

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

House Bill 3058

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[Originating in the Committee on Government

Organization; March 9, 2021]

1 A BILL to amend and reenact §30-1-10 of the Code of West Virginia, 1931, as amended, all
2 relating to monetary requirements of the boards; reducing the fund balance amounts of
3 the boards to the average annual expenses from the previous five years; creating an
4 Occupational Licensing Legal Fund from existing revenues; providing for transfer of
5 money from excess receipts of occupational licensing boards; specifying authorized uses
6 of the funds; providing that expenditures are subject to appropriation by the Legislature;
7 and requiring a balance transfer to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF
EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

§30-1-10. Disposition of money fines; legislative audit; review of board’s fee structure.

1 (a) The secretary of every board referred to in this chapter shall receive and account for
2 all money which it derives pursuant to the provisions of this chapter which are applicable to it.
3 With the exception of money received as fines, each board shall pay all money which is collected
4 into a separate special fund of the State Treasury which has been established for each board.
5 This money shall be used exclusively by each board for purposes of administration and
6 enforcement of its duties pursuant to this chapter. Any money received as fines shall be deposited
7 into the General Revenue Fund of the State Treasury. When the special fund of any board
8 accumulates to an amount which exceeds ~~twice the annual budget~~ the average actual annual
9 expenses over the past five years, excluding zero-dollar years, of the board or \$10,000, whichever
10 is greater, the State Treasurer shall:

11 (1) Transfer the excess amount to the Occupational Licensing Legal Fund created in
12 subsection (c) of this section;

13 ~~(4)(2) Any amount exceeding a \$1,500,000.00 balance in the Occupational Licensing~~
14 Legal Fund, transfer ~~Transfer~~ the excess amount to the state General Revenue Fund; and

15 ~~(2)~~(3) Notify the Legislative Auditor that the transfer has been made.

16 (b) (1) Every licensing board which is authorized by the provisions of this chapter shall be
17 subject to audit by the office of the Legislative Auditor.

18 (2) Within a reasonable time after the State Treasurer notifies the Legislative Auditor of a
19 transfer required to be made under this section, the Legislative Auditor shall conduct a review of
20 the fee structure of the applicable board to determine if the amount of the board's fees generate
21 excessive revenue, when compared to the board's normal expenses. If the Legislative Auditor
22 finds that excess revenue is generated, he or she shall report his or her findings to the
23 Legislature's Joint Standing Committee on Government Organization, along with
24 recommendations on how the fees can be adjusted to generate only the amount the board
25 reasonably needs to operate under this chapter.

26 (c) Beginning July 1, 2022, the Occupational Licensing Legal Fund is hereby created in
27 the State Treasury. The Fund shall be administered by the Finance Division of the Department of
28 Administration and shall consist of all monies made available from any source, including, but not
29 limited to, all amounts transferred into the Fund by the boards as required by subsection (a) of
30 this section or transfers from any source, any moneys that may be appropriated and designated
31 for the Fund by the Legislature, and all interests or other return earned from investment of the
32 Fund. The Finance Division of the Department of Administration, in concert and with consultation
33 from the boards, shall review and approve all invoices from the Office of the Attorney General
34 prior to submitting expenses to be paid from the Fund.

35 Expenditures of the Fund shall be used to pay legal fees and court costs to the West
36 Virginia Attorney General, or other counsel as may be required pursuant to this subsection,
37 incurred within the operation of the licensing boards covered under this chapter and are not
38 authorized from collections, but are to be made only in accordance with appropriations from the
39 Legislature and in accordance with §12-3-1 of this code and upon the fulfillment of the provisions
40 set forth in §11B-2-1 et seq., of this code. Any balance, including accrued interest and other

41 returns, remaining in the Fund at the end of each fiscal year shall not revert to the General
42 Revenue Fund, but shall remain in the fund and be expended as provided by this section:
43 *Provided, That before this fund may be used for outside counsel, the Office of the Attorney*
44 *General must indicate that the office lacks the required expertise or staff to adequately represent*
45 *the board in any proceedings.*

NOTE: The purpose of this bill is to establish a special revenue fund out of existing receipts from all the Chapter 30 boards to pay legal fees and court costs to the Attorney General's office, or other counsel, incurred within operation of the board.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.