

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

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**John Sylvia  
 Director**

April 18, 2023

The Honorable Jack David Woodrum, Chair  
 West Virginia Senate  
 Room 214W, Bldg. 1  
 1900 Kanawha Blvd. E.  
 Charleston, WV 25305

The Honorable Chris Phillips, Chair  
 West Virginia House of Delegates  
 Room 213E, Bldg. 1  
 1900 Kanawha Blvd. E.  
 Charleston, WV 25305

Dear Chairmen:

West Virginia (W. Va.) Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of a board when notified by the State Treasurer's Office that cash has been transferred from a board's special fund to the State General Revenue Fund. This transfer is triggered when the board's fund balance is in excess of twice its annual budget or \$10,000. In November 2022, the State Treasurer's Office notified the legislative auditor that a transfer had been triggered from Fund 8520 of the Board of Examiners for Registered Professional Nurses (Board) in fiscal years 2019, 2020, and 2021, pursuant to W. Va. Code §30-1-10(a)(1). The combined total of the transfers made to the State General Revenue Fund was \$1,172,272.

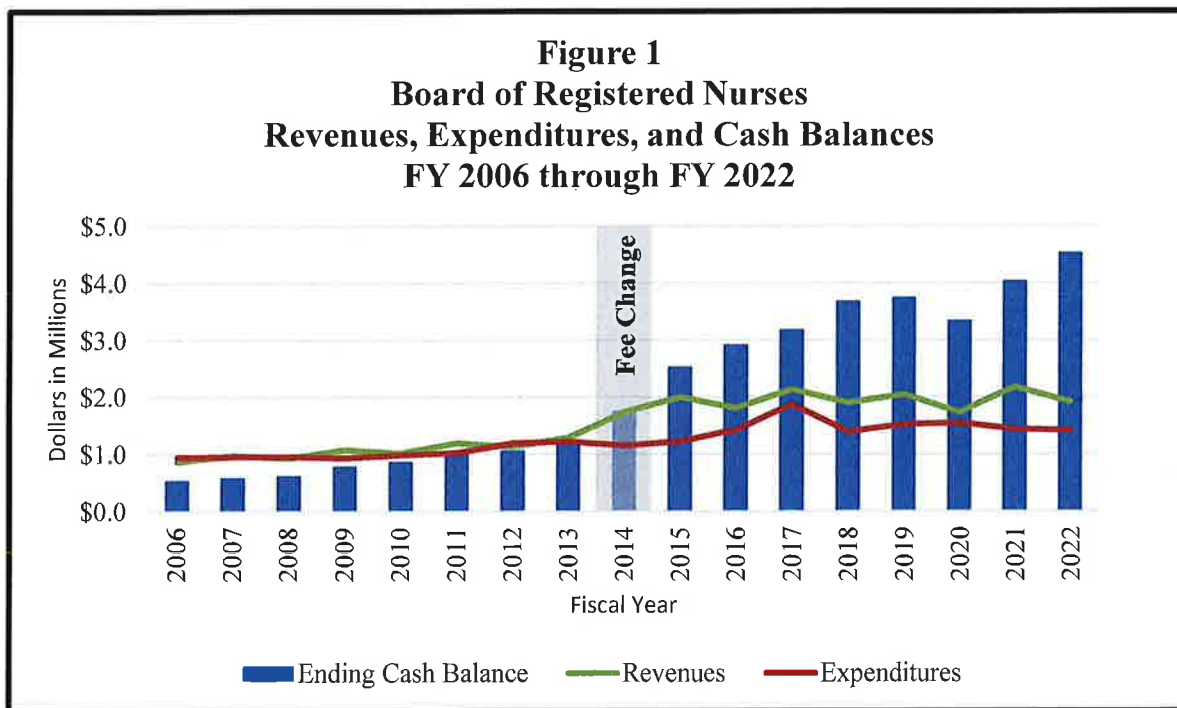
W. Va. Code §30-1-10(b)(2) requires the legislative auditor to determine if the amount of the Board's fees generate excessive revenue when compared to its normal expenses. If the legislative auditor finds that excessive revenue is generated, the findings are to be reported to the Joint Standing Committee on Government Organization, along with recommendations on how fees can be adjusted to generate only the amount the board reasonably needs to operate.

It should be noted that W. Va. Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of any board subject to a fund transfer "*within a reasonable time after the State Treasurer notifies the Legislative Auditor.*" However, the State Treasurer's Office was supposed to notify the legislative auditor of any transfer beginning in FY 2019; however, this notification was not made until November 2022. This delayed the legislative auditor's review. The State Treasurer's Office, however, acknowledged the oversight and committed to properly notifying the legislative auditor going forward.

## The Board’s Current Fee Structure Generates Excessive Revenue Compared to Normal Expenses

W. Va. Code of State Rules §19-12 establishes the fees charged by the Board. Fees were last increased by the Board in 2013. Under the 2013 revision of the rule, registered nurses are charged \$65 annually for licensure and advanced practice registered nurses are charged an additional \$35 biennially.<sup>1</sup> A portion of the annual renewal fee is set aside for the West Virginia Center for Nursing (\$10), and health programs for nurses with substance use disorders and qualifying mental health conditions (\$15).

Figure 1 shows the Board’s revenues, expenditures, and cash balances for FY 2006 through FY 2022.<sup>2</sup> Prior to 2014, the Board’s operational revenue and expenditures were nearly equal, with expenditures sometimes exceeding revenue. As a result, cash balances tended to be below annual expenditures which prompted the need for a fee increase. However, the 2013 fee increase led to substantial growth in revenue. As shown in Figure 1, the Board’s cash balance gradually increased since 2013 because revenues were consistently higher than expenditures. The upward trend of the cash balance indicates that the 2013 fee increase has raised revenue well beyond what is needed for normal operations and licensees are paying higher fees than necessary to support board operations. It should be noted that Figure 1 excludes the dialysis technician fund (Fund 8521).



<sup>1</sup> The Board also amended W. Va. Code of State Rule §19-12 in 2019, but these changes removed or consolidated fees instead of increasing them.

<sup>2</sup> This analysis does not exclude from revenues any amount that was transferred to the State General Fund because the analysis must consider all revenue generated by the current fee structure.

## The Board’s Proposed Fee Structure Would Generate Insufficient Revenue for Normal Operations in the Long Run

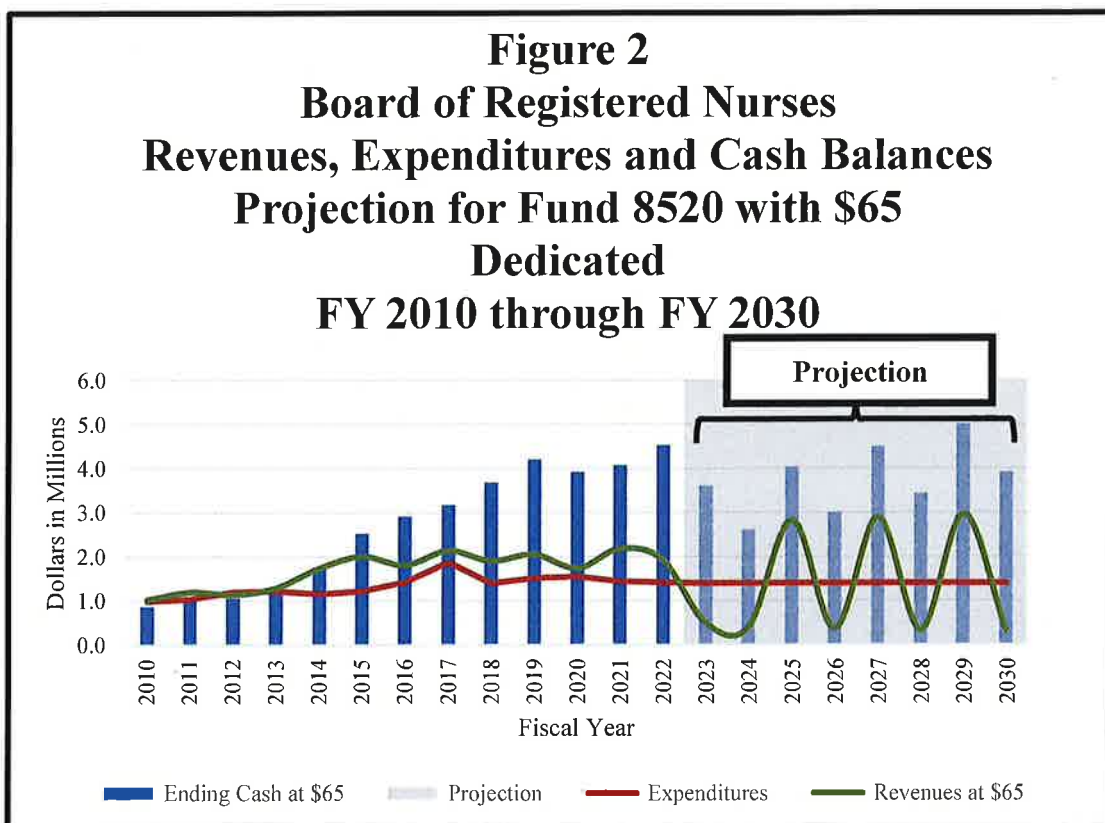
The Legislature passed House Bill 518 during the 2022 legislative session authorizing a biennial renewal cycle for registered nurses instead of the previous annual cycle. The Board adjusted its fees to account for the change in the renewal cycle. The Board proposed a biennial renewal fee of \$90 for both registered nurses and advanced practice registered nurses. Of the \$90, \$60 is to go to the main operating fund (8520). The remaining \$30 is to go to the nurse health program (Fund 9090). No fees are allocated for the Center for Nursing. The Board’s proposed renewal fee translates to a decrease of \$20 annually for registered nurses and a decrease of \$37.50 annually for advanced practice registered nurses.

As shown in Table 1, the Board’s proposed fee structure would generate an estimated average annual amount of \$1,370,510 for Fund 8520 from FY 2023 through FY 2030, assuming \$60 of the renewal fee is dedicated to normal operations as proposed. This assumes the number of licensees will continue to grow annually on average by two percent according to the long-term trend from FY 2007 to FY 2020, and the median year-over-year change of other revenues (i.e., ancillary fees that are not part of expected revenue from initial licensure and renewal) indicates an 5% decline from FY 2015 through FY 2022. The historical growth of operating expenses since 2018 has been relatively flat; therefore, PERD estimates that the average annual expenditures will average \$1,398,222. These estimates determine that the Board’s proposed fee structure will cause revenues for Fund 8520 to be lower than operating expenses on average by -1.98 percent over the 2023-2030 period. The legislative auditor recommends \$65 of the biennial renewal fee be dedicated to normal operations. Based on the previously mentioned assumptions, revenues would be on average approximately 3.14 percent above expenditures annually. This would be prudent to keep revenues slightly above expenditures to allow the Board to maintain a financial cushion in case of unexpected expenses.

<b>Table 1</b> <b>Operational Fund 8520</b> <b>Average Annual Revenues and Expenditures FY 2023-2030</b> <b>Board Proposed and Legislative Auditor’s Recommendation</b>					
	Board Proposed Fee Structure			Legislative Auditor’s Recommendation	
	Revenue Generated for Operating Expenses (\$60 Renewal Fee)	Percent Difference from Expenditures	Expenditures	Revenue Generated for Operating Expenses (\$65 Renewal Fee)	Percent Difference from Expenditures
<b>Annual Averages FY 2023-30</b>	\$1,370,510	-1.98%	\$1,398,222	\$1,442,088	3.14%

*Source: PERD analysis of Board financial and licensee data and proposed changes.*

Figure 2 shows the legislative auditor’s projection for Fund 8520, if \$65 of the renewal fee is dedicated to it. Dedicating this amount to Fund 8520 would keep revenues slightly above expenditures on average. Revenue figures are based on current licensee numbers less 3,500 to account for nurses licensed in Ohio now being eligible for the interstate licensure compact. Expenditures are projected at the average from fiscal 2018 to 2022. In addition, the fluctuations in revenue are due to the proposed biennial renewal cycle, in which registered nurses and advanced practice registered nurses would renew every other fiscal year.



Similarly, Fund 9090, which is used for nurse health programs, has accumulated an excess cash balance. In the Board’s proposed rule, it plans to dedicate \$30 of its biennial renewal fee to Fund 9090, which amounts to the same as its current \$15 annual fee and continues to grow the cash balance. However, the Board offered an amendment to its original proposed rule to lower the health program fee to \$20, which would reduce the cash balance over time. Table 2 below shows estimated revenues for Fund 9090 at these fee levels. The legislative auditor recommends dedicating \$23.50 of renewal fees to nurse health programs. This would keep revenues for Fund 9090 slightly above current expenditures.

**Table 2**  
**Fund 9090**  
**Nurse Health Programs**  
**Average Annual Revenues to Operations Compared to Expenditures**

Fee	\$20 to Fund 9090 Biennially	Percent Difference from Expenditures	Expenditures	\$23.50 to Fund 9090 Biennially	Percent Difference from Expenditures	\$30 to Fund 9090 Biennially	Percent Difference from Expenditures
<b>Annual Averages</b>	\$314,600	-9.5%	\$347,499	\$369,655	6.4%	\$471,900	35.8%

*Source: PERD analysis of Board financial and licensee data and proposed rule changes.*

The fees described above are part of the total proposed biennial renewal fee for registered nurses. **To keep revenues at approximately the same level as expenditures for both funds, the legislative auditor recommends the Board implement a \$88.50 total biennial renewal fee for registered nurses, with \$65 dedicated to Fund 8520 and \$23.50 dedicated to Fund 9090.** It should also be noted that the renewal cycle, as proposed, would result in the Board receiving most revenue in odd fiscal years, which could result in a perceived excess cash balance because the Board will receive revenue to support two years of operating expenses in a single fiscal year.

**W. Va. Code §30-7-4(b) Currently Prevents the Board’s Excess Funds from Being Transferred to the State General Revenue Fund**

In 2022, Fund 8520’s end-of-year cash balance was 319 percent of its annual expenditures and Fund 9090’s end-of-year cash balance was 450 percent of its annual expenditures. The excessive cash balance is due to revenues significantly exceeding expenditures. While the State Treasurer’s Office requested fund transfers from the Board to the State General Revenue Fund in fiscal years 2019 through 2021, starting in FY 2021, the State Treasurer’s Office cited W. Va. Code §30-7-4(b) as exempting the Board from such transfers. However, W. Va. Code §30-7-4(b) did not change in this period. W. Va. Code §30-7-4(b) dates to 1965 and reads:

*All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. No part of this special fund shall revert to the General Funds of this state. The compensation provided by this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against the General Funds of this state.*

The legislative auditor sought a legal opinion from Legislative Services because this exemption predates the general transfer requirement by 31 years (1965 to 1996) and the State Treasurer’s Office only started applying the exemption in FY 2021. Legislative Services concluded that W. Va. Code §30-7-4(b) does exempt the Board from the fund transfer requirements of W. Va. Code §30-1-10(a). While the transfer requirement is more recent, it is general in its terms and

without express language indicating an intention to repeal previous statutes. Because W. Va. Code §30-7-4(b) is special in its application to a particular case or class of cases, the Board is exempt from the more general fund transfer requirement of W. Va. Code §30-1-10(a).

Two distinct problems arise from the situation described above. Firstly, the status of the funds transferred contrary to the requirements of W. Va. Code, which total approximately \$1.2 million, is not clear. These funds have not been returned to the Board, although the State Treasurer's Office indicated it is willing to return the funds if it is deemed necessary. This process would be complicated by the fact these transactions occurred several fiscal years ago and the need to coordinate with other entities such as the Budget Office and State Auditor's Office. Secondly, since the State Treasurer's Office stopped transferring funds in FY 2021 to comply with W. Va. Code §30-7-4(b), the Board's cash balance has surpassed twice its annual expenditures.

Due to the Board's exemption from W. Va. Code §30-1-10(a), the size of the Board's cash balance, and the transfers made contrary to W. Va. Code, the Legislature should consider making a policy determination regarding the exemption provided to the Board in W. Va. Code §30-7-4(b). If the Legislature intends all boards to be subject to the transfer requirements set forth in W. Va. Code §30-1-10(a), then it should consider repealing the exemption for the Board of Registered Nurses in W. Va. Code §30-7-4(b). Making the Board subject to the transfer requirement would address its current excess funds. If the Legislature intends to maintain the exemption from W. Va. Code §30-1-10(a), then it should consider whether the Board's revenues should remain approximately equal to expenditures or if the cash balance should be reduced through attrition.

## Conclusion

The legislative auditor concludes that the Board of Examiners for Registered Professional Nurses' current fee structure generates excessive revenue when compared to its normal expenses. Therefore, a fee adjustment is needed that would reduce the revenue generated to an amount that the Board reasonably needs to operate. The Board has proposed a fee structure that would change fees, with the primary revenue-generating renewal fee being reduced to \$90 biennially. This would be a substantial reduction for registered nurses and advanced practice registered nurses. A \$90 renewal fee every other year instead of the current \$65 each year would result in an annual reduction of \$20 for registered nurses to renew their licenses. Advanced practice registered nurses pay a \$65 renewal fee as registered nurses, but they must also pay a separate renewal fee for advanced practice registered nurses every two years. Under the Board's proposed fee structure, advanced practice registered nurses would pay \$37.50 less each year compared to the current fee structure. **The legislative auditor's recommendation of \$88.50 biennially is close to the Board's proposed fee changes, as is the amount for the nurse health programs.**

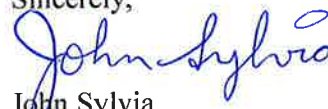
The Legislature should consider addressing the apparent conflict in W. Va. Code §30-7-4(b) and the status of funds transferred contrary to the requirements of W. Va. Code §30-1-10(a). If the Legislature maintains the Board's exemption from the fund transfer requirement, it should consider making a policy decision regarding the current excess cash balance (i.e., if the Board should be allowed to maintain it or if it should be reduced through attrition). At that point, what the appropriate fee level is will be clearer. **But if the Board is to generate only the amount**

reasonably needed to operate, then it should require \$65 of its biennial renewal fee to be put towards operational costs, and \$23.50 to be put towards nurse health programs, which amounts to an \$88.50 total renewal fee biennially.

## Recommendations

1. *To determine how the Board of Examiners for Registered Professional Nurses' fees can be adjusted to generate only the amount it reasonably needs to operate, the legislative auditor recommends the Board implement an \$88.50 total biennial renewal fee for registered nurses, with \$65 dedicated to Fund 8520 and \$23.50 dedicated to Fund 9090.*
2. *The Legislature should consider making a policy determination regarding the status of the Board's exemption from fund transfers otherwise required by W. Va. Code §30-1-10(a).*
3. *The Legislature should consider making a policy decision regarding the Board's current excess cash balance if the fund transfer exemption is maintained.*

Sincerely,



John Sylvia