

WEST VIRGINIA LEGISLATURE

Performance Evaluation and Research Division

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John Sylvia
Director

March 2, 2021

The Honorable Mark R. Maynard
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Brandon Steele
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
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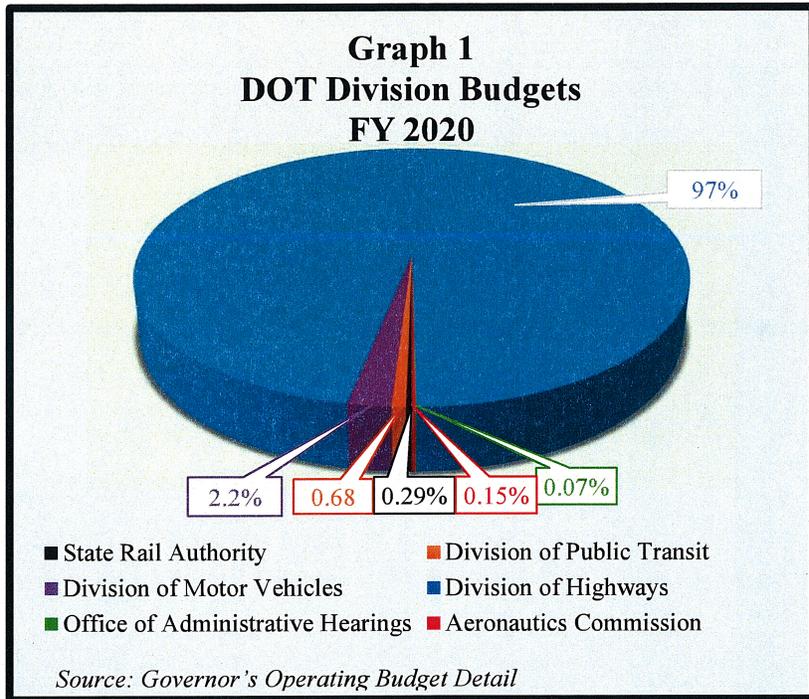
Dear Sirs:

This letter-report is in response to your request that the Performance Evaluation and Research Division (PERD) examine the cost, possible duplication of services, and rationale for a person having the dual title and responsibilities of secretary of the Department of Transportation and the commissioner of the Division of Highways. Your request also specifies the evaluation examine the current utilization of the statutory pay incentive for the secretary to hold both titles while the agencies simultaneously employ a dual deputy secretary and deputy commissioner.

The 1989 Reorganization Bill Combined Several Agencies to Form the State Department of Transportation.

With a 1989 reorganization bill, the Legislature established the state Department of Transportation (DOT) and created the position of DOT cabinet secretary. The bill also designated the existing Office of State Road Commissioner as the West Virginia Division of Highways, under West Virginia Code §17-2A-1, making it an agency within the DOT to be directed by a commissioner of highways. Graph 1 below shows the current configuration of the DOT. It is unusual in that 97 percent of the department's budget is for the DOH. The commissioner of the DOH is responsible for a budget of \$2.8 billion, 36,000 miles of state roads and employs approximately 5,000 people. Consequently, the role of the DOH commissioner within the DOT is significant.

Joint Committee on Government and Finance



Under the 1989 reorganization bill, the DOT would have one person serve as the cabinet secretary (W. Va. §5F-2-2) and another person serve as the commissioner of the DOH (W. Va. §17-2A-1). Table 1 shows the statutorily determined salaries for these positions. During FY 2001 through 2006, the DOH commissioner position had a higher salary than the cabinet secretary. However, beginning in FY 2009, a dual-title provision was allowed wherein one individual may serve simultaneously as the cabinet secretary and the commissioner of the DOH. The dual-title is permitted under W. Va. Code §6-7-2a, which states, “*That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid \$120,000.*” Table 1 shows that the salaries for the two positions and the dual title have not changed since FY 2009.

**Table 1
Statutory Salaries for DOT Cabinet Secretary,
Commissioner of Highways and the Dual Title
FY 2001 – 2020**

Fiscal Year	Cabinet Secretary	Commissioner of Highways	Dual-Title Provision
2001-2006	\$75,000	\$90,000	--
2009	\$95,000	\$92,500	\$120,000
2010	\$95,000	\$92,500	\$120,000
2011	\$95,000	\$92,500	\$120,000
2012	\$95,000	\$92,500	\$120,000
2013	\$95,000	\$92,500	\$120,000
2014	\$95,000	\$92,500	\$120,000
2015	\$95,000	\$92,500	\$120,000
2016	\$95,000	\$92,500	\$120,000
2017	\$95,000	\$92,500	\$120,000
2018	\$95,000	\$92,500	\$120,000
2019	\$95,000	\$92,500	\$120,000
2020	\$95,000	\$92,500	\$120,000
2021	\$95,000	\$92,500	\$120,000

Source: Acts of the Legislature of West Virginia reference volumes.

The Dual Title Results in Higher Salary Costs Beyond the Salaries Established in Code.

The Legislative Auditor contends that the statutory responsibilities of the commissioner of highways and the cabinet secretary of the DOT cannot be accomplished by one person. In addition, one person realistically cannot be effective serving in this dual role. This proves to be true in practice since the dual-title provision invariably leads to another person being employed in the capacity of deputy secretary/commissioner and receives a salary over \$100,000. In effect, the dual-title provision still ends up with the State employing two individuals who carry out the responsibilities of secretary and commissioner. However, instead of two persons being paid the statutory salaries of \$92,500 for the commissioner position and \$95,000 for the secretary position, the State ends up paying the statutory salary of \$120,000 for the secretary and an annual salary, not determined in statute, usually over \$100,000 for the second person.

Table 2 explains how the dual-title system still results in two individuals fulfilling the roles of secretary and commissioner but at higher salaries than statutorily allowed. Since 2001, it has been commonplace for one individual to take on the dual title of secretary/commissioner and, since 2008, the statutory salary of \$120,000, and another individual to assume the positions of deputy secretary and deputy commissioner. In March 2019, the governor initially departed from the dual-title tradition by naming the current Cabinet Secretary, Byrd White III, as Secretary of Transportation, and the current Deputy Secretary, Jimmy Wriston, as “acting” Commissioner of

Highways. However, the governor recalibrated his decision months later and reinstated the dual-title practice. The dual-title provision resulted in Mr. White receiving the salary of \$120,000 for the dual title of secretary/commissioner, and Mr. Wriston receiving the salary of \$117,000, which is not mandated in statute. **Both individuals are at higher salaries, but they are functioning to fulfill the responsibilities of secretary and commissioner.**

Table 2 DOT Leadership Titles and Salaries (March 2019 – Present)				
	Initial Title (March 2019)	Initial Salary	Current Title (Sept. 2019 – present)	Current Salary
Byrd White III	Secretary	\$95,000*	Secretary/ Commissioner	\$120,000*
Jimmy Wriston	Commissioner	\$92,500*	Deputy Secretary/ Deputy Commissioner	\$117,000
<i>Sources: PERD analysis, OASIS, W.Va. State Code §6-7-2A, Governor's Office Press Releases.</i> <i>*Statutorily mandated annual salary.</i>				

When asked about the dual-title system, the current DOT secretary stated, *“It is not a matter of one person completing the duties of two people, it is two jobs with sometimes similar and sometimes distinctly different responsibilities. As a practical matter...my Deputy Secretary/Commissioner and I are a team that manages all of the agencies within the DOT.”* Although the current secretary holds the top two authoritative titles for the DOT, and his deputy maintains the second two, the leadership dynamics are equally collaborative.

- In an August 2019 interview, the secretary explained the approach he and his deputy have taken to the dual-title setup: *“The fact is, we’re partners. We’re equal. I don’t do anything of major importance that I don’t tell him about and vice versa...”* The secretary stated that the current leadership arrangement does not consist of him simply telling the deputy secretary what to do. *“I think that is different than its been done in the past,”* he added.
- A September 2019 joint statement from the secretary and deputy secretary asserted: *“At the end of the day, we care less about our titles and more about getting work done. We view each other as equal partners – each with our own unique skill sets and diverse backgrounds...”*
- The secretary explained to PERD in October 2020: *“[The Deputy Secretary] and I discuss and thoroughly work every decision for each agency we are responsible. Much like a Fortune 500 company, we have a Chief Executive Officer (CEO) and a Chief Operations Officer (COO). To operate in the most effective and efficient manner, we work together and reach an agreement on every major decision involving DOT agencies.”*

The DOT secretary added that it is *“difficult to determine”* what percentage of his workload is estimated to be spent on each of his respective titles. The secretary reported, *“Because we work*

as a team on everything for each of the agencies there is not a clear dividing line between the duties of the Commissioner and Secretary. Obviously, the statutory duties of each position are different, but we shoulder both sets of responsibilities. I may go to one agency's meeting and [the Deputy] another but the major decisions are made jointly." He also stated that the main overlap in duties between the role of secretary and the role of commissioner "*is the responsibility to oversee and manage the Division of Highways.*"

The Duties and Responsibilities of the Commissioner Are Not Clearly Defined.

The dual-title option under W. Va. Code §6-7-2a raises another issue when you consider that under W. Va. Code §17-2A-2, the commissioner of highways "*shall devote his full time and attention to his official duties and responsibilities.*" However, the commissioner's duties and responsibilities are not all explicitly stated. Therefore, it is unclear that one person can devote full time and attention to the commissioner's duties if that person is also assuming the position of the cabinet secretary. West Virginia Code §17-2A-2 explicitly states that the commissioner has direct and full control of the entire state road program and system; however, this is "*subject to other provisions of law.*" It is not understood what other provisions of law are referred to. In addition, West Virginia Code §17-2A-8 lists 40 duties of the commissioner, most of which focus on the state road system, but they are in addition to other undefined duties, powers, and responsibilities. Given this review, it is unclear whether the full range of duties and responsibilities requires the full time and attention of the commissioner. Therefore, it would have to be presumed that the commissioner's duties include the duties of the cabinet secretary to avoid interpreting a conflict between W. Va. Codes §6-7-2a and §17-2A-2.

Conclusions

The Legislative Auditor finds that in practice, the dual-title provision results in a second person placed in the position of deputy secretary/commissioner to facilitate carrying out the duties and responsibilities of the secretary and commissioner. According to the current administration, the powers, duties, and responsibilities of the secretary and commissioner are collaborated equally between two persons. This suggests that in practice, one person cannot devote full time and attention to the commissioner's responsibilities, assuming they include the cabinet secretary's responsibilities. Therefore, **the Legislative Auditor concludes that the Legislature should consider eliminating the dual-title provision** since it results in two people carrying out the duties of the secretary and commissioner, and at salaries that are significantly above the statutory salaries established for both positions under W. Va. §6-7-2a(a). The secretary and commissioner positions have extensive responsibilities, and, therefore, they should function as two distinct positions. **It is also recommended that the Legislature clearly define and distinguish the powers, duties, and responsibilities of the commissioner of highways.**

The Legislative Auditor acknowledges that in terminating the dual-title provision, the Legislature may need to revisit the current statutory salaries of \$92,500 for the commissioner and \$95,000 for the secretary since they have been unchanged in Code for more than 12 years. Even

with increases in the annual salaries, the State will still be able to have the two positions at a cost below what has been paid under the dual-title provision.

I hope this addresses your inquiry of the DOT dual-titles arrangement. We welcome the opportunity to provide you with any further assistance that you may need.

Sincerely,

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

John Sylvia



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

March 31, 2021

West Virginia Legislature
Performance Evaluation and Research Division
Mr. John Sylvia
Building 1, Room W314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Electronically submitted

Dear Mr. Sylvia:

Thank you for allowing the West Virginia Department of Transportation (DOT) and the Division of Highways (DOH) to meet with representatives of the Performance Evaluation and Research Division (PERD) for the Exit Conference on March 16, 2021, regarding PERD's draft copy of the "Dual Title Letter Report" to respond to the draft findings. We will offer our opinions of the areas to be examined by the report below.

The report states that PERD was to examine the cost, possible duplication of services, and rational for a person having the dual title and responsibilities of Secretary of the Department of Transportation and the Commissioner of the Division of Highways. The examination was to also include the current utilization of the statutory pay incentive for the Secretary to hold both titles while employing a dual Deputy Secretary and Deputy Commissioner.

The first issue is the cost of having both positions and the option of having one person holding both positions with another person serving as the deputy. The report sets forth the historical and current salaries authorized in §6-7-2a as well as the salaries of the current Secretary/Commissioner and Deputy. PERD seems to be taking the position that this is somehow circumventing the intent of the statute. However, this fails to consider two things, (i) the statute specifically provides for one person to hold the dual position and (2) the authority granted to the Commissioner to hire and organize sufficient personnel to effectively operate the DOH in W. Va. Code §17-2A-4. Obviously, the Legislature intended to allow one person to hold both positions at a statutorily set salary. The Authority of the Commissioner of Highways to hire sufficient staff, regardless of the title or salary assigned is also clear and unambiguous. This authority is necessary and common to all commissioners of agencies throughout state government. The fact that The Secretary/Commissioner option is being exercised does not equate to overspending or

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neglecting any fiduciary duty. Neither is exercising the option to have a Deputy Secretary/Commissioner. Both are allowed and reasonable options under the law.

Next, we need to examine the makeup of the Department and the oversight or supervision being exercised. The DOH is a very large, statewide organization with over 5,000 employees and an annual enrolled operating budget of \$1.4 billion (not including bond funds). The other eight agencies under the Department of Transportation combined do not equal the size, responsibilities, or budget of the DOH. In fact, two of the seven are "ghost agencies". The Legislature defunded the Public Port Authority without going through the sunset process, it exists on paper only. The Legislature also terminated the Office of Administrative Hearings effective June 30, 2021, by transferring its duties to the magistrate courts. The Aeronautics Commission and the Public Transit Authority are grant pass through agencies with minimal staff and limited duties.

The State Rail Authority is a very unique, self-contained, smaller agency that requires minimal oversight. The Parkways Authority is a quasi-governmental agency that operates with some oversight and advice from the Secretary and Deputy; it does not need day-to-day interaction with either of them. When questions or problems arise with any agency or division, the Secretary and Deputy are able and available to address them. That leaves the Division of Motor Vehicles, which is also a statewide agency, but about one tenth the size of Highways. The Commissioner and his staff operate with the advice of the Secretary and Deputy as needed.

All the agencies meet every two weeks to provide updates and discuss issues and accomplishments. Deputy Wriston and I have an open-door policy and are available to assist any agency as needed. We attend agency and commission board meetings and engage agency heads regularly to maintain a good working relationship and necessary oversight.

By far the largest, most complex agency within Transportation is the DOH. The report states that the practice of the current administration suggests that the dual position of Secretary and Commissioner cannot be held by one person because one person cannot devote full time and attention to the job of Commissioner, as required by W.Va. Code §17-2A-2. As stated, many times, by both Deputy Wriston and I, we choose to operate and manage the jobs of Secretary and Commissioner together. That is a management decision and style that works for us. Given our respective backgrounds, we bring different strengths and perspectives to the job which enables us to provide better management of the entire Department.

It should be noted that the prior four Secretaries, from years 2005 through 2019, held the dual title of Secretary and Commissioner. They all had at least two deputies and

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often as a variety of assistants. Each administration configured the position to utilize their strengths and hire the staff necessary to operate the Department effectively and efficiently. This administration is no different. Please see Attachment 1.

Clearly, the dual system helps, not hinders, the administration of the Department. Should the Legislature decide to eliminate the dual position option, additional deputies and assistants will be hired as needed. The prior seven Secretaries, from 1989 to 1996, who did not have the option of the dual role, had multiple deputies and assistants to assist them as needed. It is unlikely to save any money if the dual option is no longer available.

The second area to be examined is possible duplication of services. However, the report did not discuss it, therefore, it will be assumed that it is in reference to the Secretary and Deputy working as a team rather than separate individuals. Merely using a team approach to decision making does not lead to a duplication of efforts. If the Secretary and Commissioner were making separate decisions on the same issues, that would be duplication of services and a waste of time. The team approach allows them to bring the best ideas and problem-solving approaches to the issue at hand. It is no different than gathering the State Highway Engineer and the Deputy State Highway Engineers to look at a project design to determine a more cost-effective approach. Everyone brings something to the table; from the many ideas one will rise to the top as the solution to the problem. This type of problem-solving collaboration is encouraged in the Department. My management team believes this approach results in better decisions, not duplication of services.

The final area to be examined is the rationale for a person having the dual title and responsibilities of the Secretary and Commissioner. Since West Virginia does not have a record of the committee and floor debates of the amendment to W. Va. §6-7-2a, we have no way of knowing the impetus for the amendment. We must rely on the plain meaning of the words. The Legislature saw fit, eighteen (18) years ago, to authorize one person to hold the dual positions of the Secretary of Transportation and the Commissioner of Highways. Regardless of why the change was made, the decision has proven to be a sound one. Allowing one person to have the ultimate responsibility for the Department of Transportation and its largest agency has proven to be an effective and efficient organizational tool.

Sincerely,



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

BEW/Ph

Attachment 1

West Virginia Department of Transportation
Secretaries & Commissioners 1989 to Present

	Effective Date	Monthly Salary	Annual Salary	Title	Additive Rate	Estimated Benefit Cost	Estimated Annual Cost
Kenneth M. Dunn	7/3/1989	\$5,833.33	\$70,000	SECTRAN	54.60%	\$38,220	\$108,219.94
Arthur L. Gleason, Jr.	1/18/1993	\$5,625.00	\$67,500	SPECAST	54.60%	\$36,855	\$104,355.00
Charles L. Miller	11/16/1993	\$5,833.33	\$70,000	SECTRAN	54.60%	\$38,220	\$108,219.94
Fred Vankirk	7/1/2001	\$7,500.00	\$90,000	DOHCOM	54.60%	\$49,140	\$139,140.00
Richard W. Jemliola	7/1/1997	\$5,833.33	\$70,000	SECTRAN	54.60%	\$38,220	\$108,219.94
Samuel Bonasso	6/29/1998	\$5,833.33	\$70,000	SECTRAN	54.60%	\$38,220	\$108,219.94
Samuel H. Beverage	1/15/2001	\$5,367.00	\$64,404	DOHCOM	54.60%	\$35,165	\$99,568.58
Danny Ellis	7/1/2008	\$7,228.00	\$86,736	TRBUSMG	54.60%	\$47,358	\$134,093.86
Paul Mattox	7/1/2008	\$9,999.99	\$120,000	DOHCOM	54.60%	\$65,520	\$185,519.81
Thomas J. Smith	1/25/2017	\$9,999.99	\$120,000	SECTRAN	54.60%	\$65,520	\$185,519.81
Byrd E. White	8/23/2019	\$9,999.99	\$120,000	SECTRAN	54.60%	\$65,520	\$185,519.81

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
SECRETARIES AND COMMISSIONERS 1989 TO PRESENT

1989 -1990 Kenneth M. Dunn (Kanawha) \$5,833.33 Monthly Salary Fred Van Kirk,
Commissioner June 22, 1984 through February 17, 1985 and January 17, 1989 through
August 31, 1997

1990-1992 Arthur L. Gleason, Jr. (Cabell) Fred Van Kirk, Commissioner

1993-1995 Charles L. Miller(Kanawha) Fred Van Kirk, Commissioner

1995- 1997 Fred VanKirk (Kanawha) Both

1997 - 1998 Richard W. Jemiola (Cabell) Samuel Beverage, Commissioner

1998-2000 Samuel Bonasso (Monongalia) Fred VanKirk, Commissioner

2000 - 2001 Samuel H. Beverage (Acting) (Cabell) Fred VanKirk, Commissioner
January 1, 2001 through January 15, 2005

2001 - January 15, 2005 Fred VanKirk (Kanawha) Both

2005 - 2006 Danny Ellis (Acting) (Logan) Paul Mattox, Commissioner

2006- 2017 Paul A. Mattox, Jr. (Putnam) Both

2017 - 2019 Thomas J. Smith (Putnam) Both

2019 - Present Byrd E. White (Raleigh) Both