

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



# POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

## SUPREME COURT OF APPEALS OF WEST VIRGINIA *RE-APPROPRIATED FUND BALANCE ANALYSIS*

Legislative Auditor: Aaron Allred



GENERALLY ACCEPTED GOVERNMENT  
AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (**GAGAS**). 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.

POST AUDIT DIVISION

# POST AUDIT DIVISION

## POST AUDITS SUBCOMMITTEE MEMBERS

SENATE MEMBERS	HOUSE MEMBERS
President, Mitch Carmichael	Tim Armstead, Speaker
Ed Gaunch	Timothy Miley
Roman Prezioso	Eric Nelson Jr.



JUNE 24, 2018  
LEGISLATIVE AUDIT REPORT

## SUPREME COURT OF APPEALS OF WEST VIRGINIA

### *RE-APPROPRIATED FUND BALANCE ANALYSIS*

#### LEGISLATIVE AUDITOR'S STAFF CONTRIBUTORS

Aaron Allred ..... Legislative Auditor  
Melissa Bishop, CPA ..... Assistant Director  
Justin Robinson ..... Audit Manager  
Christian Baumgarner ..... Auditor  
Judith Strawderman ..... Auditor

BACKGROUND: 1  
MEMO by Former Administrative Director: 4  
POST AUDIT ANALYSIS of Court Spending: 6  
APPENDIX A: 11  
APPENDIX B: 12  
APPENDIX C: 13

## Background

In a memo written by the former Administrative Director Steve Canterbury, dated November 7, 2016, Mr. Canterbury describes the spend down of \$29 million of excess funds the Court had accumulated up to Fiscal Year 2012. In this memo, Mr. Canterbury mentioned that the Court had spent down this balance, among other reasons, because of concerns from members of the Legislature regarding this balance of funds and the possibility of the sponsorship of a constitutional amendment that would take away the Court's budgetary authority. While Mr. Canterbury attests to the accuracy of this memo, a review of all the Court's administrative conference minutes during this period where the Justices discussed such matters does not reflect any conversation that the balance was spent down for this purpose.

During the May 2018 Post Audits Subcommittee meeting, Chief Justice Workman responded to a question from Senate President Carmichael regarding the spend down of these excess funds and the statements made by Mr. Canterbury in his memo. The Chief Justice responded that she, nor any of the Justices, discussed the need to spend this balance down to avoid sponsorship of a constitutional amendment. Further, she stated she was concerned with how this money was spent which is why she had asked for Mr. Canterbury to provide an explanation, which in turn resulted in his November 7, 2016 memo. The report that follows discusses the memo written by Mr. Canterbury and the Post Audit Division's review of expenditures that contributed to the spend down of the \$29 million of excess funds re-appropriated by the Court in Fiscal Year 2012.

**In Fiscal Year 2012, the Supreme Court of Appeals of West Virginia had unused appropriated General Revenue Funds totaling \$29 million. By Fiscal Year 2016, this re-appropriated fund balance was reduced to \$333,514 for various reasons, including the renovations to the Justice's chambers and other Court facilities.**

The Legislative Auditor first became aware of concerns regarding the spend down of the Court's re-appropriated fund balance while reviewing memos written by Justice Loughry responding to questions concerning his Court vehicle use. In an August 26, 2016 memo to the other Justices responding to their questions regarding this vehicle use, Justice Loughry questioned the "*depletion of the Court's so-called rainy day fund in the amount of \$26 million*". Based on this statement, the Legislative Auditor sought to determine how these excess appropriated funds had accumulated up to 2012, and what this money was spent on to reduce it to approximately \$333,514 only four years later.

A meeting was held with the current Administrative Director and the Director of Financial Management to discuss these re-appropriated funds. It soon became clear that determining exactly how these funds were accumulated up to 2012 would not be possible because employees with such knowledge were no longer employed with the Court. However, simply stated, the Court was appropriated more General Revenue Funds than were needed nearly every year since 1997. The graph on the next page shows the trend of the yearly re-appropriated funds.

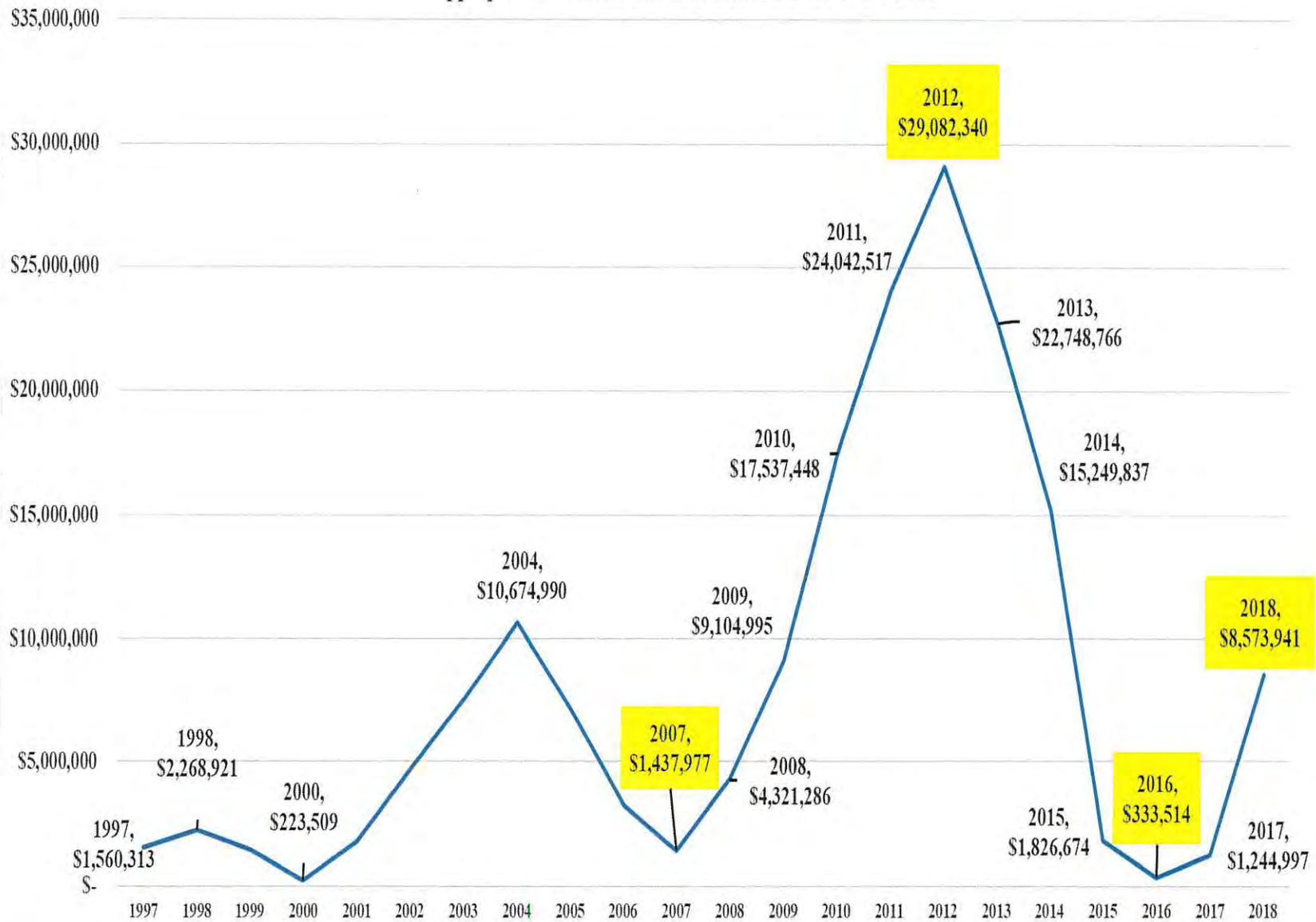
Through a review of the re-appropriations from 2007, when the re-appropriated amount was \$1.4 million, to 2012, when the Court had accumulated \$29 million in excess funds, the Legislative Auditor determined that budgeted funds remained unused in the following categories:

1. Payroll Expenses - \$17,435,464
  - a. Personal Services - \$8,080,741
  - b. Annual Increment - \$827,504
  - c. Employee Benefits - \$8,527,219
2. Child Protection Act Funding - \$3,522,912
3. Unclassified/Current Expenses - \$7,766,363
4. BRIM Premium - \$357,600

**Total Funds Re-Appropriated to Fiscal Year 2012 = \$29,082,340\***

\*Difference of \$1 due to rounding.

Supreme Court of Appeals of West Virginia  
 Re-Appropriated General Revenue Funds FY 1997 - FY 2018



Data obtained from the Executive Budget Reports for Fiscal Years 1998 to 2019

## **November 7, 2016 Memo by Former Administrative Director Steve Canterbury**

The memo from the former Administrative Director to Justice Workman on November 7, 2016, suggested several reasons the amount of re-appropriated funds had been depleted. The reasons stated in his memo, which is available in its entirety in Appendix C of this report, are as follows:

### **Fiscal Year 2011**

At the end of 2011, the Court carried over approximately \$29 million into FY 2012.

### **Fiscal Year 2012**

Judges, justices, and magistrates all received pay raises effective July 1, 2011 totaling approximately \$6.1 million which, for this Fiscal Year, was absorbed by the Court using the re-appropriated funds from 2011. The Court's appropriation request for General Revenue Funds was decreased by \$2 million to further reduce some of the re-appropriated funds. The court then carried over approximately \$22.7 million into FY 2013.

### **Fiscal Year 2013**

In his memo, the former Administrative Director indicated that there was "scuttlebutt" in the Senate concerning the Court's re-appropriated funds which was causing more talk of a constitutional amendment to take away the Court's budgetary authority. As a result, the Court absorbed some of the previous year's raises for judges, justices, and magistrates from these re-appropriated funds totaling approximately \$4.4 million. Additionally, unanticipated construction and furniture purchases for Justices' chambers, the business court, the City Center East server room with backup air conditioning and generators, the Clerk's office, and the Justices' Conference Room added additional costs. There was also new Family Court space in several counties that required the purchase of technologies, furniture, and office equipment. Altogether, there was an additional \$1.2 million spent beyond the amount budgeted for these purposes. Finally, the mandate that the drug courts serve all W.Va. counties caused an additional \$1.9 million in drug court expenditures. At the end of FY 2013, the Court re-appropriated approximately \$15.25 million to Fiscal Year 2014.

### **Fiscal Year 2014**

The Court chose to return approximately \$4 million of its discretionary funds to the General Revenue Fund to help with the budget shortfall that year. Also, as stated in this memo,

*The Court did not seek appropriations for approximately \$10 million in expenditures in an attempt to bring the year-end balance to as close to zero as possible, mainly to continue to forestall a constitutional amendment. The Court discussed the need to eliminate any carry-over money at the end of the year so that the Senate leadership would not continue down the path towards the sponsorship of such an amendment. So the money was spent from several lines. No one category saw an extremely large increase, but some of the increases were in the new drug courts, the roll-out of the UJA [Unified Judicial Application], the completion of all remodeling in the Capitol and at City Center East, and with mandated raises of certain classifications of employees. (Emphasis Added)*

At the end of Fiscal Year 2014 the Court re-appropriated approximately \$1.8 million to Fiscal Year 2015.

**Fiscal Year 2015**

The Court re-appropriated \$333,514 to Fiscal Year 2016.

As previously stated, how or why the Court accumulated \$29 million in excess General Revenue Funds in 2012 cannot fully be explained. The description of how the funds were spent down in the former Administrative Director's memo does not accurately account for how the money was depleted to a balance of \$333,514 going into 2016. Those instances noted in his memo simply do not fully account for the depletion of \$29 million. As stated in his memo, Mr. Canterbury said:

*As can be logically deduced, the carried-over funds were not all spent on a single project or in a single way. Money was spent in several areas in several years that totaled a reduction in the rollover amount of \$28 million*

**Fiscal Year 2016**

The Court re-appropriated approximately \$1.2 million to Fiscal Year 2017. This included \$2 million that was returned to the General Revenue Fund that had been budgeted for the anticipated annual Judicial Retirement contribution.

## Post Audit Analysis of Expenditures by the Supreme Court

The Post Audit Division conducted an analysis of the Court's expenditures for Fiscal Years 2012 to 2018 to determine specific categories where the Court had increased its spending over prior years to account for how the \$29 million of re-appropriated funds was decreased to \$333,514 in Fiscal Year 2016, and then again increased to \$8.6 million in 2018. This analysis resulted in the following:

Fiscal Year	Re-Appropriated Balance	Appropriation	Total Available	Total Expenditures	Remaining Balance
2012	\$29,082,340	\$120,483,624	\$149,565,964	\$126,817,198	\$22,748,766
2013	\$22,748,766	\$122,320,952	\$145,069,718	\$129,819,881	\$15,249,837
2014	\$15,249,837	\$121,511,992	\$136,761,829	\$134,935,155	\$1,826,674
2015	\$1,826,674	\$131,812,993	\$133,639,667	\$133,306,154	\$333,513**
2016	\$333,514	\$139,572,495	\$139,906,009	\$138,661,012	\$1,244,997
2017	\$1,244,997	\$141,759,670	\$143,004,667	\$134,430,726	\$8,573,941
2018	\$8,573,941	\$141,759,670	\$150,333,611	N/A*	N/A*

\* Those items noted N/A are not available due to data not being available for the completed Fiscal Year 2018. \*\* Difference of \$1 Due to Rounding  
Data obtained from the State of WV Executive Budget Reports FY 2012 - 2019

Fiscal Year	Increase/(Decrease) in Appropriation vs. Prior Year	Increase/(Decrease) in Re-Appropriation vs. Prior Year	Increase/(Decrease) in Expenditures vs. Prior Year	Current Year Increase/(Decrease) in Re-Appropriation	Year End Balance (Re-Appropriation)
2012	\$1,577,432	\$5,039,823	\$12,950,828**	(\$6,333,574)	\$22,748,766
2013	\$1,837,328	(\$6,333,574)	\$3,002,683	(\$7,498,929)	\$15,249,837
2014	(\$808,960)	(\$7,498,929)	\$5,115,274	(\$13,423,163)	\$1,826,674
2015	\$10,301,001	(\$13,423,163)	(\$1,629,001)	(\$1,493,160)	\$333,514
2016	\$7,759,502	(\$1,493,160)	\$5,354,858	\$911,483	\$1,244,997
2017	\$2,187,175	\$911,483	(\$4,230,286)	\$7,328,944	\$8,573,941
2018	\$0	\$7,328,944	N/A*	N/A*	N/A*

\* Those items noted N/A are not available due to data not being available for the completed Fiscal Year 2018. \*\* Difference of \$1 Due to Rounding  
Data obtained from the State of WV Executive Budget Reports FY 2012 - 2019

Table 1 above shows the yearly appropriations, amounts re-appropriated from the prior year, and the total available balance of funds. It also shows the total expenditures for each year and the year-end balance of unused funds that are re-appropriated into the next year.

Table 2 provides an analysis of the changes in amounts noted in Table 1 from prior years, current year changes in expenditures, and the year-end balances of unused funds. This includes the change in the amount appropriated to the Court, the change in the unused funds balance that was re-appropriated, and the change in total expenditures as compared to the prior year. It also shows the current year change in the balance of unused funds, as well as the year-end balance of those unused funds that are re-appropriated into the next year.

### Fiscal Year 2012

In Fiscal Year 2012, the re-appropriated fund balance was decreased by approximately \$6.3 million, from \$29 million to \$22.7 million. In addition to the \$29 million re-appropriated that year, the Court received an increase in their current year appropriation of \$1.58 million

for a total available balance of \$149.6 million. The Court had roughly \$13 million more in expenditures over the prior year, totaling approximately \$127 million. Nearly all of this increase in expenditures is attributable to payroll expenses, with a total increase of \$12,404,621 over the past year's expenditures totaling nearly \$101 million. Payroll related expenses were approximately 80 percent of the Court's Fiscal Year 2012 expenditures. This correlates to the \$6.1 million of raises given to the judges and justices of the Court as stated in Mr. Canterbury's memo, as well as including other related payroll expense increases. Other areas of spending saw a net increase of \$546,207, with notable increases in the following categories:

Category	Total Expenditures	Increase Over Prior Year
Travel	\$ 1,545,301	\$ 587,784
Telecommunications	\$ 1,384,385	\$ 582,374
Leasehold Improvements	\$ 872,928	\$ 872,928
Computer Equipment	\$ 754,877	\$ 361,270

The reduction of the re-appropriated balance by \$6,333,574 is accounted for as follows:

Increase in Spending FY 2012	\$12,950,828
Less: Increase in Re-Appropriation from FY 2011	(\$5,039,823)
Less: Increase in FY 2012 Appropriation	(\$1,577,432)
<b>Net Decrease in Re-Appropriated Fund Balance</b>	<b>\$6,333,573</b>
	(Difference of \$1 Attributable to Rounding)

### **Fiscal Year 2013**

In Fiscal Year 2013, the re-appropriated balance was further decreased by approximately \$7.5 million, from \$22.7 million to \$15.2 million. In addition to the re-appropriated funds, the Court received an increase in their Fiscal Year 2013 appropriation of \$1.8 million for a total available balance of approximately \$145 million. The Court had a net increase in spending of \$3 million over the prior year. Payroll related expenses increased \$900,491 over the prior year, but with only an additional \$1.8 million in appropriations, the Court was still absorbing some of the salary increases from the prior year through its re-appropriated fund balance. Other areas saw a net increase in expenditures of \$2.1 million. It is difficult to pinpoint exactly what expenditures were attributable to the increase in spending that led to a decrease in the re-appropriated fund balance; however, the following areas saw notable increases in spending over the prior year:

Category	Total Expenditures	Increase Over Prior Year
Contractual Services	\$ 1,769,328	\$ 1,587,586
Computer Services	\$ 2,866,787	\$ 922,348
Routine Building Maintenance	\$ 905,545	\$ 505,223
Office Equipment	\$ 692,135	\$ 330,453
Consulting for Capital Asset Project	\$ 791,113	\$ 725,764

As stated in Mr. Canterbury's memo, the majority of the spending increases over the prior year were for renovations to various family and business courts, the Court's City Center East leased office space, the clerk's office, and the widely publicized renovations and furniture purchases of the Justice's chambers. As also stated in his memo, those related expenditures exceeded the budgeted amount for those renovation projects by \$1.2 million. The Legislative Auditor questions the Court's spending on renovations to the leased space at City Center East, where those renovations would not benefit the Court if it were to vacate that space, but instead would be to the benefit of the lessor.

The reduction of the re-appropriated balance by \$7,498,929 is accounted for as follows:

Increase in Spending FY 2013	\$3,002,683
Plus: Decrease in Amount Re-Appropriated from FY 2012	\$6,333,574
Less: Increase in FY 2013 Appropriation	(\$1,837,328)
<b>Net Decrease in Re-Appropriated Fund Balance</b>	<b>\$7,498,929</b>

#### **Fiscal Year 2014**

In Fiscal Year 2014, the Court decreased its re-appropriated fund balance by the greatest amount in the four-year period. In this year, the balance was reduced by \$13.4 million for a total year end balance of \$1.8 million. The Court received \$808,960 less in appropriations for the year for a total available balance of approximately \$136.8 million. Expenditures increased by \$5.1 million over the prior year. Payroll expenses again increased by approximately \$2.4 million over the prior year. Other areas had a net increase in spending of \$2.7 million. Categories of expenditures that saw significant increases in spending included:

Category	Total Expenditures	Increase Over Prior Year
<b>Rental Expenses (Real Property)</b>	<b>\$ 1,157,141</b>	<b>\$ 375,965</b>
<b>Contractual Services</b>	<b>\$ 2,255,231</b>	<b>\$ 485,902</b>
<b>Travel</b>	<b>\$ 2,356,639</b>	<b>\$ 909,251</b>
<b>Computer Services</b>	<b>\$ 3,225,697</b>	<b>\$ 358,910</b>
<b>Attorney Legal Services Payments</b>	<b>\$ 5,056,069</b>	<b>\$ 1,058,542</b>
<b>Miscellaneous Equipment</b>	<b>\$ 825,513</b>	<b>\$ 271,565</b>
<b>Contractor Payments - Capital Asset Project</b>	<b>\$ 1,251,192</b>	<b>\$ 1,251,192</b>
<b>Computer Equipment</b>	<b>\$ 536,464</b>	<b>\$ 409,428</b>

The increases in contractor payments and contractual services are also attributable to the completion of renovations to the Court's City Center East facilities and at the Capitol, including those renovations to the Justices' chambers. This increase in expenditures related to renovations along with a slight reduction in the current year appropriation further decreased the Court's re-appropriated fund balance. The reduction of this balance by \$13.4 million is accounted for as follows:

Increase in Spending FY 2014	\$5,115,274
Plus: Decrease in Amount Re-Appropriated from FY 2013	\$7,498,929
Plus: Decrease in FY 2013 Appropriation	\$808,960
<b>Net Decrease in Re-Appropriated Fund Balance</b>	<b>\$13,423,163</b>

**Fiscal Year 2015**

The Court carried over approximately \$1.8 million in unused funds into Fiscal Year 2015. It also appropriated an additional \$10.3 million in funds over the previous year for a total available balance of approximately \$133.6 million. According to Mr. Canterbury’s memo, the appropriation request in the prior year was reduced by \$10 million to reduce their year-end balance to as close to zero as possible “*mainly to continue to forestall a constitutional amendment*”. However, in 2015 the Court did seek that increase in appropriation and was granted it. Total expenditures decreased by \$1.6 million over the prior year; however, based on the prior years’ increases in spending, the total expenditures of \$133.3 million reduced the Court’s re-appropriated fund balance to \$333,514 at the end of this year. Payroll expenses again increased, this time by \$1.45 million. The only other area of spending that saw a significant increase was Contractual Services, shown below:

Category	Total Expenditures	Increase Over Prior Year
Contractual Services	\$ 4,990,267	\$ 2,735,036

**Fiscal Year 2016**

In Fiscal Year 2016, the Court received an additional \$7.76 million in appropriations over the prior year. With the \$333,514 in re-appropriated funds, the total available balance for 2016 was approximately \$140 million. Payroll costs decreased by \$1.7 million in this year, yet overall expenditures increased by \$5.35 million. Some areas that saw an increase include:

Category	Total Expenditures	Increase Over Prior Year
Rental Expenses (Real Property)	\$ 1,545,376	\$ 907,289
Telecommunications	\$ 2,057,853	\$ 715,067
Contractual Services	\$ 6,494,519	\$ 1,504,251
Travel	\$ 3,031,268	\$ 446,726
Attorney Legal Services Payments	\$ 6,989,695	\$ 2,039,508

With the increase in appropriation exceeding the increase in expenditures for Fiscal Year 2016, the Court’s ending balance of unused funds grew from \$333,514 to \$1.24 million.

**Fiscal Year 2017**

In Fiscal Year 2017, the Court received an additional appropriation of approximately \$2.19 million over the prior year. With the \$1.24 million of unused funds from the prior year, the total available balance was \$143 million. Nearly every category saw a decrease in expenditures, including payroll expenses which decreased by \$71,000. This in turn resulted in the Court’s year-end unused fund balance to increase from \$1.24 million to \$8.57 million, with a total increase of \$7,328,944.

## **Fiscal Year 2018**

In the current fiscal year, which is nearly complete, it appears that the Court's expenditures are again reduced from the prior year. Since the data available is not complete until the close of the fiscal year, it is not possible to report specific decreases at this time. However, it is projected by the Court in a memo from the Court's Director of Finance to the Court's Administrative Director dated February 27, 2018, that this year-end "surplus" will be approximately \$19.5 million. Therefore, from the start of Fiscal Year 2016 to the end of Fiscal Year 2018, the Court will have increased its re-appropriated fund balance by nearly \$19.2 million.

## **Conclusion**

The Legislative Auditor is concerned with the Court's accumulation of appropriated General Revenue Funds in the majority of the years reviewed, with particular regard to the fact that in five years they had re-appropriated funds that went from \$1.4 million in 2007 to \$29 million in 2012. There is also concern over how these funds were subsequently spent down. A focus for an increase in the spending of tax dollars should be on increasing the outcomes for those operations of the Court that benefit the citizens of the State. In Fiscal Year 2012, the \$29 million equated to 24% of the Court's total appropriations (\$120 million) and 25.5% of the Court's total Fiscal Year 2011 expenditures (\$113.9 million). The Court's re-appropriated fund balance totaled approximately \$8.6 million at the beginning of Fiscal Year 2018. If the Court's current projection is accurate, this balance will grow to \$19.5 million at the end of the current fiscal year. The total growth from Fiscal Year 2016 to 2019 will be nearly \$19.2 million in unused appropriated funds, equaling 14% of the Court's 2018 total appropriations.

The Legislative Auditor's Post Audit Division will continue its research in identifying specific expenditures that attributed to the increased spending and reduction of the \$29 million of excess funds. Those areas identified in this report as having a significant increase in spending over the prior year will be further reviewed to identify the specific reasons that these monies were spent. This information will be presented to the Post Audits Subcommittee at an upcoming meeting.

**WEST VIRGINIA LEGISLATURE**  
*Joint Committee on Government and Finance*

**Appendix A**

1900 Kanawha Blvd. East, Room E-132  
Charleston, WV 25305-0610  
(304) 347-4800  
(304) 347-4819 FAX



**Aaron Allred**  
**Legislative Manager**

June 14, 2018

Lori J Paletta-Davis, Esq., Administrative Counsel  
WV Supreme Court of Appeals  
Capitol Complex  
1900 Kanawha Blvd. E  
Bldg. 1, Room E-100  
Charleston, WV 25305-0830

Dear Ms. Paletta-Davis:

This is to transmit a draft copy of the Post Audit Division's Report on the Supreme Court of Appeals of West Virginia. This report is tentatively scheduled to be presented during the June interim meeting of the Post Audits Subcommittee. We will inform you of the exact date, time, and location once the information becomes available, but at this time we anticipate that meeting to be held Sunday, June 24, 2018 1:00 pm in the Senate Finance Committee Room, Room 451-M. It is expected that a representative from the Supreme Court of Appeals of West Virginia be present at the meeting to respond to the report and answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify Nathan Harris, at 304-347-4880 as soon as possible. In addition, if you would like to provide a written response to be included in the report, it must be submitted to our office by Noon Friday, June 22, 2018, for it to be included in the final report. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Aaron Allred".

Aaron Allred

Enclosure

Cc. Chief Justice Margaret L. Workman  
Justice Menis E. Ketchum, II  
Justice Robin Jean Davis  
Justice Elizabeth D. Walker

## Appendix B

### Objective, Scope, and Methodology

The Post Audit Division within the Office of the Legislative Auditor conducted this audit pursuant to Chapter 4, Article 2, Section 5 of the *West Virginia Code*, as amended.

#### Objectives

This is the third in a series of audit reports of the Supreme Court of Appeals of West Virginia. The objective of this report is to provide information concerning the Court's accumulation of \$29 million of unused appropriated funds that were re-appropriated into Fiscal Year 2012, the spend down of this balance to \$333,514 at the end of Fiscal Year 2015, those areas of expenditures that saw a significant increase over prior years, and finally to provide information concerning the Court's growing balance of unused funds.

#### Scope

The scope of this audit consists of an analysis of budget information and appropriations for the Court for Fiscal Years 1998 to present; and an analysis of expenditures for Fiscal Years 2012 through present.

#### Methodology

Evidence was gathered from various sources including internal court memorandums, administrative conference meetings of the Court discussing budget matters, executive budget reports, WVFIMS and wvOASIS transaction data, invoices, and testimonial evidence of Court employees.

SUPREME COURT OF APPEALS  
STATE OF WEST VIRGINIA

STEVEN D. CANTERBURY  
ADMINISTRATIVE DIRECTOR



ADMINISTRATIVE OFFICE  
BUILDING 1, ROOM E-100  
1900 KANAWHA BOULEVARD, E.  
CHARLESTON, WV 25305-0832  
(VOICE) 304/558-0145  
(TTY) 304/558-4219  
(FAX) 304/558-1212  
[www.state.wv.us/wvsca/](http://www.state.wv.us/wvsca/)

MEMORANDUM

TO: ALL JUSTICES

FROM: STEVE CANTERBURY *SAC*

DATE: November 7, 2016

SUBJECT: Review of the Lowered Reappropriation from FY 2011 until the Present

Justice Workman asked that I prepare a memorandum to explain how the appropriation rollover of some \$29 million in FY 2011 has resulted in a rollover this past fiscal year of \$1.3 million. In brief, she wants to know where the money went.

As can be logically deduced, the carried-over funds were not all spent on a single project or in a single way. Money was spent in several areas in several years that totaled a reduction in the rollover amount of \$28 million. And there was a decision by the Court to ask for lower appropriations during the most recent fiscal years due to growing concerns that key Senate leaders were angered by the excessive amount of the Court's "surplus funds," as they styled it. That anger led to discussions among legislators about sponsoring a constitutional amendment to remove the budgetary privilege of appropriation self-determination that the Court now enjoys.

Before getting into the specifics year-by-year, it is necessary to point out that not only is every dime accounted for in Director of Finance Sue Troy's electronic files, but that the Court approved each of the appropriation requests with an understanding of the major issues and expenditures that the Court was facing when approving these requests, issues such as the threat of a successful constitutional amendment to take away the Court's budgetary independence if the Court continued to have a large fund at the end of each fiscal year, especially as the State faced greater and greater shortages. If any member of the Court wishes to know about any specific expenditure areas to the dime, then Director Troy would be happy to provide that information.

Justice Workman asked that as much of this information as possible be put into bullet points and, in any case, to keep the memorandum brief:

#### **FY 2011**

- At the end of FY 2011, the Court carried over approximately \$29 million.

#### **FY 2012**

- During the Legislative Session of 2011, Justices, judges, and magistrates all received pay raises effective July 1, 2011. However, the Legislative leadership held up that legislation until they were assured that the Court could digest the additional \$6.1 million, which the Court did. The Legislature did not provide additional, supplemental money to cover those costs.
- The Court also gave back \$2 million to the General Revenue Fund that year.
- At the end of FY 2012, the Court rolled over some \$22.7 million into the next fiscal year. A few lines did not cost as much as were projected some eighteen months earlier when the appropriation request was prepared which is why there was not an ever lower carry-over amount.

#### **FY 2013**

- With Senator Prezioso as Chair of Senate Finance and Senator Unger as Majority Leader, scuttlebutt about the Legislative leadership's frustration with the Court's so-called "surplus" started to grow more shrill, and there was more talk of a constitutional amendment to take away the Court's budgetary authority. Therefore, some of the previous year's pay raises were digested in FY 2012: \$4.4 million.
- Some unanticipated construction and furniture purchases for Justices' chambers, the business court, the City Center East server room with backup air conditioning and generators, the Clerk's office, and the Justices' Conference Room added additional costs. There was also new Family Court space in several counties that required the purchase of technologies, furniture, and office equipment. Altogether, there was an additional \$1.2 million spent beyond the budgeted amount.
- The Legislature mandated that drug courts serve all of the state's counties causing an unanticipated spike in drug court expenditures of \$1.9 million.
- At the end of FY 2013, the Court reappropriated \$15.25 million.

#### **FY 2014**

- The Court agreed to return \$4 million to the General Revenue Fund.

- The Court did not seek appropriations for approximately \$10 million in expenditures in an attempt to bring the year-end balance to as close to zero as possible, mainly to continue to forestall a constitutional amendment. The Court discussed the need to eliminate any carry-over money at the end of the year so that the Senate leadership would not continue down the path towards the sponsorship of such an amendment. So the money was spent from several lines. No one category saw an extremely large increase, but some of the increases were in the new drug courts, the roll-out of the UJA, the completion of all remodeling in the Capitol and at City Center East, and with mandated raises of certain classifications of employees.
- At the end of FY 2014, the Court reappropriated \$1.8 million.

Since then, the Court has appropriated enough to cover expenditures ending FY 2015 with \$333,514 and FY 2016 with \$1,244,997. The reappropriated amount in FY 2016 includes the \$2 million that was returned to the General Revenue Fund that had been budgeted for the anticipated annual Judicial Retirement contribution. The latter figure would have been a bit lower had more work been done on a couple of the newly created judges' spaces in the first half of that fiscal year.

As requested, I kept this explanation brief. If any more details are requested by any member of the Court, please let me know. Or contact Director Troy directly.

Thank you.



POST AUDITS SUBCOMMITTEE  
MEMBERS

SENATE MEMBERS

*President, Mitch Carmichael*  
Ed Gaunch  
Roman Prezioso

HOUSE MEMBERS

Tim Armstead, *Speaker*  
Timothy Miley  
Eric Nelson Jr.



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

*Legislative Auditor: Aaron Allred*

---

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