West Virginia Board of Public Works
November 13, 2013 – 2:00 p.m.
Governor’s Cabinet and Conference Room
Minutes

Attendees:
Members
Governor Earl Ray Tomblin
State Auditor Glen B. Gainer
State Treasurer John D. Perdue
Agriculture Commissioner Walt Helmick
Attorney General Patrick Morrisey
State Superintendent of Schools Dr. James Phares
E. Ashley Summitt, General Counsel for Secretary of State Natalie Tennant

Guests:
Mark Matkovich, Commissioner, State Tax Department
Wade Thompson, State Tax Department
Eric Hudnall, Division of Highways
Kathy Schultz, Attorney General’s Office
Tracy Webb, Attorney General’s Office
Russ Rollyson, Auditor’s Office
Peter Markham, Governor’s Office
Joe Garcia, Governor’s Office
Stephen Krzyzak, Marathon Petroleum
Judy Cooper, Secretary of State’s Office
Sheryl Webb, Secretary of State’s Office
Curt Zickefoose, Secretary of State’s Office
Bradley Harris, Secretary of State’s Office
David Gutman, WV Gazette

The West Virginia Board of Public Works met on Wednesday, November 13, 2013 at 2:00 p.m. in the Governor’s Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. The meeting was called to order and chaired by Governor Earl Ray Tomblin. A quorum of elected officials was established.

(Attached is a transcript of the meeting.)

\[Signature\]

Natalie E. Tennant,
Secretary of State
And Ex-Officio Secretary of the
Board of Public Works
STATE OF WEST VIRGINIA
BOARD OF PUBLIC WORKS

MEMBERS OF THE BOARD:
GOVERNOR EARL RAY TOMBLIN
GLENN GAINER, AUDITOR
WALT HELMICK, COMMISSIONER OF AGRICULTURE
JOHN D. PERDUE, STATE TREASURER
DR. JAMES PHARES, STATE SUPERINTENDENT OF SCHOOLS
PATRICK MORRISEY, ATTORNEY GENERAL
ASHLEY SUMMITT, PROXY FOR SECRETARY OF STATE

November 13, 2013
2:05 PM

WEST VIRGINIA CAPITOL COMPLEX
Building 1, Governor's Conference Room
Charleston, West Virginia

PENNY L. KERNS
Certified Court Reporter
and Notary Public

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GOVERNOR TOMBLIN: The Board will come to order. Do I hear a motion for approval of the September 30th minutes?

COMMISSIONER HELMICK: I make the motion.

TREASURER PERDUE: Second.

GOVERNOR TOMBLIN: The Agriculture Commissioner has moved and the Treasurer has seconded. All those in favor of the motion say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it. Second on the agenda is receive of comments from the public utility companies concerning notices of tentative assessed values for the tax year 2014. Do we have anyone from the utility companies?

(No response.)

GOVERNOR TOMBLIN: If not, we’ll move on to item number three, distribution of information regarding the Tax Department peer review of the processes used in assessing public utility companies. Mark, we have that, yes?
MR. MATKOVICH: We have that, yes.

GOVERNOR TOMBLIN: Okay.

MR. MATKOVICH: Good afternoon. I’m Mark Matkovich. I’m the acting Tax Commissioner for the State of West Virginia. It’s good to be here. The International Association of Assessing Officers has prepared a final report evaluating the West Virginia state public utilities evaluation practices. They’ve reviewed the practices of the State Tax Department, the Property Tax Division in particular. There was, as with any type of report, a substantial review of investigation regarding our practices. We’re handing this out to you for you to read and our goal is at the next meeting in December that you will be able to have a substantive discussion about it and answer any questions you might have.

I will point out the highlights now and the conclusions. It says basically that the practices of the Tax Division are in good shape. And so I don’t feel that there are any findings in regard to any suggestions for improvements. We’ll have the opportunity to discuss those with you at the next meeting. So I’ll pass these out for review, and we’ll take questions at the next meeting.
GOVERNOR TOMBLIN: All right.

Commissioner Helmick.

COMMISSIONER HELMICK: Thank you, Mr. Chairman. How do you arrive at the assessment, for instance, of an electric generating utility? Do you do that by how many megawatts, kilowatt hours, how do you do that?

MR. MATKOVICH: Are you talking about property tax purposes?

COMMISSIONER HELMICK: Yeah, how do you arrive at how much property tax that entity has to pay?

MR. MATKOVICH: You know what, with leave of this Board, I would like to refer that question to Wade Thompson, our Property Tax Director for many, many years and he’s the one who taught Jeff Amburgey everything he knows. And I know Jeff is doubly booked. That is why he cannot be here, but we thought there might be a technical question. I think it’s better to leave it to our in-house expert in that regard.

COMMISSIONER HELMICK: With leave of the committee.

GOVERNOR TOMBLIN: Without objection.

MR. THOMPSON: I don’t know if I taught him everything I knew. I don’t want to be
accused of that. Basically, it’s done looking at two
different factors and that’s one of the things that’s
covered in the study that’s looked at. Cost factor as
to what they paid for the equipment as well as the
income that’s generated because the income basically is
looked at. So it’s a look at those two factors and
they’re weighted to come to value, a total value for the
property for the system in that.

COMMISSIONER HELMICK: What do you mean for
the system? Is that the plant or is that all the
furnaces connected to --

MR. THOMPSON: It is all of it.

COMMISSIONER HELMICK: Do you base it on
gross or net revenue?

MR. THOMPSON: It’s based on net
revenues in that there are certain expenses that are
allowed. There’s a legislative rule that governs, that
the Tax Department follows that governs how utilities,
all public utilities, are valued. But I think when
you’re looking at reading the report, I think Jeff next
week will give you a better answer than I will in that.

COMMISSIONER HELMICK: Well, it’s probably
in this handout.

MR. THOMPSON: Yes, it covers that.
It covered that as well, but he can go into more specifics with you.

COMMISSIONER HELMICK: We were just discussing prior to the meeting beginning that certain counties have a significant local share in property taxes attached to education. Pocahontas County is number one, because you have a small school population and a significant tax base up here on the mountain called Snowshoe. And so it makes it the number one county with a local share and it has been for a few years. The number two over the years is Grant County, and that’s because of the utility on the mountain.

MR. THOMPSON: The power plant.

COMMISSIONER HELMICK: The power plant. So that’s why I was wondering how you arrived, whether it was for the generation of it or it was on the simply -- it certainly just couldn’t be on the value of the plant itself.

MR. THOMPSON: Plus the income that --

COMMISSIONER HELMICK: That’s generated from the plant.

MR. THOMPSON: Yes.

COMMISSIONER HELMICK: In other words, if
it's a fifteen hundred megawatt plant, which that one is
about seventeen hundred up there, but anyway, you factor
it in. Same thing over in Pleasants County?

MR. THOMPSON: Yes.

COMMISSIONER HELMICK: Thank you.

GOVERNOR TOMBLIN: Mr. Superintendent.

DR. PHARES: Many of our counties
have these air wind, the propeller farms. They don't
sell the electricity directly. They store it in
batteries and do it on call. Is that still pro-rated
and calculated?

MR. THOMPSON: Yes. Those are appraised
at what we call an industrial by the State Tax
Department. A certain amount of it is then attributable
to pollution abatement control equipment. There's
others that is personal property and also real estate,
should be under real estate as well, but it's treated
like other businesses because it's not rate based as
much as a utility is.

DR. PHARES: But it contributes to
the local share in the county as well?

MR. THOMPSON: Oh, yes, yes.

COMMISSIONER HELMICK: You have the two
types of grant. You have the wind generation plus the
coal generation.

MR. THOMPSON: Right. You have a comp there.

COMMISSIONER HELMICK: Thank you, Mr. Chairman. I am not fully informed, but I am satisfied. I'm not happy, but I'm satisfied.

GOVERNOR TOMBLIN: All right. The next item before us is the presentation pursuant to approve the following deeds. There are five of those. Yes, sir.

MR. HUDNALL: Eric Hudnall from the Division of Highways. I'm here today, may it please the Board, we have, let me just go right down through them. The first deed is from the Logan County Board of Education to the Department of Transportation. This is a total of about 10.4 acres. This was a total amount of consideration paid by the Division of Highways to the Logan County Board of Education of a hundred and sixty-four thousand dollars. And this involves the Route 10, a section of Route 10.

GOVERNOR TOMBLIN: All right. On the first one, the Logan County Board of Education, do I hear a motion to approve the following deed or transactions?
AUDITOR GAINER: So moved.
TREASURER PERDUE: Second.
GOVERNOR TOMBLIN: Auditor moves,

Treasurer seconds. Discussion?

(No response.)

GOVERNOR TOMBLIN: If not, all those in favor will say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it. I declare the motion adopted. Next deed.

MR. HUDNALL: Thank you, Governor.

This deed is from the County Commission of Hancock County to the Department of Transportation. This involves the Pennsylvania Avenue project in Weirton. It’s a very small acquisition of sixteen square feet and a total amount of consideration paid by the Department of Transportation was fifteen hundred dollars.

GOVERNOR TOMBLIN: Are there questions?

(No response.)

GOVERNOR TOMBLIN: Hear a motion?

TREASURER PERDUE: So moved.

GOVERNOR TOMBLIN: Treasurer moves.
AUDITOR GAINER: Second.

GOVERNOR TOMBLIN: Auditor seconds. All those in favor -- well, discussion?

(No response.)

GOVERNOR TOMBLIN: All those in favor will say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed No.

(No response.)

GOVERNOR TOMBLIN: The ayes have it.

Third transaction.

MR. HUDNALL: This one is between the Board of Park Commissioners for the City of Clarksburg and the Department of Transportation. This involves an acquisition of property needed for the Veteran’s Memorial Bridge. I think at the last meeting there was another transaction that the Board also approved on this project. A total of nineteen hundred forty square feet taken permanently and temporary construction easement of about nineteen thousand square feet.

GOVERNOR TOMBLIN: Are there questions?

(No response.)

GOVERNOR TOMBLIN: Hear a motion to
approve?

AUDITOR GAINER: So move.

ATTY. GENERAL MORRISEY: Second.

GOVERNOR TOMBLIN: Auditor moves, the Attorney General seconds. Discussion?

(No response.)

GOVERNOR TOMBLIN: If not, all those in favor will say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it. I declare the motion adopted. Next transaction.

MR. HUDNALL: The fourth one is also from the Park Commissioners for Clarksburg for the Department of Transportation. This is a separate parcel. It is identified under Division of Highways plans. This one is for thirty-five square feet and a temporary construction easement of four hundred fifty-two square feet.

GOVERNOR TOMBLIN: Are there questions?

(No response.)

GOVERNOR TOMBLIN: Do I hear a motion?

AUDITOR GAINER: So moved.
TREASURER PERDUE: Second.

GOVERNOR TOMBLIN: The Auditor moves, Treasurer seconds. All those in favor will say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it. I declare the motion adopted. Fifth.

MR. HUDNALL: Thank you, Governor. The fifth transaction is a deed from the Department of Transportation to the City of Mount Hope. This is for a sewage pump station for the City of Mount Hope. We are conveying a parcel of nineteen hundred sixty-four square feet and this deed is for a dollar. So there is a diversionary clause in this deed if it’s not used for public purposes.

GOVERNOR TOMBLIN: Are there questions?

(No response.)

TREASURER PERDUE: So moved, Mr. Chairman.

AUDITOR GAINER: Second.

GOVERNOR TOMBLIN: The Treasurer moves, Auditor seconds. Discussion?

(No response.)
GOVERNOR TOMBLIN: All those in favor will say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed, no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it. I declare the motion adopted. Transition number six.

MR. HUDNALL: This is also a deed from the Department of Transportation, this time for the City of Oak Hill. This is for the expansion of a facility at the White Oak Rail Trail in Oak Hill. DOH is conveying 1.05 acres to the City of Oak Hill and the total consideration on this deed is also a dollar and it also contains a reversionary clause in the event that it's no longer used for public purposes.

GOVERNOR TOMBLIN: Are there questions?

(No response.)

GOVERNOR TOMBLIN: Do I hear a motion?

TREASURER PERDUE: So moved.

AUDITOR GAINER: Second.

GOVERNOR TOMBLIN: Treasurer moves, Auditor seconds. Discussion?

(No response.)

GOVERNOR TOMBLIN: If not, all those in
favor will say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed, no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it. I declare the motion adopted. Thank you. Item number five, status update from the AG regarding collections from taxpayers.

ATTY. GENERAL MORRISEY: So, I’m pleased to report that since we last discussed this, our office has collected a little more than three hundred and seventeen thousand dollars in outstanding property taxes. And I want to take the opportunity to thank the Auditor’s Office and the Property Tax Division for the collaborative efforts we had in obtaining those monies. So if anyone has any questions, I’m happy to walk through any of the particulars with the companies. Our staff is here. We can discuss that.

GOVERNOR TOMBLIN: Where is that money?

ATTY. GENERAL MORRISEY: Where is that money?

I really don’t know. Hey, we just collect it, you know. We don’t hand it out anymore.

GOVERNOR TOMBLIN: Are there any questions of the AG?
(No response.)

GOVERNOR TOMBLIN: If not, thank you, sir.

ATTY. GENERAL MORRISEY: Absolutely.

GOVERNOR TOMBLIN: Number six under Unfinished Business, recommendations from the Attorney General regarding procedural rule including the issue of proxy voting.

ATTY. GENERAL MORRISEY: Governor, we have a number of recommendations for the procedural rule that we had reported to the Board of Public Works. But to be sure that we’re proceeding accordingly and appropriately in order for us to provide counsel to the Board, I’d like to say that I would need to have a waiver of the attorney/client privilege in order to fully discuss our thoughts. For the record, I don’t see any downside with this because I’m sharing information that we discussed publicly, but I do always want to protect the attorney/client privilege.

TREASURER PERDUE: Do we need to go into executive session? Is that what you’re asking?

ATTY. GENERAL MORRISEY: I’m not asking to go into executive session in this particular instance, but I want to make sure that the privilege is protected or
waived. And as I said, I don’t see any downside in this particular issue, but I serve as the attorney to the Board and you’re the client, and I don’t feel like I’m authorized to discuss issues unless ultimately the privilege is waived.

GOVERNOR TOMBLIN: I guess the concern I have is that these were delivered to my office on Friday, late Friday afternoon, and really have not had the opportunity to go through this. And I would respectfully ask that we delay action on this until the next meeting to give me and my legal staff the opportunity to go through and be able to respond.

AUDITOR GAINER: I don’t have a problem with that. The other thing I would ask, too, is perhaps that we also send these proposed changes over to the Commission and let them review them also and get their feedback and make sure we’re in line with that as well.

GOVERNOR TOMBLIN: I guess we will need a motion first of all for somebody to make it that we delay action on the proposals until the next meeting and then as a second part of that, Mr. Auditor.

DR. PHARES: So moved.

GOVERNOR TOMBLIN: Superintendent moves.
AUDITOR GAINER: I’ll second.

GOVERNOR TOMBLIN: Auditor seconds that we delay action on the Attorney General’s procedural rule recommendations until the next meeting.

AUDITOR GAINER: Which is December the 11th.

TREASURER PERDUE: The question I have is, I want the same thing you asked for. If we read these, and then, I mean we’ve got to make some suggestions and we want to go ahead and send them over there?

GOVERNOR TOMBLIN: Well --

TREASURER PERDUE: Your lawyer, after discussion may have some suggestions.

GOVERNOR TOMBLIN: I don’t have a problem with sending the whole thing with either objections or suggestions over to the Ethics Commission. I understand the Secretary also has made proposals.

MS. SUMMITT: Yes.

AUDITOR GAINER: Actually, this is meeting is a resumption, we agreed at the last meeting we recessed and we technically, I think, can still recess this meeting until we come back on December the 11th and take final action on the public utilities. So
do we need to even take -- I mean it will still be on
the agenda that we could consider that at the December
11th meeting.

GOVERNOR TOMBLIN: I think just for some
clarification since we’ve got two proposals from two
different members of this Board and then myself and the
Treasurer and others want to make comments or
suggestions, how do we pull this together if we want to
send it, Mr. Auditor, to the Ethics Commission? Do we
need to --

AUDITOR GAINER: I think we need,
probably need to wait until after we have the final
approval and then we would submit it to the Ethics after
that just to make sure we’re staying in alignment with
those folks.

MS. SUMMITT: After we have a final
product.

AUDITOR GAINER: After we have a final
product, is all I would ask.

GOVERNOR TOMBLIN: Okay. So between now
and the next meeting on the 11th, I guess any member who
wants their attorneys or their legal staff to look at
what the AG has proposed, to get those to us by the next
meeting and we’ll have those discussions at that time.
Is that agreeable with everyone?

ATTY. GENERAL MORRISEY: That’s perfectly fine. We’re obviously happy to explain any of the proposals, because the whole purpose is to try to ensure that when the procedural rule is finalized, it’s consistent with the law. So we noted that there were a number of things that were inconsistent so we’re just trying to conform it with all current case law, et cetera. So we’d be happy to answer any questions. I have some of my staff, Tracey Webb and Cathy Schultz, who’ve been working on these issues. So the object here is to ensure that everything we’re doing is consistent with the law.

GOVERNOR TOMBLIN: Okay. Then I guess through our legal staffs, then we’ll be able to, if there’s questions of something, the staff would reach out to each other. It’s rather an unorthodox way of doing it, but there’s several proposals. I’m dealing with the same issue. And I think in order to get it resolved, this would probably be the easiest way to have those discussions over the next month before we take any final actions as a Board.

So the Superintendent has moved and the Auditor has seconded the motion to delay further
consideration of this matter until the December 11th meeting. Discussion?

(NO response.)

GOVERNOR TOMBLIN: If not, all those in favor say aye.

(Ayes responded.)

GOVERNOR TOMBLIN: Opposed, no.

(NO response.)

GOVERNOR TOMBLIN: The ayes have it. I declare the motion adopted for further consideration of the Attorney General’s recommendation on December 11th. The next part is recommendation for the Board members regarding the draft. Is that the same?

ATTY. GENERAL MORRISEY: I think that’s the same.

GOVERNOR TOMBLIN: Then I’ll consider the motion as to be everything under unfinished business. We’ll hold it till next time. All right. Is there anything else to come before the Board?

TREASURER PERDUE: Move we adjourn.

AUDITOR GAINER: Recess.

GOVERNOR TOMBLIN: Recess until December 11th at 2:00 PM. All those in favor of the motion we recess, say aye.
(Ayes responded.)

GOVERNOR TOMBLIN: Opposed, no.

(No response.)

GOVERNOR TOMBLIN: The ayes have it and I declare the motion adopted.

(WHEREUPON, the hearing was recessed at 2:24 PM.)
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF PUTNAM, To-wit:

I, Penny L. Kerns, Certified Court Reporter, do hereby certify that the foregoing is a correct verbatim record of the proceedings had at the time and place set forth herein.

Given under my hand this 4th day of December, 2013.

[Signature]

Penny L. Kerns, CCR
Notary Public