

**West Virginia Board of Public Works  
Wednesday, September 29, 2021 – 10:00 a.m.  
Governor’s Cabinet and Conference Room  
Minutes**

**Attendees:**

Members

Governor Jim Justice  
Secretary of State Mac Warner  
State Auditor John B. McCuskey  
Commissioner of Agriculture Kent Leonhardt  
Attorney General Patrick Morrisey  
State Treasurer Riley Moore  
State Superintendent of Schools W. Clayton Burch

Guests

Matthew Irby, WV Tax Commissioner  
Travis Payne, Acting Director, Property Tax Div., Tax Department  
Frank Capehart, Acting Asst. Director, Property Tax Div., Tax Department  
Branden Harbaugh, Federal Express  
Bo White, Federal Express  
Diane Patton, Federal Express  
Jennifer Tiscia, Federal Express  
Brian Abraham, Governor’s Office  
Jennifer Greenlief, Comm. Of Agriculture’s Office  
Kathy Schultz, Attorney General’s Office  
Donald Kersey, Secretary of State’s Office  
Maureen Lewis, Secretary of State’s Office  
Steven Adams, Ogden Newspapers  
Tara Manchin, Appalachian Natural Gas Operators Association  
Phil Kabler, WV Gazette

The West Virginia Board of Public Works met on Wednesday, September 29, 2021 at 10:00 a.m. in the Governor’s Cabinet and Conference Room of the State Capitol Complex. The meeting was called to order and chaired by Governor Justice. A quorum of members was established.

The first item on the agenda was the approval of minutes from the July 1, 2021 West Virginia Board of Public Works meeting. Attorney General Morrisey made a motion to approve the minutes. Commissioner Leonhardt seconded. The motion carried.

The second item on the agenda was consideration and vote on the formal receipt of the tentative assessments for public utilities for tax year 2022 for review, as required by W. Va. Code §11-6-11, that were distributed by the State Tax Department on September 15, 2021. Auditor McCuskey stated that there were new people with the Tax Department assembling the

information this year. Commissioner Irby addressed the Board. He introduced the Acting Director of the Property Tax Division, Travis Payne and the Assistant Acting Director of the Property Tax Division, Frank Capehart. He stated that it was a collective effort to compile the tentative valuations for consideration. Since distributing them, the Tax Department has received additional information from some of the companies. They are in discussions with those companies and will present any potential adjustments at a future meeting. Auditor McCuskey asked for a list of the taxpayers that have requested meetings and what their request was. Frank Capehart replied that he did not have that immediately available, but can have it ready by the end of the day. Auditor McCuskey responded that it would be helpful to know which companies contacted the Tax Department, what the request was, and whether or not it was granted or will be recommended for adjustment. The Tax Department agreed to prepare the list prior to the next meeting.

Governor Justice asked if there was any further discussion. Treasurer Moore asked if the difference in the airline assessments was the result of the companies moving assets out of the State. Commissioner Irby replied that the valuation is based on July 1. It is not known if the companies move property in and out of the State in order to avoid the assessment date. Other states have indicated that they have noticed activity around assessment dates.

Attorney General Morrissey made a motion to formally receive the tentative assessments for public utilities for tax year 2022. Treasurer Moore seconded. The motion carried.

The third item on the agenda was consideration and vote on the request for relief from erroneous assessment, pursuant to W. Va. Code §11-6-12a, for 2021 public utility tax assessment from Federal Express. Attorney General Morrissey stated that after the Board hears from Federal Express and the Tax Department, he is going to suggest that there be an executive session to discuss potential legal issues that may arise.

Branden Harbaugh addressed the Board. He explained that the request is related to the return filed during calendar year 2020, specifically the portion where the assets are summarized by county. There are two columns, one is Book Value and the other is True and Actual Value. They were assessed based on the provisional cost of the assets, not the book value which was reported in both columns. They are requesting to be assessed by the book value as they have been in the past. The result of being assessed by total cost was an increase of approximately 150%.

Commissioner Irby responded that the Tax Department did review the return. Pursuant to W. Va. Code, all property is to be taxed at true and actual value, which is the reason for that column on the spreadsheet. The true and actual value as reported by the taxpayer was used. The taxpayer has indicated it is a clerical error on their part. They did not report true and actual value in that column, rather they reported the original cost of the item. Typically, under the cost approach to value, they take the original cost and take out depreciation to arrive at book value. That is what has been done in the past, because in the past the company has only reported the book value. For 2021, they reported the true and actual value, so that's what was used. The clerical error was on the part of Federal Express and not the Tax Department.

Commissioner Leonhardt asked if there were discrepancies in the figures, other than operational growth, that could lead to the clerical error being true. Commissioner Irby replied that they reported their original cost as the true and actual value, instead of the actual true and actual value of the asset. There are multiple ways to arrive at the value. The Tax Department took their word, as indicated on the return, as the value of the assets. In prior years, they reported the book value, which is what they are now requesting. Commissioner Leonhardt asked if by comparison to previous years, the difference is enough to indicate that Federal Express made a clerical error in reporting. Commissioner Irby replied that the Tax Department has not validated the amount, but the amount of book value would be in line with prior years.

Auditor McCuskey asked if the change will reduce the tax rate for Federal Express. Branden Harbaugh replied that is correct. Auditor McCuskey asked if the clerical error was on the company's part. Mr. Harbaugh replied that is correct as well. Auditor McCuskey asked if it was a new person filling out the form. Mr. Harbaugh replied yes. He explained that on this particular return, it was the first time he was responsible for it.

Attorney General Morrissey made a motion that the Board go in to executive session. Secretary Warner seconded. The Board went in to executive session.

The Board came out of executive session. Governor Justice stated that no action was taken during the executive session. He asked Federal Express for the amount of the adjustment they are requesting. Branden Harbaugh replied that for tax year 2021, they are requesting to be assessed at book value rather than the value they mistakenly reported. Governor Justice asked for the actual amount they are requesting. Mr. Harbaugh replied that the assessed value should have been closer to 3.2 million instead of the 8.13 million that they were assessed at. Kathy Schultz asked what the difference is in tax dollars. Mr. Harbaugh replied, it would drop their tax liability down to approximately \$75,000 as opposed to \$186,000. Auditor McCuskey clarified that the change in value is approximately 5 million, but the change in tax is approximately \$111,000. Governor Justice asked what they think the lesser tax obligation will be. Mr. Harbaugh stated that Federal Express is requesting and anticipates a \$75,000 tax liability for this return. He continued that they were assessed \$186,896. Attorney General Morrissey asked if the difference was between \$110,000 and \$111,000. Mr. Harbaugh replied that is correct.

Attorney General Morrissey stated there were some questions the Board needs to answer. The first would be whether the Board agrees this was an honest mistake and dollars should be returned. If the Board is in agreement on that, then there would need to be a discussion to negotiate with Federal Express what the dollar amount to be returned would be as well as the terms. There are a couple of different mechanisms under the statute that could be used. The decisions for the Board are should Federal Express get money back, and should the Board authorize the Attorney General's office to negotiate with Federal Express.

Governor Justice stated he wanted to explain to Federal Express the dilemma the Board has. He continued that the counties have already made their budgets based on money that is anticipated to be coming. The fairest approach to a resolution would be to agree to the reduction in taxes, but offer it as a credit rather than write a check and pull dollars out of the counties.

Attorney General Morrissey asked if Federal Express had a representative present with negotiation authority. Mr. Harbaugh replied that Bo White is their legal representation. Mr. White addressed the Board. He stated they could negotiate now or after the meeting. Attorney General Morrissey stated that if Federal Express accepts as the amount the difference between the approximate \$186,000 and \$75,000, offered as a credit for the next year, the Board will be able to reach agreement with them. If not, both parties have their options. Mr. White stated that he thinks it is a fair settlement as long as the other Federal Express representatives are in agreement. Attorney General Morrissey stated that for the purposes of efficiency, if the Board does agree to provide money back to Federal Express, it will be done in the form of a credit. That is significant because the counties have already developed their budgets and may not have money available to give back. If given as a credit it can be worked in to next year's budget. That seems to be the most efficient way for everyone involved. Mr. White replied that he agrees. The offer is acceptable to Federal Express. Governor Justice expressed appreciation to Federal Express and the business they do with the State.

Attorney General Morrissey made a motion to reach an agreement with Federal Express where the Board applies the difference between the \$186,000 and the \$75,000 in the form of a credit back to Federal Express to avoid having to call money back from the counties. Treasurer Moore seconded. The motion carried.

With no further business, Attorney General Morrissey made a motion that the Board recess until the public hearing, date to be determined. Secretary Warner seconded. The motion carried. The meeting recessed.



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Mac Warner, Secretary of State  
and Ex-Officio Secretary of the  
Board of Public Works