



STATE OF TENNESSEE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

220 French Landing Drive  
Nashville, TN 37243

(615) 741-6642

BILL HASLAM  
GOVERNOR

BURNS PHILLIPS  
COMMISSIONER

May 1, 2015

Deborah V. Loveless, CPA, CGFM  
Director, Division of State Audit  
Comptroller of the Treasury  
Suite 1500, James K. Polk State Office Building  
Nashville, Tennessee 37243-0264

and

Mr. Jeff Spalding, Executive Director  
Fiscal Review Committee  
320 Sixth Avenue North  
8<sup>th</sup> Floor Rachel Jackson Building  
Nashville, Tennessee 37243

Re: Report of Action on Audit Recommendations  
Six-Month Follow-up Report

Dear Ms. Loveless and Mr. Spalding:

An update is attached on the Department of Labor and Workforce Development's response to the six (6) findings reported in the October 2014 *Performance Audit Report*.

If you need any assistance, please contact Christopher A. Risher, CFE, Director of Internal Audit, at (615) 741-6537.

Sincerely,

A handwritten signature in blue ink that reads "Burns Phillips".

Burns Phillips, Commissioner

BP:CAR:mm

Attachment

**1. Data Reliability and reporting weaknesses in the Elevator and Boiler Units' Case Management and Tracking System (eCMATS) hamper effective management**

Updated Information

In February 2015 the Workplace Regulations and Compliance Division learned that funding would not be granted for a new computer system. Discussions with the Information Technology Division (IT) have shifted from obtaining a new computer system to modifying the current system. Discussions include addressing needed accurate and reliable computer generated information to eliminate the appearance of fraudulent and contradictory reports. At the minimum the modified computer system is expected to identify unassigned active elevators and boilers, designate active elevator and boiler assignments, and indicate active elevator and boilers are properly assigned and inspected. Internal controls have been established and implemented to ensure inspections are performed as required.

---

**2. The Boiler Unit has a heavy caseload and few internal controls to manage and monitor inspectors to ensure they complete inspections in a timely manner**

Updated Information

**Boiler Inspector 4**

The department has had a difficult time recruiting and hiring a Boiler Chief (a.k.a., Boiler Inspector 4), which dates back at least to 2010, when it was last filled prior to the current vacancy. The difficulties are in obtaining qualified applicants and salary.

- Since the October 2013 vacancy, the department has announced and posted the Boiler Chief Position seven (7) times. The position was advertised concurrently on the department's Jobs4Tn site and in trade periodicals. The postings in December 2013 and August 2014 netted zero applicants. The seven (7) postings resulted in two (2) applicants who met the human resources' standards and statutory requirements. Since current law requires ten (10) years of experience for the Boiler Chief Position, the department will determine if this requirement should be modified next legislative session.
- These qualified applicants removed themselves from consideration for the position, due to the salary. The most recent candidate stated they earned more than \$100,000 annually, as opposed to the current entry salary of \$48,600. At our request for a higher rate due to the salary difference, the Department of Human Resources approved an 11% increase to \$54,156. However, this is still far less than the qualified candidate earns in their current job. Given recent attempts, the department's Human Resources Division will be requesting to increase the salary grade for all boiler positions including the Boiler Chief Position, in order to possibly attract more qualified candidates.

### **Internal Control Measures**

Internal control measures have been established to verify inspection reports. Supervisors and administrative support staff have been informed of the new policies and procedures via the Individual Performance Plan. The new process includes the following:

1. Inspectors prepare inspection reports, while working in the field, and then email completed inspection reports to the administrative staff who places them on a shared drive. Inspection reports are maintained on a shared drive and are available for viewing by the supervisor and administrative staff.
2. Supervisors verify reports are scanned and electronically submitted to the Central Office for processing. Supervisors review the reports to ensure they contain proper signatures. If inspection reports are unsigned, incomplete, or inaccurate, the supervisor follows up with the appropriate inspector.
3. Supervisors also review territories quarterly and modify territories, when necessary to ensure work is properly proportioned among inspectors.

- 
3. **The department does not yet have a viable amusement device regulatory unit six years after the jurisdiction was transferred from the Department of Commerce and Insurance**

### Updated Information

Subject to Section 68-122-101 et. seq., *Tennessee Code Annotated*, an amusement device company operating in Tennessee is required to obtain an annual permit. To do so, an amusement device company must ensure its devices are inspected annually, maintain valid insurance coverage, complete a permit application and supporting documentation, and pay the proper fees. The law does not require the state to hire amusement device inspectors. Inspections are required to be performed by third party inspectors who are deemed qualified and certified by the National Association of Amusement Ride Safety Officials (NAARSO), Amusement Industry Manufacturers and Suppliers (AIMS), or the Association of Challenge Course Technology (ACCT). On March 19, 2015, ACCT was added to the list and designated as a certifying agency in Tennessee.

Separate funding for the Amusement Device Unit was requested in next year's budget, but was denied. Even if two or three qualified state inspectors were hired, it would not be enough to inspect all of the amusement devices in Tennessee. Also, using money from other programs to hire state inspectors is not in the best interest of either program. Therefore, allowing owners and operators to hire third party qualified inspectors is the best option. In an effort to save tax payers money, the focus will be placed on the administrative process and the issuance of permits. The new approach is more cost effective and cost efficient. Two administrative support personnel

have been reassigned from other units to assist with the day-to-day activities in the Amusement Device Unit. These employees research issues and notify noncompliant companies by sending letters, making telephone calls, and educating business owners regarding statutory requirements. They also answer telephone calls and program questions, distribute permit application packages, receive and review permit application packages, ensure proper insurance is in place, ensure inspection reports conform to program requirements (i.e., reports are complete, signed by qualified inspectors, and indicate the devices are safe and operable), obtain/process fees, check applications and supporting documentation, and issue permits. Also, an auditor position will be developed in the future to oversee third party inspections, perform spot checks for noncompliant owners/operators, and visit accident scenes.

The Elevator and Amusement Device Safety Board, which is attached to the department, is becoming more involved and is scheduling more meetings to discuss amusement device issues. Although there were periods when very few board meetings were scheduled and conducted and there was very little discussion about the Amusement Device Unit, the board is vital and meetings have been scheduled each quarter to discuss the board's suggestions and recommendations. Currently, the board is reviewing proposed amusement device fees to ensure they are reasonable. The new noncompliance process includes:

1. Notify companies that are noncompliant by regular mail, email, or telephone.
2. Follow-up with the company within one to two weeks.
3. If an owner/operator is uncooperative or does not respond to our requests, then the division would request assistance from the proper authorities, who ultimately may cite the company for a Class C Misdemeanor pursuant to Section 68-121-115, *Tennessee Code Annotated*, or injunctive relief pursuant to Section 68-121-123, *Tennessee Code Annotated*.
4. Post names, addresses and counties of operation for noncompliant amusement device companies on our department/division website so the public may view.

Since March 18, 2015, department records show 70 companies are compliant and have valid permits, 47 companies are noncompliant but have been contacted by letter, and two (2) companies are no longer doing business (total of 119).

---

**4. The Prevailing Wage Commission has incorrectly calculated aspects of the prevailing wage for the last three years**

Updated Information

Beginning in calendar year 2015 and going forward, the calculations for the prevailing wage by the manual operations and by the computer database, which contains the commission data, have

been adjusted to ensure data reliability and accurate electronic and manual computations are in accordance with the requirements of Section 12-4-405(4), *Tennessee Code Annotated*.

---

**5. The department's Mine Safety Unit is out of compliance with state statute in regard to its mine rescue teams' distance from underground mine operations**

Updated Information

1. A manpower study has been compiled. It includes the following information:
  - all mining companies in the state
  - number of miners
  - type of mines (underground, surface, etc.)
  - composition (coal, limestone, zinc, etc.)
  - territory (East, West or Middle TN)
  - number of accidents

Information has been gathered for approximately 262 mining companies.

2. The Mine Safety Unit is complying with the state and federal statutory requirements and has the accurate number of regular corps (i.e., rescue team) members. Currently, the rescue teams are comprised of 14 part-time employees from various mining companies and two full-time state employees from the Mine Safety Unit. The state requires that the Mine Safety Unit maintain two (2) teams with eight (8) members each for a total of 16 members. The federal government requires two (2) teams with six (6) members each for a total of 12 members. We are meeting both state and federal requirements. If we lose a member of a team, the Mine Safety Unit Director will immediately notify the Nashville Office, as it is imperative that we meet state and federal compliance guidelines.
3. The Mine Safety Unit has obtained 15 substitute corps members. The unit accomplished this goal by preparing/ mailing letters to underground mining companies and requesting their assistance. The unit followed-up with mining companies by making multiple telephone calls requesting one person from each company to serve as a substitute corps member. Dedicated substitutes volunteered to assist the program and contact information is kept on file in Caryville in the event that substitutes are needed. If we lose a member of a team, the Mine Safety Unit Director will immediately notify the Nashville Office and utilize a substitute.
4. The department is scheduling meetings regarding the use of a charter plane to assist the mine rescue team to meet the statutory requirement. The mine rescue team is required to be within a two hour distance of any underground operation in the state.

**6. The department has little internal auditing being documented and reported**

Updated Information

Internal Audit released an investigation report to the Comptroller of the Treasury on April 20, 2015, and is finishing a review for the Internal Revenue Service. Internal Audit is expecting to release the review report by the end of June 2015.

---