port Districts.

According to W. Va. Code §17-16B-8, the Port Authority Board of Directors may *“grant authority for the creation of a local inland port authority district.”* Port districts are considered for establishment when the proposed entities are likely to enhance the state’s markets and infrastructure. According to the Port Authority Port Procedures Manual, the proposed port district must fulfill a stringent application process before the Board will formally authorize creation of the local port. The conditions and financial responsibilities between the State and local port authorities are generally defined in an *“operating agreement.”*

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After a district is created, the Port Authority may grant either full or provisional port status, which defines the level of independence a local port may operate under. Although the Port Authority may enable a resolution of full duties and responsibilities for a port district, the operating agreement may still be legally binding and prompt the agency,

when needed, to exercise the authority provided by §17-16B-8(b), which states, “*In no event shall the powers of a local port authority district supersede the powers of the state authority.*”

The following port districts have been created throughout the Port Authority’s existence:

- Buffalo-Putnam Public Port District Authority
- Cabell-Wayne Port District, Inc.
- Eastern Panhandle Inland Port Authority
- Erickson/Wood County Public Port Authority
- Jackson County Port District (associated with Jackson County Maritime and Industrial Centre)
- Kanawha Valley Local Port Authority District, Inc.
- Martinsburg Local Port District
- Port of Huntington Tri-State Area Maritime
- Weirton Area Port Authority

A past Port Authority report for the West Virginia Legislature stated that, on average, the development and study costs associated with port districts were nearly \$195,000 in federal funding, and over \$177,000 in state funding. Although the Port Procedures Manual affirms that local port districts may share profits with the State, the financial records for FY 2015 – FY 2020 do not reflect that local districts have contributed to state revenue.

According to the Secretary of Transportation, the Port Authority does not currently oversee any of the State’s local port authority districts. The application process for new port districts has also become stagnant. The DOT General Counsel confirmed in March 2020 that “...no port districts were created since July 2014.” Counsel elaborated, “...I am advised that no port districts were active with the PPA up through the time the executive director and assistant were let go last year and that no district has contacted myself or [the Secretary of Transportation] since that time.”

While several port districts are currently inactive, any local ports that have not technically reached dissolution could possibly maintain a legally binding operator’s agreement with the Port Authority, effectively attaching the district to the State’s purview. The binding nature between the agency and local port districts can potentially lead to legal consequences involving the State, should a local port behave unethically or attract complaints against it. This became a serious legal issue in September 2016, when the Port Authority stripped the Weirton Area Port Authority of all power as a result of a hearing in Charleston after it was reported the Weirton district had attracted legal disputes from unpaid contracts.

Although the Port Procedures Manual affirms that local port districts may share profits with the State, the financial records for FY 2015 – FY 2020 do not reflect that local districts have contributed to state revenue.

According to the Secretary of Transportation, the Port Authority does not currently oversee any of the State’s local port authority districts.

While several port districts are currently inactive, any local ports that have not technically reached dissolution could possibly maintain a legally binding operator’s agreement with the Port Authority, effectively attaching the district to the State’s purview.

Therefore, the Legislative Auditor recommends that the agency confirm the existence of any legally-binding operator agreement between the Port Authority and any active local port authority district. In the event such an agreement exists and is legally valid, the Legislative Auditor recommends that full and absolute independence be granted to the local port authority, so that the district may continue to operate as an individual, self-sustaining entity.

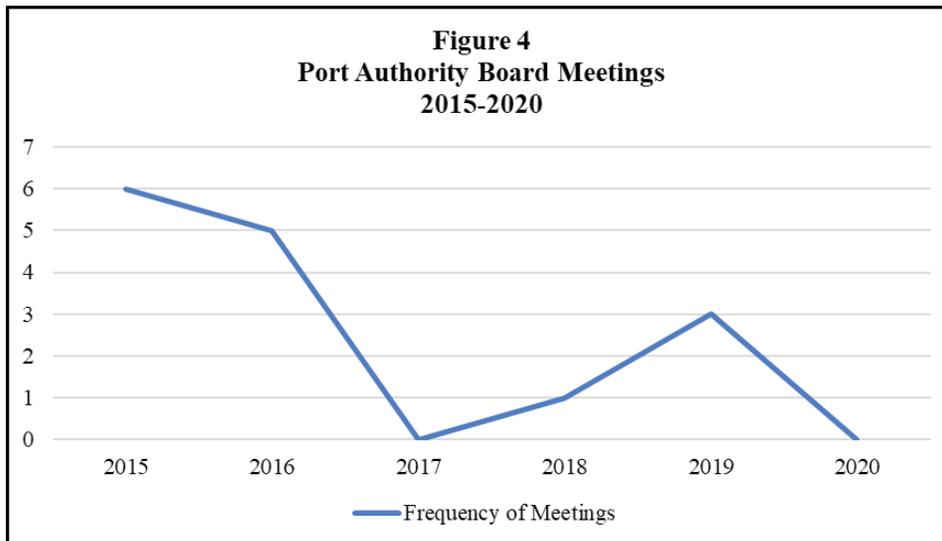
The Port Authority Is Currently Inactive, With No Employees or Funding.

The Secretary of Transportation, who currently doubles as Acting Director of the Port Authority, describes the current role of the agency as: “*The Port Authority has no funds or spending authority and is therefore inactive.*” The agency does not employ any full-time or part-time employees, and has not received further funding from any source that would permit employment of staff for the oncoming fiscal year. Additionally, the Port Authority has not received a federal grant to contribute to its revenue stream since FY 2015. The agency was recently a potential recipient for the U.S. Department of the Interior’s Boating Infrastructure Grant Program, which the Port Authority had received in the past and requires a 50% match from the State. According to the Secretary of Transportation, however, “*Last year we had to address compliance issues raised by US Fish and Wildlife with respect to those grants.*” The Port Authority is also not currently overseeing ongoing or future projects (outside of auctioning the HIG facility).

The current Port Authority Board of Directors does not meet regularly, and only assembles out of necessity, as directed by the Secretary of Transportation. The Governor was required to appoint a new member in late June in order for the Board to meet in July with a proper quorum, which demands six members. Several of the Board’s current members are serving under expired terms and the Port Authority cannot reimburse any of its necessary expenses, as directed by W. Va. State Code. Figure 4 displays the frequency of board meetings since 2015. As shown in the graph, the number of board meetings decreased from a high of eleven between 2015-2016, to four meetings between 2017 and 2020.

The agency does not employ any full-time or part-time employees, and has not received further funding from any source that would permit employment of staff for the oncoming fiscal year.

The current Port Authority Board of Directors does not meet regularly, and only assembles out of necessity, as directed by the Secretary of Transportation.



Finally, a significant amount of the information available to the public on the Port Authority’s website is outdated. The website includes projects that no longer exist, a list of public ports derived from a publication issued in 1999, HIG facility information that has not been updated since June 2015, outdated grant recipient records, and an obsolete section about the Eastern Panhandle Inland Port project written before the venture was ultimately labeled infeasible in 2012.

In the Secretary of Transportation’s view, *“The question of whether there is a ‘need’ for the Port Authority is a policy question that the Legislature seems to have answered in not funding the operations. There are a number of responsibilities assigned to the agency that could be carried out with funding. That said, the Authority should not be dissolved until all outstanding invoices are paid and issues related to the sale of the Heartland facility are definitely resolved.”*

Conclusion

The Port Authority is currently dormant and lacking the capabilities to continue regular business. The agency has incurred significant expenditures, generated minimal revenue, and dwindled to no employees while becoming increasingly inactive over the last five years. The Port Authority has also fallen short of honoring statutory responsibilities, achieving target goals, and producing successful projects in recent years. The agency has been defunded and not received a federal grant since FY 2015. The majority of local port districts, previously under the purview

of the Port Authority, are either inactive or economically self-sustaining, which has downsized the agency's involvement in the issue. Finally, the Port Authority board meetings have been limited to an as-needed basis due to the agency's dissipation. Ultimately, the Port Authority does not benefit the State, or require a continued need for existence. **Therefore, the Legislative Auditor recommends the elimination of the Port Authority once outstanding invoices are paid, and the HIG facility has been sold.**

Recommendations

1. *The Legislative Auditor recommends that the Port Authority continue to oversee the process of selling the HIG facility to the highest bidder, as currently scheduled.*
2. *The Legislative Auditor recommends that the agency confirm the existence of any legally-binding operator agreement between the Port Authority and any active local port authority district. In the event such an agreement exists and is legally valid, the Legislative Auditor recommends that full and absolute independence be granted to the local port authority, so that the district may continue to operate as an individual, self-sustaining entity.*
3. *The Legislative Auditor recommends the elimination of the Port Authority once outstanding invoices are paid, and the HIG facility has been sold.*

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

February 13, 2020

Byrd E. White, III
Secretary of Transportation
1900 Kanawha Boulevard, East
Building 5, Room A-110
Charleston, WV 25305

Dear Secretary White:

Pursuant to West Virginia Code §4-10-8, the Performance Evaluation and Research Division of the Legislative Auditor's Office is required to conduct an Agency Review of the Department of Transportation. As part of this process, a regulatory performance review of the West Virginia Public Port Authority (WVPPA) will be conducted. An entrance conference to discuss the evaluation process has been scheduled for 10:00am on Thursday, February 20, 2020, to take place in the Joint Committee Conference Room, W-330, in Building 1 of the Capitol Complex. Additionally, we are requesting the information below be provided to us either at the entrance conference or shortly thereafter.

1. Please describe the current role of the WVPPA.
2. Does the WVPPA currently have any ongoing projects or planned future projects?
3. Can you please report the total expenditures and revenues for the WVPPA, in dollar amounts, for FY2015-2020?
4. Please provide the Policies and Procedures Manual relevant to the WVPPA.
5. Please provide a directory (name and applicable title) for the current WVPPA Board of Directors, and a record of the Board's meeting dates that occurred during 2015-2020.
6. Please provide (if valid), the number of current full-time and part-time WVPPA employees.
7. Please confirm whether the WVPPA currently oversees any of the state's local port authority districts.
8. Please provide any documentation regarding the marketing campaign for the Heartland Intermodal Gateway (HIG) facility in Prichard, West Virginia.
9. Please confirm if the HIG facility is currently up for sale or lease.

Joint Committee on Government and Finance

You may forward the requested information via email to lukas.griffith@wvlegislature.gov, or provide it during the entrance conference. If you have any questions regarding the performance review, please contact me or Research Manager Brandon Burton at 304-347-4890. Thank you for your cooperation in responding to this request.

Sincerely,

A handwritten signature in blue ink that reads "Lukas J. Griffith". The signature is written in a cursive style with a large initial "L".

Lukas Griffith
Research Analyst

c: Lorrie Hodges, Department of Transportation, Executive Secretary
Nate Tawney, Department of Transportation, General Counsel

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted the Performance Review of the West Virginia Public Port Authority (Port Authority) as part of the Agency Review of the West Virginia Department of Transportation (DOT) as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code (WVC)*, as amended. The purpose of the Port Authority is to develop intermodalism by combining highway, rail, and water transportation infrastructures to maximize overall economic advantages to business, industry, and the citizens of West Virginia; and establish local port districts.

Objectives

The objective of this review was to determine the level of benefit the Port Authority provides to the state of West Virginia, and whether there is a continued need for the agency's existence.

Scope

The scope of the performance review ranged from 2005-2020. This timeline was dictated by the Port Authority's Heartland Intermodal Gateway facility in Prichard, WV, which was originally announced in 2005, and acted as the agency's largest project for the proceeding 15 years. An assessment of the agency's recent major operational components was conducted, including expenditures, revenues, funding sources, and employment trends for FY 2015 to FY 2020. Additionally, significant events involving local port districts under the purview of the Port Authority, and major projects pursued by the state agency within the 2005-2020 timeframe were reviewed.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

Initial testimonial evidence was gathered for this review via questionnaire submitted to the Secretary of Transportation (who currently doubles as acting Director of the Port Authority). Written responses to the questionnaire, along with other requested materials, were provided during PERD's entrance conference with DOT personnel on February 20, 2020. Interviews with the Secretary of Transportation and the DOT General Counsel provided verbal elaboration and confirmation on the issues explored in the questionnaire. Aside from written answers, the agency also provided PERD with expense and revenue statistics for FY 2015-2020, the agency's official Port Procedures Manual, a complete Port Authority Board of Directors directory, a record of board meetings since 2015, Heartland Intermodal Gateway (HIG) focus group documentation, the official HIG Rail Service Cost Analysis Final Report, and other HIG marketing materials such as advertising flyers. Communication between PERD and the agency's General Counsel also led to acquiring information regarding local port districts, including a formalized list of districts from 2018, and statements about the current status of specific districts. Finally, the Transportation Secretary expressed opinions on two major issues in an email to PERD, which helped round-out the report and permit the finalization of the main draft.

PERD also obtained various primary source documentation, such as *Meeting the Transportation Challenges of the 21st Century: Intermodal Opportunities in the Appalachian Region* by Rahall Transportation Institute (2004), *Report on Economic and Market Analysis for an Inland Intermodal Port* by DMJM Harris/AECOM (2007), *The Heartland Corridor: Opening New Access to Global Opportunity* case study by Appalachian Regional Commission (2010), *Eastern Panhandle Inland Port Master Plan* (2011), *Feasibility Analysis for the Eastern Panhandle Inland Port Final Report* by the Moreland Property Group (2012), *Marketplace Strategy Contract Final Report* by Rahall Appalachian Transportation Institute (2014), *Western Virginia Intermodal Facility Economic Transportation Impacts Study* by AECOM (2014), *Heartland Intermodal Gateway Rail Service Cost Analysis Final Report* by WSP Parsons Brinckerhoff (2015), and *The Heartland Corridor* case study by the Center of Excellence for Sustainable Urban Freight Systems (2018-2019). Documentation from localized sources, such as meeting minutes for the Berkeley County Council and the Brooke County Commission, were also obtained to corroborate information and timelines regarding community grant and port district activity.

The audit encountered significant limitations while attempting to compile data related to the status of nine different local port districts. In order to convey the fullest and most accurate account of the subject, PERD initially wanted to verify general information such as which port districts are currently operational, however, open source information on port districts is limited and PERD's request for information from a local port district official went unanswered. Agency officials made a strong effort to obtain what information they could regarding the subject, but the data shared with PERD, although relevant, was dated. While the limited information did not prevent PERD from fulfilling the ultimate audit objective, it largely inspired the second recommendation, which urges the Port Authority to conclusively determine if the State has legally binding agreements with active local port districts.

Financial data and invoices were obtained through the State Auditor's OASIS system. No procedures were conducted on OASIS data because the Legislative Auditor considers it an authoritative source under GAGAS 8.103c. Therefore, Port Authority financial records gathered from OASIS were considered sufficient and appropriate.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C Agency Response



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • (304) 558-0444

Byrd E. White, III
Cabinet Secretary

May 29, 2020

ELECTRONICALLY SUBMITTED

Performance Evaluation & Research Division
Director John Sylvia
Building 1, Room W 314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

**RE: West Virginia Public Port Authority Audit
part of the Agency Review of the Department of Transportation**

Dear Mr. Sylvia:

In reference to Lukas Griffith's May 27, 2020 email and the attached revised draft copy of the West Virginia Port Authority (WVPPA) Audit, the Department of Transportation (DOT) appreciates the opportunity to provide comments for the initial Port Authority Audit (draft) prepared by your Performance Evaluation & Research Division (PERD).

Overall, DOT agrees with the revised Audit Report. However, one caveat is that it may be desirable for DOT in some way to certify Port Districts, if the need arises, and perhaps also serve as a conduit for grants and other "passthroughs" that may become available.

The DOT staff has not requested an exit conference with PERD. The emails that have been received and responded to are sufficient, addressed all WVPPA's concerns, and will be considered by DOT as the final meeting.

The WVPPA/DOT appreciated working with your professional staff and thank you for your service. Should you or your staff have additional questions or concerns, please feel free to contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Byrd E. White, III".

Byrd E. White, III
Secretary of Transportation
Commissioner of Highways

BEW/h

cc: Nate Tawney, WVDOT General Counsel

E.E.O./AFFIRMATIVE ACTION EMPLOYER



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939