

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE CAPITOL BUILDING COMMISSION

Commission Serves a Needed Function
Inadequate Controls over Review Process

Improvement Needed on Documentation of
Final Decisions

OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex

CHARLESTON, WEST VIRGINIA 25305
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May 1998

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EXECUTIVE SUMMARY

The Capitol Building Commission (CBC) was created in 1976, terminated in 1986, and reestablished in 1990. The Commission is composed of five members: the Commissioner of the Division of Culture and History (chair), one architect, one engineer, and two members from the public at large. The Secretary of the Department of Administration (ex-officio) is a non-voting member. According to WV Code §4-8-1 *et seq.*, the Capitol Building Commission has the authority to:

review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds, which affect the appearance thereof. The approval of the commission is mandatory before any contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract.

The CBC's function is to ensure that work performed within the Capitol Complex does not have detrimental effects on its appearance.

Issue Area 1: The Capitol Building Commission serves a needed and ongoing function.

Since the continuance of the CBC in 1990, the CBC has reviewed 66 projects. Many of these projects had significant impacts on the overall appearance of the capitol complex. The Commission provides an ongoing service. Without its service, there is the potential of contracted work within the complex to detract from the aesthetic value and the structural integrity of the capitol complex.

The occurrence of negative physical changes to the Capitol Complex that are substantial or permanent could be costly to restore, or costly with respect to the loss of historical and structural integrity. The benefit of continuing the Capitol Building Commission is more obvious when you consider the relevant cost of the Commission. The combined total cost for a CBC meeting is estimated at \$1,500. **Based on an average of four meetings per year, the average annual cost for the Commission is around \$6,000.**

There are several benefits provided by the Capitol Building Commission. First, the Commission provides an independent review of all work done to the Capitol Complex which provides some insurance that work done is structurally sound and aesthetically pleasing. Another benefit is that the two professionals on the Commission (an architect and an engineer) are both providing their service free of charge to the State. Finally, having citizen members on the Commission and having meetings open to the public, provides the public an active voice in changes made to the Capitol Complex. **It is the opinion of the Legislative Auditor that the benefits exceed the cost of the Commission.**

Issue Area 2: There are Inadequate Controls in Place to Effectively Manage the Plan Review Function of the CBC.

The WV *Code* §4-8-1 gives the Capitol Building Commission authority to review and approve or reject all plans that involve substantial physical changes in the Capitol Complex. Furthermore, the Commission's approval is mandatory before any contract can be let for work, or before any work can be done if the work is not under a contract. However, despite having statutory authority to review all projects, sometimes projects are implemented without CBC approval. The obvious effect is that changes could occur that have a detrimental affect on the appearance of the Capitol Complex, and could result in additional costs to undo any damage.

One cause for the lack of compliance is that some agencies do not know that projects involving major changes to the Capitol Complex require CBC approval. With changes in administrations and agency heads, the CBC should inform agencies regularly of their responsibilities. Another procedural problem is that it is not clear what types of projects are required to be reviewed by the CBC. **Either the statute governing the Capitol Building Commission should be amended or the Capitol Building Commission should adopt new legislative rules to use clear definitions of important terms, as well as specific examples that illustrate the types of projects to be reviewed.**

Issue Area 3: The Capitol Building Commission Needs to Improve Documentation of its Decisions.

According to procedural rules the Capitol Building Commission, should keep a journal of its final actions. In §188-1-3.10, the rules state: "*All final actions of the Commission shall be journalized, and such journal shall be open to the inspection of the public at all reasonable times.*" One of the main purposes for having a journal is to keep the Commission accountable to the public and the Legislature as to how it arrived at its decisions. According to the current chairman of the CBC, the Commission minutes are intended to satisfy the procedural requirements for this journal. **However, the minutes do not satisfactorily maintain the final actions of the Commission.**

The lack of a journal or improved documentation of Commission minutes does not provide the public or the Legislature with adequate information on the final action taken by the Commission. The lack of this information does not provide an adequate account of the changes that have occurred on the Capitol Complex, and therefore it detracts from the accountability of the Commission. **The Capitol Building Commission should maintain a separate journal of its actions, or improve the documentation of the minutes to clearly indicate relevant dates and other facts of the Commission's final actions.**

Review Objective, Scope and Methodology

The preliminary performance review of the Capitol Building Commission (CBC) is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 11 of the *West Virginia Code*, as amended. The CBC is mandated to review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex.

The objective of this review was to determine if the agency was needed as well as its effectiveness in providing oversight to capitol complex modifications and changes. The scope of this report examined the CBC's effectiveness in reviewing plans for the life of the CBC although it focuses primarily on the time period of October 1990 to present.

The methodology included a review of the CBC minutes. Interviews were held with members of the Department of Administration, General Services Division, Archives and History, Historic Preservation as well as the CBC. A search for similar review functions in other states was conducted. This performance evaluation complied with **Generally Accepted Government Auditing Standards**.

Issue Area 1: The Capitol Building Commission Serves a Needed and Ongoing Function.

The Capitol Building Commission (CBC) was originally created in 1976. The Commission was terminated in 1986, but it was continued by Senate Bill 77 which took effect July 1, 1990.¹ The Commission is composed of five members: the Commissioner of the Division of Culture and History (chair), one architect, one engineer, and two members from the public at large. The Secretary of the Department of Administration (ex-officio) is a non-voting member. According to WV *Code* §4-8-1 *et seq.*, the Capitol Building Commission has the authority to:

review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds, which affect the appearance thereof. The approval of the commission is mandatory before any contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract.

The CBC's function is to ensure that work performed within the Capitol Complex does not have detrimental effects on its appearance. The occurrence of negative physical changes to the Capitol Complex that are substantial or permanent could be costly to restore, or costly with respect to the loss of historical and structural integrity. The Capitol Complex undergoes projects each year that may involve the removal of walls and doorways, construction of memorials, placements

Table 1 Number of Projects Reviewed by the CBC	
Year	Number of Projects
1991	30
1992	9
1993	5
1994	6
1995	4

¹*It appears that the termination of the CBC was inadvertent and not the intent of the 1986 Legislature. The bill (HB 1335) to continue the CBC passed both the House of Delegates and the Senate. On the third reading of the Senate, the name of the Commission was changed to the Capitol Building and Grounds Preservation Commission. The 1986 Acts contains the Commission under the new name with a 1992 Sunset date. It may be that the Commission under the old name was terminated but the Commission was not re-established under the new name inadvertently.*

1996	7
1997	5

of plaques and statues, construction of handicap ramps, painting and tree planting. Table 1 illustrates the projects reviewed since 1991. In total, 66 projects were reviewed. (See Appendix A for a brief description of these projects.)

Also, there currently is a new *Master Plan* that is a long-term plan which envisions major changes to the complex over a thirty year period. This plan replaced the previous Master Plan of 1966 developed by the State Building Commission. Some of the projects of the 1966 plan were completed, which resulted in the need for a new plan. The development of the new Master Plan started in 1991 and was finalized in the Fall of 1994. The CBC assisted in the development of the new plan.

One of the goals of the Master Plan is to “*improve, enhance and add to the visitor (tourist) experience and lengthen the visitor stay.*” Some of the improvements proposed in the Master Plan include:

- Building a visitor center on Capitol grounds.
- Redesigning the Cultural Center to provide space for a conference room, a restaurant, cafeteria, and additional space for current Cultural Center uses.
- Provide for additional parking.
- Closing off certain streets and re-routing traffic.

It is not certain how many of these proposed projects will require funding by the Legislature. Nevertheless, a thirty year plan is in place, some of which could be implemented. Given the ongoing nature of substantial changes that routinely occur on the Capitol Complex, the possible risk of changes having adverse affects on the appearance, and the relatively low cost of the Commission, **the Legislative Auditor recommends the continuance of the Capitol Building Commission.**

The Cost of the Commission

Since the continuance of the CBC in 1990, the CBC has reviewed 66 projects. Many of these projects had significant impacts on the overall appearance of the capitol complex. Five projects were denied, of which two were denied initially, but were later approved after some modifications to the original proposal. The Commission provides an ongoing service. Without its service, there is the potential of contracted work within the complex to detract from the aesthetic value and the structural integrity of the capitol complex.

The benefit of continuing the Capitol Building Commission is more obvious when you consider the relevant cost of the Commission. Since the continuance of the Commission in 1990, the Commission has met 30 times amounting to nearly four meetings per year. The average cost

of one meeting of the Capitol Building Commission is \$968.² This amount accounts for time spent preparing for meetings, time spent in meetings and work done after meetings by the chairperson of the CBC, who is the Commissioner of Culture and History, the Commissioner's secretary, and the Director and Deputy Director of General Services. There are other State employees that attend CBC meetings for which their time and salary information were not obtained. A generous estimate was made to account for their time. The combined total cost for a CBC meeting is estimated at \$1,500. Based on an average of four meetings per year, the average annual cost for the Commission is around \$6,000.

There are several benefits provided by the Capitol Building Commission. First, the Commission provides an independent review of all work done to the Capitol Complex which provides some insurance that work done is structurally sound and aesthetically pleasing. Another benefit is that the two professionals on the Commission (an architect and an engineer) are both providing their service free of charge to the State. Finally, having citizen members on the Commission and having meetings open to the public, provides the public an active voice in changes made to the Capitol Complex. **It is the opinion of the Legislative Auditor that the benefits exceed the cost of the Commission.**

Other States Have Similar Capitol Review Functions

Other states have a commission that is similar in function to West Virginia's Capitol Building Commission. Primary differences between the Capitol Building Commission and other State commissions are the number of members and funding. Table 2 provides a comparison of the CBC and that of some other states.³

²The Commission has not claimed travel or per diem reimbursement. The cost estimates are based on the number of hours State employees spend on Commission business and the hourly value of their time based on their annual salary. Figures could not be obtained for all State employees who attend CBC meetings. Rough estimates were made for these employees.

³An exhaustive search of all States was not performed. The States listed are those identified from a limited search. There are likely other States with similar commissions that are not listed here.

<p>Table 2 Capitol Building Commissions at Home and Abroad</p>			
State and Name	Number of Members	Does it have its own budget?	Powers - General
<u>West Virginia</u> Capitol Building Commission	Six members	No	Review and approve or reject all plans for significant physical changes to inside or outside of capitol complex.
<u>Ohio</u> Capitol Square Review and Advisory Board	Nine members	Yes	Coordinate and approve improvements, additions, and renovations. Regulate use of capitol square. Maintain, supervise, and preserve the capitol square.
<u>Colorado</u> State Capitol Building Advisory Committee	Nine members	No	Review, advise, and make recommendations with respect to plans to restore, redecorate, and reconstruct space within the public and ceremonial areas of the state capitol complex.
<u>Oklahoma</u> Commission on the Preservation of the State Capitol	Fifteen members	Yes	Responsible for planning and supervising the preservation and restoration of the interior and exterior of the state capitol building.
<u>Georgia</u> State Capitol Preservation Commission	Nine members	No	Develop master plan, advise building authority on special maintenance needs of capitol building, develop plans for the approval of plans.

Recommendation 1

The Legislature should continue the oversight function of the Capitol Building Commission.

Issue Area 2: There are Inadequate Controls in Place to Effectively Manage the Plan Review Function of the CBC.

The WV Code §4-8-1 gives the CBC authority to review and approve or reject all plans that involve substantial physical changes in the Capitol Complex. Furthermore, the Commission's approval is mandatory before any contract can be let for work, or before any work can be done if the work is not under a contract.

However, despite having statutory authority to review all projects, sometimes projects are implemented without CBC approval. The obvious effect is that changes could occur that have a detrimental affect on the appearance of the Capitol Complex, and could result in additional costs to undo any damage. The current chairperson of the CBC stated that "*it is true that some changes have occurred without the Commission's knowledge, but this is a rare circumstance.*" Statements from the Deputy Director of General Services within the Department of Administration suggests this problem is more than a rare circumstance. He indicated that some projects are being started without CBC approval. The Deputy Director stated in a letter that:

...there are no established procedures for a formal 'permitting' process that would insure that all building alterations other than maintenance actions be reviewed prior to work commencement. Agencies often contract with private vendors without advising the Capitol Building Commission or General Services....the correct procedures are often ignored. The main reason for this [projects being started without CBC approval] is the urgency of the project as established by the requesting agency or constitutional officer.

One example of a project currently underway without CBC approval is the Supreme Court's changes to their East Wing offices. The Director of General Services indicated that this project should have been reviewed by the CBC before it started. This work is being performed by a private contractor. The outside contractor stated in a letter that the "*project has been well coordinated with General Services and Supreme Court staff,*" but makes no mention of having the approval of the CBC. Nor is there any mention of the project being reviewed or approved by the CBC in its minutes.

The private vendor indicated that General Services was aware of the project and that General Services attended pre-construction meetings. General Services verified that it was aware of the project before it started. The Legislative Auditor asked the Director of General Services why he did not inform the private vendor that CBC approval was required. He stated that:

Although General Services was aware of this project it was not a General Services project. Ordinarily when an agency wants to renovate an area in the Capitol they request the work through General Services. General Services then hires the architect, submits the drawings to the CBC for approval and then either accomplishes the work with in-house staff or bids the work out to a contractor. That was not the case with this project. The Supreme Court, not aware of the requirement to obtain approval from the CBC, dealt directly with the architect and

contractor without the project being submitted for approval. Dan Gilchrist who met with the architect on several occasions did not realize that Supreme Court personnel had not requested approval from the CBC.

When asked if General Services informed the CBC of the project, since General Services staff regularly attends CBC meetings, it was stated that “*General Services did not inform the CBC of the project. It was assumed by General Services personnel that the Supreme Court had prior approval of the project.*”

It is clear from this example that there is a significant lack of procedure in the CBC review process.

Causes for the Lack of Procedure

One cause for the lack of procedure is some agencies do not know that projects involving major changes to the Capitol Complex require CBC approval. The CBC informed State agencies of their responsibility to submit projects to the CBC in 1990 when it was re-established. There are discussions in the CBC minutes indicating the need to notify State agencies on the following dates:

October 10, 1990; November 7, 1990; January 9, 1991; and July 7, 1994. However, there is record of only one time notices were actually sent to State agencies, which were dated December 1990.

With changes in administrations and agency heads, the CBC should inform agencies regularly of their responsibilities. Furthermore, a previous example shows that General Services has been aware of projects being started but has not informed either the agency of its responsibility, the private vendor, or the CBC of the project. It should become a standard procedure that when General Services is aware of projects being started that did not go through General Services, it should inform both the agency and the private vendor that the project needs to be approved by the CBC, and the CBC should also be informed of the project.

Another procedural problem is that it is not clear what types of projects are required to be reviewed by the CBC. Sometimes the CBC spends time reviewing plans which arguably should not be reviewed. According to the *WV Code*, the CBC should review plans that recommend **substantial** physical changes. The CBC’s procedural rules (§188-2-2.1) state that:

*Substantial physical changes shall mean permanent physical changes that alter the structural integrity or aesthetic beauty of the public areas of the capitol building and surrounding complex, **but shall not include renovations or repairs needed to maintain the capitol building and surrounding complex.*** [emphasis added]

In January 1996, the Commission spent time reviewing plans to partition a section of room MU-425 to office space for a staff attorney. Is this by definition renovation? Is this a permanent physical change? There are other projects that are described in the minutes as renovations, and it

is debatable if they constituted **permanent** changes.

The Commission's statute and rules do not provide specific examples of what types of work is required to be reviewed by the Commission. There is nothing in the rules that specify what constitutes "*permanent physical changes*." Terms such as "*renovations*" and "*repairs*" are very broad and should be defined with a list of specific examples. In the inception of the CBC in 1976, the original members addressed this problem in their first meeting. The members decided that changes such as painting, paneling, partitions and drop ceilings would not need Commission approval, but the proposed plans and information should be passed on to the Commission for its use and information. However, these guidelines were never incorporated into the procedural rules and they do not appear to have spanned time since the current membership has spent Commission time reviewing plans of this very nature. The statute and/or procedural rules for the CBC should list the types of changes that should be reviewed by the CBC, such as painting, paneling, partitions, drop ceilings, and removal of walls and doorways.

The consequences of not defining terms and listing specific examples of work are that some projects that should be reviewed by the CBC may not be because someone decided that the project did not constitute a permanent change. Furthermore, the lack of defined work to be reviewed results in the inefficiency of the CBC reviewing projects that it need not review.

Recommendation 2

The Capitol Building Commission should inform State agencies at least annually of their statutory responsibility to submit projects to the CBC before work is started.

Recommendation 3

The General Services Division should make it standard procedure to inform all private vendors of their statutory responsibility to submit project plans to the CBC. General Services should also inform the CBC of any work being done by outside contractors.

Recommendation 4

Either the statute governing the Capitol Building Commission should be amended or the Capitol Building Commission should adopt new legislative rules to use clear definitions of important terms, as well as specific examples that illustrate the types of projects to be reviewed.

Issue Area 3: **The Capitol Building Commission Needs to Improve Documentation of its Decisions.**

According to the procedural rules for the Capitol Building Commission, the Commission should keep a journal of its final actions. In §188-1-3.10, the rules states: “*All final actions of the Commission shall be journalized, and such journal shall be open to the inspection of the public at all reasonable times.*” One of the main purposes for having a journal is to keep the Commission accountable to the public and the Legislature as to how it arrived at its decisions. According to the current chairman of the CBC, the Commission minutes are intended to satisfy the procedural requirements for this journal. **However, the minutes do not satisfactorily maintain the final actions of the Commission.** Appendix A lists numerous projects in which documentation of the final actions are not clear. In many cases, it is impossible to identify one or more important facts, namely:

1. The date a project was first submitted for review;
2. The date a final decision was made;
3. Was the decision made within the statutory 90 day decision period?;
4. Were there any dissenting votes?;
5. If there were dissenting votes, what were the areas of concern?; and
6. If a project was denied, what was the final vote and what were the reasons the project was denied?

Without a proper journal being kept, it is difficult to keep the CBC accountable for their actions. One example of this lack of accountability is the Commission does not inform an agency of its approval or rejection in writing as required by law. According to WV Code §4-8-2, “*Whenever the approval of the commission is requested, as required by sections four and five [§§ 4-8-4 and 4-8-5] of this article, the commission shall meet and **render its decision, in writing**, within ninety days of the filing with the commission of such request.*” The chairman of the Commission stated “*After checking our files, we can find no evidence that notification was sent in writing regarding decisions made by the Capitol Building Commission. I assume that in the past this was communicated verbally.*”

In summary, the lack of a journal or improved documentation of Commission minutes does not provide the public or the Legislature with adequate information on the final action taken by the Commission. Important points that are not properly documented are listed above. The lack of this information does not provide an adequate account of the changes that have occurred on the Capitol Complex, and therefore it detracts from the accountability of the Commission.

Recommendation 5

The Capitol Building Commission should maintain a separate journal of its actions, or improve the documentation of the minutes to clearly indicate relevant dates and other facts of the Commission's final actions.

Recommendation 6

The Capitol Building Commission should inform State agencies of its approval or rejection of projects in writing as required by law.

Appendix A

Summary of Plans Reviewed by the Capitol Building Commission

Summary of Plans Reviewed by the Capitol Building Commission	
*** Plans with no indication of approval indicate plans that were discussed by the CBC but it is not possible to tell from the minutes what the final action of the CBC was.	
<u>Plans reviewed during 1991</u>	
<u>Plans Reviewed</u>	<u>Was the Plan Approved</u>
Plan to extend wall partitions by the House of Delegates	Yes
Sign outside of a Legislator's Office	No
Plan to obtain mold for light shades in corridors	
Work on building 4 (including extending stairwell and modernizing air conditioning and elevators).	
Plan to repair fault outside of Governor's entrance to the Capitol Building	
Plan to clean marble in Capitol Building	
Heating system in the Cultural Center	
Plans to work on Building 3 (including work on roof, wiring and plumbing)	
Plan of the Fraternal Order of Police to place a permanent plaque on the wall next to the statue	No
Plan to plant 44 crab apple trees	Yes
Plan for planting at Cultural Center Plaza	
Plan of restoration of Governor's Portico facade	
Plan to replace balustrades and rails in Governor's mansion	
Handicap lifts in east and west wing loading docks	
Plan to reinstall teller's cages at Treasurer's Office	No
Plan to add plaque to the F.O.P. statue	Yes
Plan for alterations to Senate Finance Rooms	Yes
Plan for a Christopher Columbus Statue	
Plan to build substructure for boat dock at capitol quay	

Plan to paint the exterior of the Governor's Mansion	
New duct work for Building 3	Yes
Plan to move the Blue Star Memorial Marker	Yes
Plan to correct improper paint color on penthouse of Building 4	
Plan to refinish doors in Capitol Building	
Plan to replace planters with pavers at Governor's Mansion	Yes
Re-submitted plan for teller's cages	Yes
Plan to repair capitol quay	
Plan to refinish Governor's reception room floor	
Plan to reconfigure Room E-217	No
Plan to reconfigure Room W-106	
<u>Plans Reviewed in 1992</u>	
Plan to replace Cultural Center Lower Roof	
Plan to add boiler burner in Building 3	
Plan for DHHR to install a satellite dish on top of Building 6	Yes
Plan to change glass in the skylight at House of Delegates Chamber	
Plan for Domestic Violence Memorial	Yes
Plan for Fallen Fireman's Memorial	Yes
Plan to restore decorative ceiling in west wing corridor	
Plan to upgrade bathrooms to ADA standards	
Plan to install power poles	
<u>Plans reviewed during 1993</u>	
Plan to build handicap ramp at west wing entrance	Yes
Plan to redo sidewalk on boulevard	
Plan for a plaque honoring James Haley by D.O.H.	Yes
Plan to plant flowers on the corner of Greenbrier and Kanawha Blvd.	

Plan to plant Oak trees between D.M.V. and Greenbrier	
<u>Plans reviewed during 1994</u>	
Plan to paint outside Senate and House chambers	
Plan to replace lights on walkways entering east and west wing	
Review of five year improvement plan by General Services	
Plan for changes to the women's restroom outside of Senate	
Plan for renovations to the House of Delegates Chamber	
Plan for statue of Robert C. Byrd	Yes
<u>Plans reviewed during 1995</u>	
Plan for a Peace Memorial Rose Garden	
Plan to add lights to steps at the river	Yes
Plan for a partition in hallway on south side of Senate Chamber	Yes
Plan to change W-122 and W-124	Yes
<u>Plans reviewed during 1996</u>	
Plan to partition section of room MU-425	Yes
Plan to extend on or both of main unit elevators	Yes
Plan to make changes to east wing loading dock of Capitol Building	
Plan to add lights to Greenbrier and Kanawha Blvd..	
Plan for kiosk with climate controls for guards	No
Plan for signs to direct people to Laidley Field Parking area	Yes
Plan for a chilled water plant in D.M.V. parking lot	
<u>Plans reviewed during 1997</u>	
Plan for a Marine Corps Memorial Plaque	
Plan for a new D.M.V. Building near Laidley Field	Yes
Plan for Plaza Deck	
Plan for steps and walkways to the Veterans Memorial	

Plan for renovation to Holly Grove	
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Appendix B

Agency's Response

