

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

1900 Kanawha Blvd. East  
Building 1, Room W-314  
Charleston, WV 25305-0610  
(304) 347-4890

**John Sylvia**  
**Director**



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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 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 an excess cash balance transfer had been made from a board's special fund to the State General Revenue Fund. An excess cash balance transfer is triggered when a board's end-of-year fund balance exceeds twice its annual budget or \$10,000, whichever is greater. At the end of fiscal year 2021, the State Treasurer's Office notified the Real Estate Appraiser Licensing and Certification Board (Board) that an excess cash balance transfer was required in the amount of \$248,047. On November 16, 2021, the Board transferred the amount to the State General Revenue Fund. On November 22, 2022, the State Treasurer's Office notified the legislative auditor of the Board's transfer.

Upon being notified of such a transfer under W. Va. Code §30-1-10(b)(2), the legislative auditor must determine if a 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 a 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.*" While the State Treasurer's Office was required

to notify the legislative auditor of the Board's transfer soon after the transfer was made in November 2021, 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.

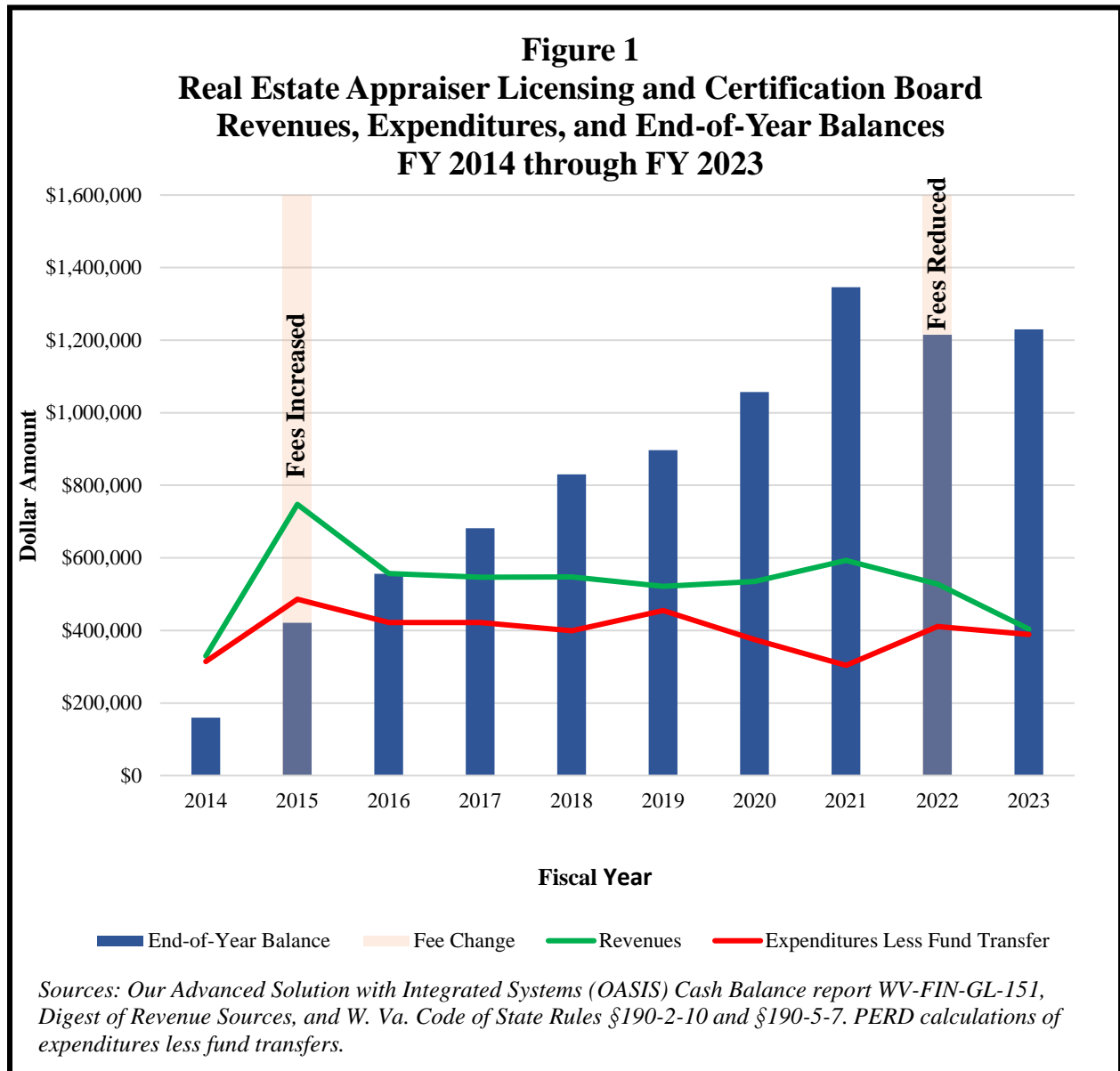
## **As of FY 2023 the Board's Fee Structure No Longer Generates Excessive Revenue Compared to Normal Expenses**

Figure 1 below shows the Board's financial information from FY 2014 through FY 2023. In FY 2014, the Board's end-of-year cash balance was 50 percent of its typical annual expenditures, which is precariously low. A prudent cash balance would be an amount at least equal to annual expenditures to be able to absorb unexpected occurrences. This suggested the Board's fees were not generating sufficient revenue to cover expenses. The Board responded by increasing application fees and other fees for appraisers in FY 2015 through amending its legislative rule, 190 CSR 2. The fee increases were expected to generate approximately \$15,000 in additional revenues annually. In addition, the Board responded to changes at the federal level that resulted from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was signed into law in July 2010. The law made sweeping changes to the national financial services industry including appraisal management companies (AMCs) to ensure their independence and fair compensation. In 2013, the Legislature responded to the Dodd-Frank Act by passing legislation requiring AMCs to be registered with the Board to operate in the state (W. Va. Code §30-38A-1). The Board began registering AMCs in FY 2015, charging a one-time \$500 application fee and an annual registration fee of \$2,000. As Figure 1 shows, registering AMCs led to a spike in revenue in FY 2015 of over \$400,000. It should be noted that registering AMCs was to comply with state law and not necessarily to address the Board's financial condition.

In FY 2016, revenues decreased due to a decline in initial AMC applications. Revenues remained relatively stable thereafter. On the expenditure side, registering AMCs increased expenses through hiring an additional staff person and staff pay raises. The Board also paid \$84,722 for a lawsuit in FY 2015. However, Figure 1 shows that revenues exceeded expenditures for every year through 2023 and the Board's end-of-year cash balance grew to more than \$1.3 million in FY 2021, which is over three times the Board's annual expenditures. The increase in cash reserves in FY 2021 also resulted, in part, from declines in expenditures in FY 2020 and 2021. PERD's review of the State's central accounting system, Our Advanced Solution with Integrated Systems (OASIS), shows that expenditures declined in large part from reduced spending for legal services as well as lower travel expenses related to the COVID pandemic. The Board confirmed that in late FY 2020, it decided to contract with the West Virginia Attorney General's Office for an assistant attorney general on an as-needed basis instead of the full-time attorney assignment it had. The drop in travel expenses correlates with the governor's state employee ban on out-of-state travel in March 2020 in response to the COVID pandemic.

In response to the Board's large accumulation of cash reserves, the Legislature reduced most of the Board's fees during the 2022 legislative session. This caused revenue to drop in FY 2023 to a level nearly equal to expenditures. Also in FY 2022, the Board's expenditures returned to pre-pandemic levels. The lower fees, the increase in expenditures, and the fund transfer that prompted this review caused the Board's cash reserves to drop in FY 2022. Given the FY 2022 fee reductions and expenditures returning to pre-pandemic levels, PERD determines that the

Board's fee structure will likely not generate revenue in excess of its normal expenses. **Therefore, the Performance Evaluation and Research Division (PERD), within the Legislative Auditor's Office, concludes that no further adjustments to the Board's fees are currently needed.**



## The Board Has Had Two Excess-Balance Transfers to the State General Revenue Fund

Under West Virginia Code §30-1-10(a), the State Treasurer's Office is to determine if a board's cash reserves have accumulated to an amount that exceeds twice its annual budget and transfer the excess to the State General Revenue Fund. Table 1 below shows that the Board has had two excess-balance transfers to the State General Revenue Fund, one in FY 2021 in the amount

of \$248,047, and the other in FY 2023 in the amount of \$113,838. Although the Board's fee structure has been decreased and revenues declined in FY 2023, the Board's cash reserves were high enough that an excess-balance transfer could not be avoided.

Table 1 also shows that the Board's budgeted expenditures were significantly higher than actual expenditures from FY 2016 through FY 2023. In some instances (FY 2021 and 2022), budgeted expenditures were 80 to 94 percent higher than actual expenditures. While it is understandable that a board would want to budget beyond what it may need to account for contingencies and unexpected expenses, it is unrealistic when the annual budget is as much as 94 percent higher than actual expenditures.

<b>Table 1</b> <b>Revenue, Expenditures, and Cash Balances</b> <b>FY 2014 through FY 2023</b>					
<b>Fiscal Year</b>	<b>Budgeted Expenditures</b>	<b>Actual Expenditures</b>	<b>End-of-Year Cash Balance</b>	<b>Revenue</b>	<b>Excess Balance</b>
<b>2014</b>	\$292,645	\$314,398	\$159,468	\$329,608	\$0
<b>2015</b>	\$521,123	\$486,057	\$420,876	\$747,466	\$0
<b>2016</b>	\$498,310	\$422,197	\$556,387	\$556,796	\$0
<b>2017</b>	\$549,018	\$421,504	\$681,541	\$546,658	\$0
<b>2018</b>	\$563,018	\$399,384	\$829,995	\$547,869	\$0
<b>2019</b>	\$563,018	\$454,612	\$897,009	\$521,625	\$0
<b>2020</b>	\$549,018	\$374,845	\$1,056,993	\$534,829	\$0
<b>2021</b>	\$549,018	\$303,779	\$1,346,083	\$592,869	\$248,047
<b>2022</b>	\$797,065	\$410,868	\$1,214,787	\$527,619	\$0
<b>2023</b>	\$558,095	\$388,769	\$1,230,028	\$404,055	\$113,838
<b>Avg.</b>		<b>\$396,995</b>	<b>\$976,603</b>	<b>\$529,040</b>	
<i>Sources: Our Advanced Solution with Integrated Systems (OASIS) WV-FIN-GL-151 report, Digest of Revenue Sources, and executive budget operating details. PERD calculations of excess balances.</i>					

## **The Legislature Should Consider an Alternative Method of Determining Excess Balances**

According to the State Treasurer's Office, it interprets "annual budget" in statute to be a board's requested budget as submitted for the State Executive Budget or as recorded in OASIS, the State's central accounting system. Although the state treasurer's interpretation of annual budget may fulfill the Legislature's intent, it becomes problematic when a board submits an annual budget amount that is well above what it actually spends for the year represented. A consequence of inflated budget amounts is that they avert the transfer of excess balances. Over time, cash balances will increase and eventually an excess balance transfer cannot be avoided, and the eventual transfer may be a relatively large amount.

In the past, PERD has noted that the current mechanism for determining excess cash balances should be revisited because using budgeted expenditures could incentivize inflated

budgeted expenditures and/or increases in actual expenditures as ways to avoid fund transfers. In previous reports, PERD recommended the Legislature consider basing the excess-balance transfer mechanism on a board's cash balance exceeding the sum of total revenues for the previous two fiscal years. Legislators have recently introduced several bills related to this issue, each with different transfer mechanisms. During the 2023 legislative session, Senate Bill 248 proposed basing transfers on the sum of twice a board's current actual expenditures. In that same year, House Bill 3011 proposed basing transfers on the average of annual expenditures for the past five years. In the 2024 legislative session, several bills were introduced to change the method for determining excess balances, two of which based the method on revenues instead of expenditures. Senate Bill 432 based the excess-fund transfer on the sum of total revenues for the previous two fiscal years, consistent with PERD's recommendation, and House Bill 4599 proposed transfers on the average revenue over the preceding four years. PERD reiterates the previous recommendation that **the Legislature consider amending West Virginia Code §30-1-10 to state that excess-balance transfers from licensing boards to the State General Revenue Fund be based on the sum of a board's actual revenues for the previous two fiscal years.**

## Recommendations

- 1. The Performance Evaluation and Research Division determines that no further adjustments to the Real Estate Appraiser Licensing and Certification Board's fee structure are currently needed.*
- 2. The Legislature should consider amending West Virginia Code §30-1-10 to state that excess-balance transfers from licensing boards to the State General Revenue Fund be based on a board's cash balance exceeding the sum of the board's actual revenues for the previous two fiscal years.*

Sincerely,



John Sylvia