

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3483

By Delegates Espinosa and Householder

[Introduced February 14, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto new article,
 2 designated §5-30-1, §5-30-2, §5-30-3, and §5-30-4, all relating to approving the creation
 3 of the West Virginia First Foundation pursuant to the terms of the West Virginia First
 4 Memorandum of Understanding; and to authorize the appointment of governing board
 5 members to the West Virginia First Foundation by the Governor and regional authorities.

6 *Be it enacted by the Legislature of West Virginia:*

ARTICLE 30. THE WEST VIRGINIA FIRST FOUNDATION.

§5-30-1. Legislative findings.

1 (a) The people of West Virginia, its Local Governments, and its communities have been
 2 harmed by misfeasance, nonfeasance, and malfeasance committed by certain entities within the
 3 Pharmaceutical Supply Chain.

4 (b) West Virginia is not alone in seeking to combat the effects of the opioid epidemic,
 5 indeed, states, political subdivisions, and private entities across the nation are embroiled in
 6 complex litigation and other efforts to alleviate the harm caused by the epidemic.

7 (c) The people of West Virginia, its local governments, and its communities are committed
 8 to ensure that all opioid funds shall be used in a manner consistent with evidence-based
 9 strategies, programming, and services used to expand the availability of treatment for individuals
 10 affected by substance use disorders and addiction, to develop, promote, and provide evidence-
 11 based substance use prevention strategies, to provide substance use avoidance and awareness
 12 education, to engage in enforcement to curtail the sale, distribution, and promotion or use of
 13 opioids and other drugs, to decrease the oversupply of licit or illicit opioids, and to support recovery
 14 from addiction to be performed by qualified providers.

15 (d) The creation of a private foundation will advance the goals of abating the epidemic by
 16 providing a long term steady stream of money to fund the efforts by both private and governmental
 17 entities.

18 (e) All 55 counties and virtually all participating municipalities, representing 99.6 percent of

19 the population of West Virginia, have signed on to the West Virginia First Memorandum of
20 Understanding.

21 (f) The Circuit Court of Kanawha County, Civil Action No. 19-C-9000, has adopted and
22 approved the West Virginia First Memorandum of Understanding and the abatement structure
23 created therein, including, but not limited to, the creation of a private foundation for the purposes
24 set forth therein.

§5-30-2. Definitions.

1 "Governing Board" means the board of directors for the nonprofit foundation described in
2 §5-30-3.

3 "Expert Panel" means the group of individuals having substantive expertise in various
4 areas to assist the West Virginia First Foundation as set forth herein.

5 "Local Government" means the counties and municipalities that are parties to the MOU.

6 "MOU" means the West Virginia First Memorandum of Understanding approved and
7 adopted by the Circuit Court of Kanawha County as referenced in §5-30-1 of this code.

8 "Opioid Funds" means funds that are obligated to be transferred to the West Virginia First
9 Foundation from any source, including, but not limited to, those settlements subject to the terms of
10 the MOU.

11 "Order" means the order of the Circuit Court of Kanawha County referenced in §5-30-1 of
12 this code adopting and approving the MOU and the abatement structure created therein, including,
13 but not limited to, the creation of a private foundation for the purposes set forth therein.

14 "Region" means any of the geographic regions to be established pursuant to the Order and
15 MOU.

§5-30-3. West Virginia first foundation created.

1 A private foundation in keeping with the order shall be created that qualifies under Internal
2 Revenue Code Section 501(c)(3), which will be known as the West Virginia First Foundation, with
3 a governing board, an expert panel, and other additional and other regional entities as may be

4 necessary for the purpose of receiving and disbursing opioid funds and other purposes as set forth
5 in the order and the documents establishing the West Virginia First Foundation. The operation of
6 the West Virginia First Foundation shall be governed by its articles of incorporation and such by-
7 laws as are adopted consistent with the provisions of the MOU.

§5-30-4. West Virginia first foundation board composition.

1 The governing board shall consist of 11 members comprising representation as follows:

2 (a) To represent the interests of the State of West Virginia, the Governor shall appoint five
3 members of the governing board who shall be subject to confirmation by the Senate. The five
4 appointees are intended to be limited to one from any given region. If special circumstances are
5 shown, this provision may be waived by a vote of four of the six local government members.

6 (b) To represent the interests of the local government, six members with one member
7 selected from each region. The local government in each region shall make the selection of the
8 board member to represent their region.

9 (c) Governing Board terms will be staggered three year terms. Governing board members
10 may be reappointed.

11 (d) Governing board members shall serve as fiduciaries of the West Virginia First
12 Foundation separate and apart from any representational capacity of the entity approving the
13 governing board member. Members of any regional governing structure shall likewise serve as
14 fiduciaries of their region separate and distinct from any representational capacity of the entity
15 appointing the member.

16 (e) Governing board members should have expertise in a variety of disciplines, such as
17 substance abuse treatment, mental health, law enforcement, pharmacology, finance, and
18 healthcare policy and management. Drawing governing board members from these disciplines
19 will help to ensure that the governing board will make appropriate and prudent investments in
20 order to meet short-term and long-term goals.

NOTE: The purpose of this bill approve the creation of the West Virginia First Foundation pursuant to the terms of the West Virginia First Memorandum of Understanding and to authorize the appointment of board members to the West Virginia First Foundation by the Governor and Regional authorities.

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