

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

POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

West Virginia Jobs Act

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



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
Justin Robinson, Director

POST AUDIT DIVISION

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Post Audit Report on the WEST VIRGINIA JOBS ACT

June 18, 2019

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While the West Virginia Jobs Act is Intended to Increase the Number of West Virginians Employed on Taxpayer Funded Improvement Projects, the Broadness of the Act and Hurdles in Enforcing its Provisions Limit its Ability to Achieve its Intended Purpose.

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ENCLOSURE:

Division of Labor's Response - FY 2018 Jobs Act Annual Report

EXECUTIVE SUMMARY

The Legislative Auditor conducted this audit of the West Virginia Jobs Act pursuant to W.Va. Code §4-2-5. The objective of this review was to determine whether the West Virginia Jobs Act is meeting its legislative purpose and to assess the Division of Labor's ability to adequately administer and enforce the statutory requirements of the program. The findings of this audit are highlighted below.

Frequently Used Acronyms in This Report

DOL: West Virginia Division of Labor

PERD: Performance Evaluation and Research Division

LFPR: Labor Force Participation Rate

Report Highlights

Issue 1: While the West Virginia Jobs Act is Intended to Increase the Number of West Virginians Employed on Taxpayer Funded Improvement Projects, the Broadness of the Act and Hurdles in Enforcing its Provisions Limit its Ability to Achieve its Intended Purpose.

- The local labor market comprises a total of eight states and Washington, D.C. This incorporates 205 counties or census equivalent units. Therefore, West Virginia residents only make up about 8 percent of the local labor market. The remaining 92 percent of the labor force comprises out-of-state residents.
- The Legislative Auditor's review of Jobs Act referrals data from 2011 to present indicates that substantially more Jobs Act waivers are issued than referrals made and there have been no West Virginians hired as a result of the Act's referral process.
- The DOL confronts numerous challenges in ensuring compliance with the Jobs Act. Public Authorities fail to notify the DOL at the onset of public improvement projects subject to Jobs Act compliance, while contractors fail to notify the DOL about known issues of noncompliance. In addition, DOL indicates it has limited resources for enforcement activities.

Recommendation

1. The Legislative Auditor recommends that the Legislature consider repealing the West Virginia Jobs Act.

Post Audit's Response to the Agency's Written Response

On June 11, 2019, the Legislative Auditor received a brief response from WorkForce West Virginia. WorkForce expressed general agreement with the report but offered a clarification regarding its ability to determine and report the number of hires resulting from its referrals. As a result, the Legislative Auditor modified the report to more accurately present the data from WorkForce. WorkForce indicated it has no plans of providing a formal, written response to the report.

On June 12, 2019, the Legislative Auditor received a response to this report from the West Virginia Division of Labor. The Division of Labor chose to respond by providing a copy of its Fiscal Year 2018 Jobs Act Annual Report and requested that a copy be provided to the members of the Post Audits Subcommittee. The annual report is included as a separate enclosure to our audit report.

Issue 1: The West Virginia Jobs Act Has Not Achieved its Intended Purpose of Increasing Employment Among West Virginians and Has Not Resulted in Any Hires Since its Enactment. Further, Constraints of Federal Law Limit the Ability of the State in Making it More Effective.

Introduction

A 2018 audit report from the Legislative Auditor’s Performance Evaluation and Research Division (PERD) found significant issues with respect to compliance with the West Virginia Jobs Act (Jobs Act) on the part of public authorities. While primary compliance oversight is delegated to the State’s Division of Labor (DOL) under the provisions of the Jobs Act, public authorities and employers have specific responsibilities that can affect the DOL’s efforts in meeting compliance objectives. If public authorities fail to hold employers accountable for the reporting requirements of the Jobs Act, the DOL—relying on information provided by the employers—cannot effectively enforce the provisions.

As a result, the Legislative Auditor conducted a follow-up to determine whether the Jobs Act is meeting its legislative purpose of aiding in the reduction of unemployment among West Virginia residents. Additionally, after reviewing PERD’s report on the DOL’s compliance with the Jobs Act, the Legislative Auditor evaluated whether the DOL’s oversight of compliance and enforcement is sufficient to properly administer the Act. The Legislative Auditor’s review identified the following issues:

1. The Jobs Act’s broad statutory construction means that work-force eligible West Virginians only make up approximately 8 percent of the local labor market from which employers must hire.
2. WorkForce West Virginia indicates that it has no way of determining whether any West Virginians have been hired through the Acts’ job referral process, but issues waivers in about 95 percent of instances.
3. The State’s Division of Labor continues to face substantial barriers to proactive enforcement of the Act.
4. The Privileges and Immunities Clause of the U.S. Constitution limits the ability of the State to strengthen the provisions of the Jobs Act to make it more effective.

The Legislative Auditor recommends that the Legislature consider repealing the West Virginia Jobs Act.

The Legislature Enacted the Jobs Act to Increase the Frequency in Which Residents of the Local Labor Market Are Hired on Public Improvement Projects. While the Jobs Act is Generally Meant to Increase the Hiring Frequency of Those in the Local Labor Market, its Specific Purpose was Intended to Benefit the Unemployed West Virginia Labor Market.

In 2001, the Legislature enacted the West Virginia Jobs Act, W.Va. Code §21-1C, to enhance the employment opportunities of West Virginia residents by creating a hiring initiative for public improvement projects. The program’s goal is for at least 75 percent of employees on

public improvement projects to be hired from the local labor market to address the significantly higher unemployment rate in West Virginia compared to other states. In addition, the Act cites that the majority of West Virginia counties are designated as labor surplus areas. The United States Department of Labor defines labor surplus areas as:

A civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period.

Historically, West Virginia has had one of the highest unemployment rates in the United States. In 2001, the unemployment rate was approximately five percent, resulting in approximately 40,000 unemployed residents throughout the State. Because of this, the Legislature found that:

...the employment of persons from outside the local labor market on public improvement construction projects contracted for and subsidized by the taxpayers of the state contributes significantly to the rate of unemployment and the low per capita income among qualified state residents who would otherwise be hired for these jobs.

Therefore, any public improvement project in the amount of \$500,000 or more, excluding improvements funded in whole or in part by federal funds, shall be subject to the provisions set forth in the Jobs Act.

WorkForce West Virginia, a state government agency funded through the U.S. Department of Labor, oversees a network of workforce development services for residents and employers of the State. As a result, the provisions of the Jobs Act empower WorkForce West Virginia to act as an intermediary between employers and unemployed West Virginians to facilitate the hiring of residents for public improvement projects. However, if an employer that is subject to the Jobs Act's provisions is unable to find, on its own, the minimum number of qualified employees from the local labor market, the employer has a duty to inform the nearest WorkForce West Virginia office. In such instances, employers are required to provide WorkForce with the number of qualified job applicants needed, including job descriptions of the positions to be filled.

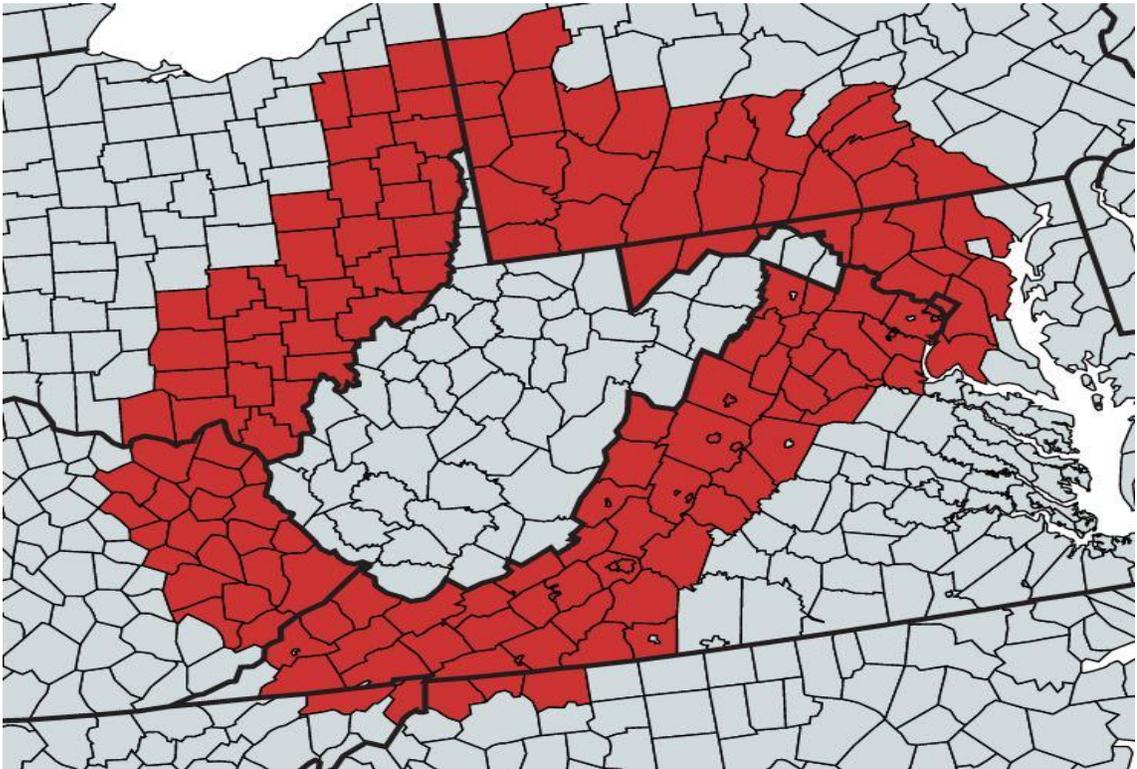
WorkForce uses this information and attempts to refer qualified West Virginians to apply for these positions. However, the deadline established by the Jobs Act for WorkForce to refer and fill these positions with a West Virginia worker is only three business days. If, in three days, WorkForce is unable to refer or fill the number of qualified job applicants requested, they are required to issue a waiver to the employer permitting the remainder of positions to be filled from outside the local labor market.

In Order to Comply with Federal Law, The Local Labor Market's Composition is Very Broad, Primarily Comprising Out-of-State Residents.

According to the Jobs Act, the local labor market is defined as “...every county in West Virginia, and any county outside of West Virginia if any portion of that county is within fifty miles

of the border of West Virginia,” and comprises portions of eight states (West Virginia, Ohio, Maryland, Pennsylvania, Virginia, Tennessee, Kentucky, and North Carolina) and Washington D.C.. This includes 205 counties or census equivalent units—only 55 of which are in West Virginia. This figure equates to an approximate 27 percent of the total number of census equivalent units in the local labor market that fall within the boundaries of the State.

Figure 1: Local Labor Market Map (Non-WV Counties).



Source: Created by the West Virginia Legislative Auditor’s Office using Google Earth mapping software to measure distances.

The Legislative Auditor conducted a comprehensive comparative analysis between West Virginia and the remainder of the local labor market. The analysis sought to determine the differences in total population, population active in the workforce, labor force participation rates, and land area between West Virginia and the rest of the local labor market.

Local Labor Market Population Comparison

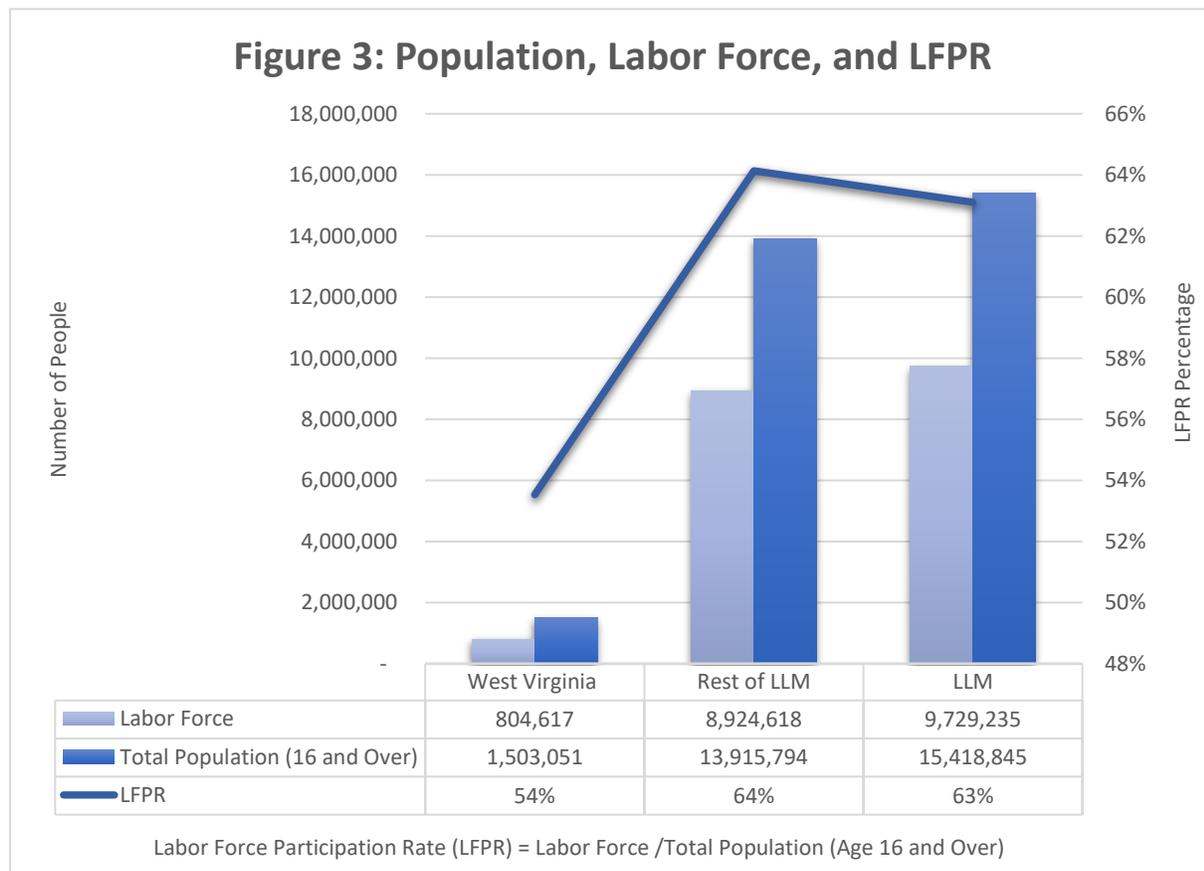
Figure 2: Local Labor Market Population		
Location	Total Population	Percentage of Total Population
West Virginia	1,815,857	9.50%
All Other Areas in the LLM	17,307,417	90.50%
Total Local Labor Market	19,123,274	100%

Source: U.S. Census Bureau, Population Division, September 2018

The Legislative Auditor compiled estimates of 2017 resident population data based on the 2010 U.S. Census to determine the total population of West Virginia compared to all other states and districts covered in the local labor market. While West Virginia has a total population of approximately 1.8 million, the rest of the local labor market has a total population of approximately 17.3 million. Therefore, in terms of general population, West Virginia makes up approximately 9.5 percent of the local labor market. Although population estimates provide a general figure of persons in a pre-determined area, they do not specify the number of persons in the labor force. In such instances, utilizing labor force data as a measure of value is more appropriate.

Local Labor Market Labor Force Analysis

The Bureau of Labor Statistics (BLS) defines labor force as “...all persons classified as employed or unemployed...” including individuals who are at least 16 years of age, completed any work that week (either as a paid employee or self-employed), or attempted to procure gainful employment during the preceding 4-week period, if unemployed. As you can see in the first column of the chart below, a comparison of 2017 active labor force participants indicated that **West Virginia residents only comprise approximately 8 percent (804,000) of the 9,729,000 active labor force participants in the local labor market.**



Source: U.S. Census Bureau, Population Division, September 2018; Bureau of Labor Statistics, Local Area Unemployment Statistics.

In addition, the Legislative Auditor analyzed the labor force participation rate (LFPR), or the number of persons in the labor force divided by total population. This analysis sought to determine the extent to which West Virginia compared to the rest of the local labor market. LFPR is an important labor market measure that represents the relative amount of labor resources (people) available for the production of goods and services. Generally, a high LFPR is a key indicator of economic stability in a region—that is, the working-age population is working or actively looking for work.

The analysis indicated that, as shown in the first column of the chart above, West Virginia represented a LFPR of 54 percent, 10 percent lower than the LFPR of 64 percent comprising the rest of the local labor market outside of West Virginia. Overall, the local labor market LFPR is approximately 63 percent. Figure 3 on the previous page provides a breakdown.

Local Labor Market Geographical Analysis

In terms of geographical area, the majority of the local labor market is not included within the borders of West Virginia. Accordingly, since most of the labor force resides in locations outside of the State, the ability for West Virginia residents to procure employment in the local labor market is reduced as a result of the disproportionate distribution. The local labor market spans approximately 92,365 square miles and is measured in land area.¹ West Virginia comprises 24,038 square miles (26 percent) of the total land area encompassed in the local labor market. Conversely, the remaining 68,327 square miles (74 percent) of the local labor market falls within the borders of other states and Washington, D.C.

Figure 4: Labor Force Density (Persons per Square Mile)	
Location	Labor Force Density
West Virginia	33.47
Rest of Local Labor Market	130.62
Local Labor Market	105.33

Source: Data compiled by the Legislative Auditor’s office using Bureau of Labor Statistics, Local Area Unemployment Statistics; U.S. Census Bureau, 2010 Census.

The Legislative Auditor sought to determine the distribution of the labor force in West Virginia as opposed to the rest of the local labor market. Labor force density was computed as a measure to determine the number of labor force participants per square mile of land area and is calculated from dividing labor force participants by the land area specific to the region being examined. Density is an important measure to consider for business and employment purposes, as areas with a higher population or labor force density should be able to support increased levels of job activity. The local labor market, as a whole, has a labor force density of 105.33 persons-per-square-mile. West Virginia on its own has a labor force density of 33.47, with the remaining portion of the local labor market at 130.62 persons-per-square-mile. These figures indicate that

¹The U.S. Census Bureau defines land area as “An area measurement providing size, [in square miles], of the land portions of geographic entities for which Census Bureau tabulates and disseminates data.”

West Virginia has a labor force density approximately four times lower than the rest of the local labor market.

In total, the local labor market includes more out-of-state active labor force participants and more land area than is encompassed in West Virginia. However, according to Legislative Services, it is likely that the broad statutory construction of the local labor market was intentional by the Legislature. According to a legal memo obtained from Legislative Services:

Historically, state laws encouraging the discrimination of non-residents and a preference for residents has been found unconstitutional by the United States Supreme Court in many cases. The Privileges and Immunities Clause in the U.S. Const. art. IV, §2 generally has a two-part test to determine if a law, such as the WV Jobs Act, is unconstitutional. First, does the law infringe on a fundamental right enjoyed by citizens of the state or nation? Second, is the law the least restrictive means necessary to cure the evil at which the law is aimed?

The Job Act's effectiveness in increasing the number of West Virginians employed may be limited by the disproportionate number of non-West Virginians included in the local labor market. However, the State's ability to strengthen the Act to make it more effective may be limited by the U.S. Constitution. According to Legislative Services, efforts by the State to narrow the Act may likely lead to a challenge and the Act being held Unconstitutional.

As the Act is currently written very broadly to include non-residents in the definition of the local labor market, it's likely West Virginia was attempting to stay within the well-established law surrounding the Privileges and Immunities Clause. Any attempt to amend the law to influence private contractors to hire state residents could likely violate the two-part test of the Privileges and Immunities Clause.

Since 2011, WorkForce Reports That It Had Referred 55 Qualified West Virginians for Public Improvement Projects Subject to the Jobs Act but Cannot Determine Whether Any West Virginians Have Been Hired as a Result.

The Legislative Auditor requested and analyzed data from WorkForce regarding the number of Jobs Act referrals made to employers engaged in projects that are subject to the Act, and the number of hires resulting from those referrals. WorkForce provided data from 2011 to present. From 2012 to 2015, no data was available for review, which indicates a lapse in efforts to obtain and maintain proper documentation. Similarly, data was available in a limited capacity for 2011, 2016, and 2017. However, since 2018, WorkForce's documentation detailing the number of hires and referrals for the Jobs Act has greatly improved. This is due, in part, to an updated data management system and the recommendations made in the 2018 PERD audit report.

Based on available information, since fiscal year 2011 WorkForce has provided 55 referrals to employers performing state-funded projects subject to the Jobs Act. **However, indicated that it does not have any data that would allow it to determine whether any qualified candidates have been hired as a result of the referral process.** Figure 5 provides a breakdown of referrals and hires from 2011 to 2019.

**Figure 5: WorkForce West Virginia
Referrals and Hires 2011-2019**

Year	Referrals	Hires
2011	22	0
2012	Data Unavailable	-
2013	Data Unavailable	-
2014	Data Unavailable	-
2015	Data Unavailable	-
2016	16	0
2017	3	0
2018	14	0
2019	0	0
Total	55	0

Source: Data provided to the Legislative Auditor's Office from Workforce West Virginia.

The Legislative Auditor also reviewed data from the DOL regarding the number of waivers issued to employers engaged on projects subject to the Jobs Act since 2018, when the collection and reporting of Jobs Act data improved. In 2018 and 2019, 19 employers requested that WorkForce refer a total of 269 qualified West Virginians for 45 public improvement projects.

Figure 6: Referrals and Waivers Issued FY 2018-2019

Year	2018	2019
Number of Companies Filing Job Orders	10	9
Number of Job Orders	26	19
Number of Job Openings	131	138
Number of Referrals	14	0
Number of Waivers Issued	117	128*
Percentage of Waivers as Job Openings	89%	100%

*Received New Job Order on 04/29/2019 for 10 Bridge Painters

Source: Data provided to the Legislative Auditor's Office from Workforce West Virginia.

According to data provided to the Legislative Auditor, WorkForce made referrals for 14 of those postings (5.2 percent). In addition, at least 245 Jobs Act waivers were issued, authorizing employers to hire from outside the local labor market. These waivers cover at least 91 percent of the job openings requested by employers over those two years. As of April 2019, no referrals had been issued by WorkForce for fiscal year 2019, and therefore, no hires have resulted from the provisions of the Jobs Act. Figure 6 provides a breakdown of job postings, referrals, and waivers from 2018 and 2019.

Referrals and subsequent hires may be limited by the 3-day window that WorkForce has under the Act to procure qualified candidates for a job posting. WorkForce officials indicated that the 3-day turnaround period restricts their ability to locate, contact, and procure qualified candidates for public improvement projects subject to the Jobs Act. Since public improvement projects generally require immediate start dates, the wait time between locating and contacting a

potential employee often exceeds the 3-day window in which WorkForce has been allotted to refer qualified candidates.

WorkForce indicated that to discourage employers from turning down qualified referrals, it employs a mechanism to deter employers from rejecting referrals and hiring from outside the local labor market by means of reduced waivers. If an employer declines to hire a referral, the consequence is a reduction in the number of waivers equivalent to the number of declined referrals. However, this mechanism can also be easily circumvented by requesting a higher number of qualified candidates, and subsequent waivers, than actually needed.

Despite Improvements in the Collection and Reporting of Jobs Act Data, the Division of Labor Still Faces a Number of Challenges in Enforcing and Ensuring Compliance with the Jobs Act.

Enforcement of the Jobs Act is statutorily the responsibility of the State's Division of Labor. DOL's enforcement duties include specific responsibilities concerning public authorities and employers. The DOL informs public authorities of their obligations under the Jobs Act—including counties and municipalities. Accordingly, public authorities are required to inform the DOL of any public improvement projects subject to the Jobs Act.

In such instances, the employer or public authority has a duty to provide the DOL with certified payroll records or waivers on a weekly basis so that the DOL can ensure compliance with the Act. When the DOL receives the payroll records, it evaluates the records to ensure that the required number of employees from within the local labor market have been hired by each employer. For contractors employing the services of subcontractors, the general contractor is required to provide public authorities with a list of subcontractors.

A review of the DOL's oversight functions regarding the implementation and continual enforcement of Jobs Act provisions identified the following areas of concern: (1) lack of staffing resources dedicated to enforce Jobs Act provisions; (2) reactive nature of enforcement; and, (3) public authorities failing to notify DOL of public improvement projects and nonconformity of Jobs Acts provisions.

Lack of Staffing

Currently, the DOL employs 18 Labor Inspectors in the Licensing, Wage, and Hour Section. The Wage and Hour Section is responsible for the enforcement of state wage payment laws, minimum wage and overtime requirements, child labor, verifying the legal employment status of workers, state wage bond requirements, employee meal break requirements, the maximum work hours (schedule) for nurses, the hiring of employees from the local labor market for state public improvement projects, employer limitations relating to employee polygraph examinations, the application and licensure of state polygraph examiners and the registration of employment agencies.

Inspectors are classified as "boots on the ground" personnel tasked with inspecting job sites as the primary mechanism of enforcement for violations pursuant to Jobs Act provisions. DOL

indicated to the Legislative Auditor that it currently has no dedicated funding source for Jobs Act compliance and enforcement activities. Absent adequate funding, program operations are restricted by a reduced inflow of labor resources: time, staffing, and supplies. In an interview with DOL officials, it was stated:

...DOL receives no funding earmarked for the purpose of enforcing the Jobs Act. . . [E]ven modest funding (\$750,000) would likely allow the DOL to ensure compliance with the Act.

Allocating a source of funding specifically for Jobs Act enforcement may enable the DOL to hire additional Labor Inspectors to ensure improved compliance with the Jobs Act.

Reactive Rather Than Proactive Enforcement

Enforcement of the Jobs Act is inherently reactive in nature because enforcement often occurs after the job has commenced, or even been completed, and payroll has been processed. Thus, violations may go unnoticed, and, ultimately, unpenalized. This reactive enforcement may result in the identification of noncompliance after a project has been completed. In these instances, penalties are assessed against employers, but no West Virginians are hired as a result. Proactive enforcement—enforcement that occurs prior to job commencement and to the submission of payroll records—may increase the number of incurred penalties and foster improved compliance with the Jobs Act.

Jobs Act inspections are to be completed as a result of notification from public authorities as specified by W.Va. Code. Prior to 2016, Jobs Act inspections were performed concurrently with Prevailing Wage Act inspections, likely as a cost-and time-saving measure. Since the repeal of the Prevailing Wage Act took effect, DOL personnel have attempted to stay abreast of most of the contracting activities subject to Jobs Act provisions through the media, agency contacts, and other means and continue to perform Jobs Act inspections concurrently with other routine inspections. However, it appears that enforcement of the Jobs Act is constrained primarily by external factors outside the DOL's control.

Failure to Report Public Improvement Projects and Non-Compliance with Hiring Requirements

Many out-of-state employers fail to adhere to the reporting requirements of the Jobs Act. Although the DOL takes steps to inform the public authorities and employers about compliance with the Jobs Act by means of informational flyers located on their website, adherence to the provisions are overlooked in some instances.

The DOL indicated to the Legislative Auditor that ensuring compliance with the Act is particularly challenging when the general contractor uses subcontracts for specialized jobs. Subcontractors may not be made aware of the hiring requirements pursuant to the Jobs Act. Similarly, subcontractors regularly subcontract out to additional subcontractors at various times and dates, which further complicates enforcement. Even in instances wherein DOL receives all of the relevant information from the contractors, it is impossible to predict which contractors and

subcontractors will be on-site on the date of DOL’s inspection. Operationally, the multi-tiered subcontracting dynamic is a primary limiting factor in ensuring compliance.

Out-of-State Employers for Public Improvement Projects Subject to the Jobs Act Mostly Hire Out-of-State Workers.

Figure 7: In-State vs. Out-of-State Employees		
Location of Employees	Number of Employees Hired	Percentage of the Total Hired
In-State	153	69%
Out-of-State	68	30%
Unknown	2	1%
Total	223	100%

Source: Data collected by the Legislative Auditor’s Office regarding DOL payroll records.

The Legislative Auditor conducted an analysis of DOL payroll records for fiscal year 2018 public improvement projects subject to Jobs Act provisions. A sample of 10 West Virginia counties was taken (five border, five non-border) to determine the relationship between in-state and out-of-state employers and their hiring preferences. A total of 36 employers—27 in-state and 9 out-of-state—were sampled for this analysis. A total of 223 employees which included 69 percent in-state, 30 percent out-of-state, and the remaining one percent unknown were hired by employers as shown in the last column of the chart above, illustrated as Figure 7. The analysis indicates there may be a causal relationship between the majority of employers headquartered in West Virginia and the resulting higher number of West Virginia residents hired.

Figure 8: Percentage of In-State and Out-of-State Hires				
Employer Location	In-State Employees	Out-of-State Employees	Total	In-State %
In-State	138	10	148	93%
Out-of-State	15	58	73	21%
Total*	153	68	100%	

*Two employee locations are unknown
Source: Data collected by the Legislative Auditor’s Office regarding DOL payroll records.

The Legislative Auditor also sought to determine the extent to which in-state employers hire in-state employees and out-of-state employers hire out-of-state employees. In-state employers hired in-state employees approximately 93 percent of the time, while out-of-state employers hired in-state employees approximately 21 percent of the time, as illustrated in the last column of Figure 8. The Legislative Auditor’s analysis concludes that, predominantly, out-of-state employers bring their own labor for public improvement projects, while in-state employers hire residents of the State.

Conclusion

Previous evaluations of the Jobs Act identified issues with enforcement and compliance with regulations from public authorities and employers. The Legislative Auditor finds that

noncompliance on the part of both public authorities and employers remain a concern despite prior reports and additional efforts by the DOL. Although the DOL has undertaken efforts to foster enhanced compliance and enforcement, full compliance with the Act cannot be achieved until public authorities and employers adhere to the provisions set forth in W.Va. Code.

Further, in the 18 years since the Act was put into place, it does not appear that any West Virginians have been hired through the Act's referral process. Additionally, the State's labor force participation rate is currently the lowest in the country, and its unemployment rate remains among the highest. The Legislative Auditor's analysis indicates that as many as 95 percent of job openings listed through the Jobs Act result in the issuance of a waiver.

While the intentions behind the West Virginia Jobs Act were good, the broad composition of the local labor market and the relative ease of obtaining waivers to hire employees from outside the local labor market lead the Legislative Auditor to question whether the Jobs Act is meeting its legislative purpose to aid in the reduction of unemployment in West Virginia. In addition, the State may have limited options in terms of strengthening the Jobs Act to make it more effective. While the Act, as currently enacted, is very broad, any actions by the Legislature that attempt to narrow the scope of the local labor market, thereby increasing the number of West Virginians hired by employers could run afoul of the U.S. Constitution.

Recommendation

1. The Legislative Auditor recommends that the Legislature consider repealing the West Virginia Jobs Act.

Appendix A

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

Post Audit Division

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Charleston, WV 25305-0610
(304) 347-4880



Justin Robinson
Director

June 7, 2019

Scott Adkins, Acting Executive Director
WorkForce West Virginia
State Capitol Complex
Building 3, Suite 300

Dear Acting Director Adkins:

This is to transmit a draft copy of the Post Audit Division's report on the West Virginia Jobs Act. 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 time and location once the information becomes available. It is expected that a representative from your agency 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 Terri Stowers, Executive Administrative Assistant at 304-347-4880 by **Tuesday, June 11, 2019**. In addition, we need your written response by noon on **Friday, June 14, 2019** in order for it to be included in the final report. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Justin Robinson".

Justin Robinson
Director

Enclosure

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

Post Audit Division

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(304) 347-4880

Justin Robinson
Director



June 7, 2019

Mitchell Woodrum, Commissioner
West Virginia Division of Labor
State Capitol Complex
Building 3, Room 200

Dear Commissioner Woodrum:

This is to transmit a draft copy of the Post Audit Division's report on the West Virginia Jobs Act. 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 time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to respond to the report and answer any questions committee members may have during or after the meeting.

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Sincerely,

A handwritten signature in blue ink that reads "Justin Robinson".

Justin Robinson
Director

Enclosure

Objective, Scope, and Methodology

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

Objectives

The objective of this review was to determine if the West Virginia Jobs Act is meeting its legislative purpose and to determine if the State's Division of Labor has provided adequate oversight regarding the implementation and enforcement of the West Virginia Jobs Act provisions in accordance with statute.

Scope

The scope of this review consists of documentation regarding the West Virginia Jobs Act, including the purpose as outlined in W.Va. Code; the enforcement of the provisions by the DOL; the impact of the Act on unemployment rates in the State; the effectiveness of the Act in employing West Virginia residents; and, determining the effect that the local labor market has on the legislative purpose of the Act. We examined data from FY 2011 through FY 2019, except as otherwise noted.

Methodology

Post Audit staff gathered and analyzed several sources of information and assessed the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through interviews with various agencies that oversee, collect, or maintain information. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence.

Audit staff analyzed various source documents that were either provided to us by DOL, WorkForce, or publicly available on the web, such as data from the U.S. Census Bureau and the U.S. Bureau of Labor Statistics.

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.



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