WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3157

By Delegates Jennings, Smith, Ridenour, Phillips, Honaker, McGeehan, Butler, Hillenbrand, Hanshaw (Mr. Speaker) and Crouse

[Introduced January 30, 2023; Referred to the Committee on Veterans' Affairs and Homeland Security then the Judiciary]

A BILL to amend and reenact §15A-12-1, §15A-12-2, §15A-12-3, §15A-12-4, §15A-12-5 and §15A-12-7 of the Code of West Virginia,1931, as amended, all generally relating to clarifying security clearance and/or non-disclosure agreement requirements, the duties, functions, reporting requirements, prohibitions and restrictions applicable to the West Virginia Fusion Center and to add certain criminal penalties for violations of prohibitions and restrictions applicable to the West Virginia Fusion Center.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. WEST VIRGINIA FUSION CENTER.

§15A-12-1. West Virginia Fusion Center Established.

(a) The Governor shall establish, organize, equip, staff, and maintain a multiagency information fusion center ("Fusion Center") to receive, analyze, and disseminate all hazard, crime, and threat information. The Department of Homeland Security shall operate the facility, as directed by the Governor, with oversight auditing and accountability to the select committee of the Legislature as set forth herein, and in collaboration among federal, state, and local agencies, as well as private sector persons, organizations, entities, or agencies, including, but not limited to, those with the primary purposes of homeland security, counter-terrorism, public safety, public protection, and identification of threats to critical infrastructure: *Provided*, That the Fusion Center shall not knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor for any federal agency, when that participation or cooperation involves ~~illegal or improper actions~~ any action prohibited or restricted by §15A-12-1 *et seq.* of this code and/or by federal or state law prohibiting intelligence gathering activities upon citizens of the United States. The Fusion Center will exercise due diligence in ascertaining the motives of any federal agency that collaborates with the Fusion Center to ensure that the agency is only using results or collaboration with the Fusion Center for legitimate law-enforcement purposes. Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center or to remotely access Fusion Center assets or infrastructure absent a valid warrant from the U.S. District Court for the Southern District of West Virginia, nor when it knows or has reason to know that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity against a citizen of ~~West Virginia~~ the United States. Further, that the Fusion Center is subject at all times and in all operations to the Joint Oversight Committee as set forth in §15A-12-3 of this code.

(b) The Fusion Center shall collect, integrate, analyze, disseminate, and maintain such information to support local, state, and federal law-enforcement agencies, ~~other governmental agencies~~ and private persons, organizations, entities, or agencies in detecting, preventing, investigating, preparing for, responding to, mitigating and/or recovering from any possible or actual criminal or terrorist activity, as well as any hazard or threat, including to the state’s critical infrastructure, in compliance with applicable state and federal laws and regulations, including 28 CFR 23: *Provided*, That as used in this article, "terrorism" shall mean only foreign or international terrorist groups or individuals, or domestic groups or individuals involved in transnational or domestic terrorism as defined in ~~6 U.S.C. §485~~ 18 U.S. Code § 2331: *Provided, however*, That under no circumstance shall the Fusion Center or its officers, directors, agents, or employees engage in, or be ordered or directed to engage in prohibited ~~non-law enforcement~~ intelligence gathering activities on citizens of the United States as set forth in any federal or state law or in contravention of the Constitution of the United States, nor shall the Fusion Center engage in, or collaborate with any other entity on, any information or intelligence gathering for any political purpose nor be solicited for, or cooperate in, any investigation of a public official or candidate for elected office, unless reasonable grounds exist to suspect the subject of the investigation is, or may be, involved in criminal conduct. Any such information or intelligence gathering will be immediately reported to the Attorney General and the leadership of the Joint Oversight Committee. This provision shall not prohibit the Fusion Center from ~~participating in~~ investigating matters ~~dealing with~~ in order to prevent or uncover election fraud, prevent or uncover election tampering, or any other issues ~~designed~~ the purpose of which is to provide the citizens of the state with ~~tamper-free~~ elections free from ballot harvesting, ballot fraud, algorithmic manipulation of votes or vote tabulations, cyber attack or manipulation of any kind, or any other effort or attack of any kind on free, fair and legitimate elections, as constitutionally guaranteed, anywhere within the State of West Virginia, and shall not restrict the Fusion Center from assisting in security matters involving political or dignitary visits to or within the State of West Virginia. Any information or intelligence gathered regarding election fraud will be reported to the Attorney General and the leadership of the Joint Oversight Committee at the earliest opportunity.

(c) Any improperly or inadvertently collected or gathered information must be reported to the Director of the Fusion Center within 72 hours. The Director will investigate the causes of the improper or inadvertent collection and will take corrective measures. No improperly or inadvertently collected or gathered information may be shared with any other entity outside the Fusion Center. The Director will direct that the subject information be destroyed or erased within 15 days. The Director will include any incidents of improper or inadvertent collection, together with corrective actions in his annual report to the Joint Oversight Committee.

~~(c)~~ (d) The West Virginia Fusion Center shall be housed within secure facilities in order to access sensitive information, as permitted by state and federal law. Within the secure facilities, the Fusion Center shall house ~~a Homeland Secure Data Network (HSDN)~~ homeland secure information systems and networks in order to access classified information as permitted by state and federal law and ensure that appropriate security measures are in place for: (1) the secure facilities; (2) data collected or stored at the secure facilities; and (3) personnel working at the secure facilities: *Provided*, That no classified information may be allowed or accessed on the Fusion Center’s homeland secure information systems and networks which violates the prohibitions and/or restrictions set forth in §15A-12-1(a), §15A-12-1(b), and §15A-12-2 of this code, and all such classified data shall be subject to unrestricted and unredacted access, review, inspection and investigation by the Joint Oversight Committee set forth in §15A-12-3 of this code.

~~(d)~~ (e) The West Virginia Fusion Center shall do all acts necessary and proper to carry out the powers granted to the board of the State Resiliency Office.

§15A-12-2. Operation of center.

(a) The West Virginia Department of Homeland Security shall operate the West Virginia Fusion Center under the direction of the Governor, with oversight auditing and accountability to the ~~select committee of the Legislature~~ Joint Oversight Committee as set forth herein, and shall cooperate with the United States Department of Homeland Security, local, county, state, or federal government agencies, and private organizations: *Provided*, That the Fusion Center shall not knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor for any federal agency, when that participation or cooperation involves illegal or improper actions. Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it knows or has any reason to know or suspect that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity as defined in §15A-12-1(a) of this code against a citizen of ~~West Virginia~~ the United States: *Provided, however*, That all Fusion Center operations shall be subject to applicable state and federal laws and regulations, including, but not limited to, 28 CFR Part 23, and shall at all times strictly abide by all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in any federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

(b) The West Virginia Fusion Center shall: (1) Be the primary clearinghouse for the State of West Virginia for the collection, analysis, and proper distribution of information and actionable intelligence as defined in this section; (2) generate intelligence analyses critical for homeland security policy and relevant threat warning in order to protect life, liberty, and property in West Virginia; (3) promote and improve intelligence sharing among public safety and public service agencies at the federal, state, and local levels, and with critical infrastructure and key resource entities within the private sector subject to all restrictions and prohibitions recited in this article; (4) receive and integrate intelligence and information related to terrorism and other homeland security threats; (5) collect, analyze, produce, disseminate, and maintain such intelligence and information, as allowed by law, to support local, state, and federal law enforcement agencies, other governmental agencies, and private organizations in: preventing, preparing for, responding to, and recovering from any possible or actual terrorist attack or other homeland security threat; and (6) maximize intelligence and information sharing in strict accordance with all applicable state and federal laws, restrictions, and prohibitions: *Provided*, That the Fusion Center shall not knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor for any federal agency, when that participation or cooperation involves ~~illegal or improper actions~~ any action prohibited or restricted as set forth in §15A-12-1(a) of this code. Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it knows or has reason to know or suspect that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity or politically motivated activities against a citizen of ~~West Virginia~~ the United States.

(c) The Governor shall provide facilities, budget, and administrative support for the West Virginia Fusion Center and its employees and participants. The cabinet secretary shall serve as security manager for the West Virginia Fusion Center.

(d) Private sector persons, organizations, entities, or agencies participating in the West Virginia Fusion Center shall not be considered governmental entities, nor shall employees or agents of private sector persons, organizations, entities, or agencies assigned to the West Virginia Fusion Center be considered state employees; however, private sector entities and their employees or agents are subject to the same confidentiality requirements and held to the same standards as an employee of the West Virginia Fusion Center, including, but not limited to, any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1): *Provided*, That the Fusion Center shall not knowingly participate in any activity, or knowingly cooperate, with any federal agency, or a contractor for or any person or entity utilizing or collaborating with any federal agency, when that participation or cooperation involves illegal or improper actions: *Provided*, *however,* that the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion Center when it knows or has reason to know or suspect that such federal agency or federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity against a citizen of ~~West Virginia~~ the United States.

(e) The operations of the West Virginia Fusion Center shall be overseen by the cabinet secretary and deputy cabinet secretary of the West Virginia Department of Homeland Security, with oversight auditing and accountability to the ~~select committee~~ Joint Oversight Committee of the Legislature as set forth herein in §15A-12-3 of this code.

(f) The cabinet secretary and deputy cabinet secretary shall either have a current, valid federal security clearance at the appropriate level, and training and certifications commensurate with the position, or be eligible for that clearance, and be in the process of obtaining the appropriate clearance.

(g) The cabinet secretary and deputy cabinet secretary may adopt policies and procedures for the operation of the West Virginia Fusion Center. All such policies and procedures shall be subject to the full and unlimited inspection and review of the Joint Oversight Committee set forth in §15A-12-3 of this code. The cabinet secretary and deputy cabinet secretary may adopt rules and regulations as may be necessary to carry out the provisions of this act, including rules and regulations concerning the operations of the West Virginia Fusion Center: *Provided*, That all policies, procedures, rules, and regulations and use of the Fusion Center by any party shall be subject to any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including but not limited to, 50 U.S.C. §3036(d)(1).

(h) Subject to appropriations, the West Virginia Fusion Center shall have the following employees, all in the unclassified service of the civil service act:

(1) A director, who shall be appointed by and serve at the pleasure of the cabinet secretary. The director shall either have a current, valid federal security clearance at the appropriate level, and training and certifications commensurate with the position, or be eligible for that clearance, and be in the process of obtaining the appropriate clearance, and shall:

(A) Be responsible for all operations of the West Virginia Fusion Center and shall report to the cabinet secretary or deputy cabinet secretary;

(B) Be responsible for:

(i) Facilitating and implementing applicable federal standards and programs by the West Virginia Fusion Center;

(ii) Ensuring compliance with all applicable laws and federal requirements, including, but not limited to, any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1);

(iii) Maintaining proper separation between military and civilian capacities;

(iv) Providing support, as needed, to the cabinet secretary and deputy cabinet secretary; and

(v) Other duties and responsibilities as may be assigned by the cabinet secretary and deputy cabinet secretary, subject to all restrictions and prohibitions described in this article.

(5) A deputy director, who shall be appointed by and serve at the pleasure of the director. The deputy director shall either have a current, valid federal security clearance at the appropriate level, and training and certifications commensurate with the position, or be eligible for that clearance, and be in the process of obtaining the appropriate clearance, and shall be responsible for assisting the director in: (A) facilitating and implementing applicable federal standards and programs by the West Virginia Fusion Center; (B) ensuring compliance with all applicable laws and federal requirements; (C) maintaining proper separation between military and civilian capacities; (D) providing support, as needed, to the cabinet secretary and deputy cabinet secretary; and (E) other duties and responsibilities as may be assigned by the Fusion Center director.

§15A-12-3. Joint Oversight Committee.

(a) The Speaker of the House of Delegates and President of the Senate shall establish a select committee which shall have oversight of the operations and activities of, and information collected by, the West Virginia Fusion Center to ensure the proper collection, dissemination, storage, and destruction/erasure of information or intelligence and adherence by the West Virginia Fusion Center with any and all prohibitions or restrictions set forth in §15A-12-1 *et seq*. of this code. The committee shall be composed of: (1) The Speaker of the House of Delegates and four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates, no more than two of whom shall be appointed from the same political party; and (2) the President of the Senate and four members of the Senate, to be appointed by the President of the Senate, no more than two of whom shall be from the same political party; and counsel and staff to the Speaker and the Senate President: *Provided*, That in the event the membership of a political party is less than 15 percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than 15 percent membership may be one from that house. The committee shall be chaired by the President of the Senate and the Speaker of the House of Delegates or any Senator or Delegate designated by same. All members appointed to the select committee by the select committee chairs serve until their successors are appointed as provided in this section.The select committee members, counsel, and staff ~~must have~~ shall be granted the ~~appropriate~~ necessary security clearance or clearances in order to obtain any and all information that is classified within the West Virginia Fusion Center, and/or shall be granted access to any and all information and intelligence that is used, processed, or stored within the West Virginia Fusion Center and shall be subject to the same rules, regulations, and laws as the employees of the West Virginia Fusion Center for safeguarding of all information and intelligence for which access is granted: *Provided*,That committee members, counsel, and staff execute non-disclosure agreements and any other documents presented by the West Virginia Fusion Center: *Provided,* *further*, That any such documentation presented is not above that required of West Virginia Fusion Center employees and shall be subject to the same rules, regulations, and laws as the employees of the West Virginia Fusion Center for safeguarding both classified and law enforcement sensitive information or intelligence. These select committee members, counsel, and staff shall be advised of the restrictions and protocol for handling such information or intelligence and shall sign a statement of understanding as well as a confidentiality agreement. Failure of any state or federal agency to grant the necessary security clearance or clearances to the select committee members, counsel, and staff, and/or to grant access to any and all information and intelligence that is used, processed, or stored within the West Virginia Fusion Center to the select committee members, counsel, and staff after their execution of the applicable non-disclosure agreements shall result in the suspension of all Fusion Center operations precluded from oversight due to any refusal to grant the necessary security clearance or clearances, and/or to grant access to any and all information and intelligence that is used, processed, or stored within the West Virginia Fusion Center to the select committee members, counsel, and staff after their execution of the applicable non-disclosure agreements, until such necessary security clearance or clearances to the select committee members, counsel, and staff have been granted and/or until access is granted to any and all information and intelligence that is used, processed, or stored within the West Virginia Fusion Center to the select committee members, counsel, and staff after their execution of the applicable non-disclosure agreements.

(b) Members of the select committee, with their counsel and/or staff, may enter and inspect the West Virginia Fusion Center at any time staff is present with select committee counsel and staff, with or without notice to the West Virginia Fusion Center: *Provided*, That Fusion Center staff may not vacate the Fusion Center for the purpose of evading entry and inspection by the select committee, with their counsel and/or staff and that if the Fusion Center staff are not present at the arrival of the select committee, with their counsel and/or staff, a member of the Fusion Center staff shall grant access to the Fusion Center for the select committee, with their counsel and/or staff within two hours of the select committee’s request for access.

(c) Meetings of the select committee shall be confidential, or, as applicable, classified, and the information and materials, in any medium, including hard copy and electronic, coming to the attention of or placed in the custody of the Select Committee shall not be subject to the West Virginia Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code.

(d) The select committee may conduct proceedings in a confidential executive session for the purpose of conducting business, establishing policy, reviewing investigations, and interrogating a witness or witnesses.

(e) All witnesses appearing before the select committee shall testify under oath or affirmation, and any member of the select committee or its counsel may administer oaths or affirmations to such witnesses. To compel witnesses to attend a hearing or produce any books, records, documents, or papers, or any other tangible thing except where the records, documents, data, or items are protected from disclosure by privilege recognized by state or federal courts, the select committee may issue subpoenas, signed by one of the co-chairs: *Provided*, That the select committee may specifically authorize or delegate the power to any member of the select committee to sign subpoenas on its behalf. The subpoenas shall be served by any person authorized by law to serve and execute legal process, and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(f) If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the select committee shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and that court may compel obedience to the subpoena as though the subpoena had been issued by that court in the first instance: *Provided*, That prior to seeking circuit court relief, the select committee may, in its discretion, first demand the Secretary of Homeland Security or the director of the West Virginia Fusion Center under whom an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the select committee and address the basis for the failure to comply and whether compliance will be forthcoming.

(g) The select committee may direct the West Virginia Fusion Center to send its budgetary accounting to the State Auditor: *Provided*, That if budgetary expenditures are classified, or security or law enforcement sensitive such that disclosure would compromise an investigation, those entry descriptions, but not the expenditure amounts, may be redacted from the West Virginia Fusion Center accounting provided to the State Auditor: *Provided, however*, That the State Auditor shall bring any accounting issues of concern to the attention of the select committee, upon which the select committee shall subpoena the West Virginia Fusion Center for unredacted copies of the accounting items to be presented for explanation and justification of the necessity and legality of the concerns raised by the State Auditor. The select committee may take whatever action it deems necessary, if any, after review and analysis of the subpoenaed unredacted materials.

(h) The West Virginia Fusion Center shall report annually in writing by May 1st beginning in 2024 to the Joint Oversight Committee set forth in §15A-12-3 of this code regarding the performance of the West Virginia Fusion Center. The report must include: *(i)* an unclassified general narrative about the types of cases, crimes, incidents, and reports the West Virginia Fusion Center has reviewed and evaluated in a manner that protects the personal privacy of West Virginia citizens and the operational integrity of the West Virginia Fusion Center; the unclassified narrative must include both privacy audits performed in the prior year and de-identified information from those audits regarding the cases, crimes, incidents and reports on which the West Virginia Fusion Center worked during the prior year that were reviewed during the audits; and *(ii)* a classified specific narrative of any and all federally or state targeted individuals in the state of West Virginia and the nature of any known or suspected criminal or terrorist activity that such targeted individual are known or believed on probable cause to have conducted or to be conducting.

§15A-12-4. Memoranda of understanding required.

(a) Each governmental and nongovernmental entity participating in the West Virginia Fusion Center shall enter a memorandum of understanding between the West Virginia Fusion Center and the participating entity. The memorandum of understanding shall at a minimum:

(1) Provide a framework and working mechanism for the organization of the West Virginia Fusion Center to address issues that are common to city, county, state, and federal governments’ obligations to protect the safety and well-being of citizens and to enhance the success of the Fusion Center in responding to criminal, terrorist, and other threats to public safety through the achievement of coordination and cooperation;

(2) Clarify the working relationships between the governmental and nongovernmental entities and use limitations of shared information; and

(3) Outline the intent of the parties regarding the information provided by the governmental and non- governmental entities to the West Virginia Fusion Center.

(b) Nothing in any agreement shall obligate any nongovernmental entity to provide information nor establish any duty for any nongovernmental entity to assume any police or law enforcement responsibilities.

(c) Failure of any governmental or nongovernmental entity to abide by the restrictions and use limitations set forth by the West Virginia Fusion Center may result in the suspension or termination of use privileges, discipline sanctions imposed by the user’s employing agency, or criminal prosecution.

(d) Any and all interagency memoranda of understanding and participating public or private persons, organizations, entities, or agencies described in this section shall be subject to all restrictions and prohibitions described in this section and to unrestricted review, inspection and auditing by the select oversight committee and its counsel and staff.

(e) No information may be gathered or collected for any purpose other than legitimate law enforcement purposes. No information gathered or collected may be used for any non-law enforcement intelligence operations against U.S. citizens as set forth in any federal or state law or in contravention of the Constitution of the United States.

§15A-12-5. Confidentiality and immunity from service of process; penalties.

(a) Papers, records, documents, reports, materials, databases, or other evidence or information relative to criminal intelligence, any terrorism investigation, threat assessment, or information on infrastructure which if released would compromise the public safety in the possession of the West Virginia Fusion Center shall be confidential and shall not be subject to the West Virginia Freedom of Information Act (§29B-1-1 *et seq.* of this code): *Provided*, That this exemption from the West Virginia Freedom of Information Act may be lifted in the event a court determines in a state or federal whistleblower action that unlawful or unauthorized activity has taken place, and shall in no way restrict the Legislature’s select oversight committee from access to all such information. Every five years, the West Virginia Fusion Center shall conduct a review of information contained in any database maintained by the West Virginia Fusion Center. Data that has been determined not to have a nexus to criminal or terrorist activity shall be removed from such database. A reasonable suspicion standard shall be applied when determining whether or not information has a nexus to terrorist activity for non-U.S. citizens, but a probable cause standard shall apply for U.S. citizens: *Provided, however*, That all such determinations shall be reported to the Legislature’s select oversight committee at regularly scheduled oversight audit and committee meetings.

(b) No person having access to information maintained by the West Virginia Fusion Center shall be subject to subpoena in a civil action in any court of the state to testify concerning a matter of which he has knowledge pursuant to his access to criminal intelligence information maintained by the West Virginia Fusion Center.

(c) No person or agency receiving information from the West Virginia Fusion Center shall release or disseminate that information without prior authorization from the West Virginia Fusion Center.

(d) Intelligence data in the possession of a criminal or juvenile justice agency, state or federal regulatory agency, or peace officer, or disseminated by such agency or peace officer, are confidential records under §29B-1-1 *et seq.* of this code.

(e) Any person who: ~~knowingly~~

(1) Knowingly disseminates information in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $1,000, or be confined in jail for not more than 20 days, or both fined and confined. If such unauthorized dissemination results in death or serious bodily injury to another person, such person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years: *Provided*, That all state and federal Whistleblower Protection Act protections shall apply to any person whose disclosures are found to have been made to report or protect against violation or attempted violation of any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

(2) Intentionally, willfully, or knowingly violates any of the restrictions and prohibitions governing the operation of the Fusion Center or takes any action prohibited or restricted as set forth in §15A-12-1 *et seq*. of this code, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000, or be confined in shall be imprisoned in a state correctional facility not less than one nor more than five years, or both fined and imprisoned; and shall additionally be subject to separate criminal prosecution and penalties and civil liability for violations of civil rights.

(f) Any person, being an officer or employee of the United States, the State of West Virginia or of any department, agency, or political subdivision thereof, or any person from the private sector or industry assigned to or working with the West Virginia Fusion Center in any capacity, who knowingly publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by law, any critical infrastructure or national intelligence information protected from disclosure by this section coming to him or her in the course of his or her employment, affiliation, or official duties with the West Virginia Fusion Center, or by reason of any examination or investigation made by, return, report, or record made to or filed with, such department or agency, officer or employee thereof, shall be guilty of a felony and, upon conviction, be imprisoned in a state correctional facility for not less than one year, and shall be removed from office or employment and affiliation with the West Virginia Fusion Center: *Provided*, That all state and federal Whistleblower Protection Act protections shall apply to any person whose disclosures are found to have been made to report or protect against violation or attempted violation of any and all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

(g) The West Virginia Department of Homeland Security shall provide legal counsel to the West Virginia Fusion Center to serve as privacy and civil liberties counsel to the West Virginia Fusion Center. Such attorney shall advise the West Virginia Fusion Center director and its deputy director on all matters necessary to ensure compliance with all applicable federal and state privacy or civil liberties laws, obligations, restrictions, and prohibitions as set forth herein.

(h) For purposes of this article:

(1) "Criminal intelligence information" means data or information that has been evaluated and determined to be relevant to the identification and criminal activity of individuals or organizations that are reasonably suspected of involvement in criminal activity.

(2) "Critical Infrastructure" means systems and assets as defined in 42 U.S.C. § 5195c(e).

(3) "National Intelligence" means data or information determined to meet the definition stated in 50 U.S.C. §3003 (5): *Provided*, That Fusion Center activities and operations relating to National Intelligence shall at all times strictly abide by all restrictions and prohibitions against conducting non-law enforcement intelligence operations against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

§15A-12-7. Costs.

(a) The director, with approval of the cabinet secretary or deputy cabinet secretary, may enter into agreements with participating agencies or organizations, whether public or private, for their participation in the West Virginia Fusion Center. Such agreements: (1) Shall define the duties and responsibilities of each participating agency or organization; (2) may provide for payment by the participating agency or organization of a reasonable share of the cost to establish, maintain, and operate the West Virginia Fusion Center; and (3) shall require compliance with all requirements, restrictions, and prohibitions set forth in ~~this article~~ §15A-12-1 *et seq* of this code.

(b)(1) The West Virginia Fusion Center, with approval of the cabinet secretary or deputy cabinet secretary, may accept any ~~gift, grant, payment,~~ moneys~~,~~ or assets seized by forfeiture as a result of collaborative efforts ~~or contribution from any source, public or private,~~ for the purpose of ~~paying~~ reimbursing the costs ~~to establish, maintain, or operate~~ incurred by the West Virginia Fusion Center during the particular collaborative effort from which the moneys or assets were seized. Such ~~gift, grant, payment,~~ moneys~~,~~ or assets seized by forfeiture as a result of collaborative works or contribution may be in the form of ~~services,~~ equipment, supplies, materials, or funds. All amounts received under this section shall be remitted to the State Treasurer in accordance with chapter 12 of this code, and the amendments thereto. Upon receipt of each such remittance, the State Treasurer shall deposit the ~~entire~~ amount necessary to reimburse the costs incurred by the Fusion Center during the particular collaborative effort in the State Treasury to the credit of the West Virginia Fusion Center Fund, that is hereby created in the State Treasury and shall be administered by the West Virginia Department of Homeland Security in accordance with this article and subject to regular auditing and oversight by the Legislature’s select oversight committee. All amounts of money or assets seized which exceed the costs incurred by the Fusion Center, the State Treasurer shall deposit in the state’s Rainy Day fund.

(2) Moneys in the West Virginia Fusion Center Fund may be used by the director to pay any costs associated with establishing, maintaining, or operating the West Virginia Fusion Center. The director of the West Virginia Fusion Center Fund shall develop policy and procedures for purchasing, and expenditures shall be made in accordance with vouchers approved by the director or the director’s designee. Any gift, grant, payment, moneys, or any assets seized by forfeiture as a result of collaborative efforts, or contribution in any form other than funds may be accepted by the director, with approval of the cabinet secretary, and utilized and expended in any manner authorized by law to establish, maintain, or operate the West Virginia Fusion Center: *Provided*, That all moneys used by the director shall be subject to all restrictions and prohibitions set forth in this article, and also to regular auditing and oversight by the Legislature’s select oversight committee.

(3) The moneys credited to the fund created in subsection (b) of this section shall be used for the purposes set forth in this section and for no other governmental purposes. It is the intent of the Legislature that the moneys deposited in this fund shall remain intact and inviolate for the purposes set forth in this act.

NOTE: The purpose of this bill is to clarify security clearance and/or non-disclosure agreement requirements, the duties, functions, reporting requirements, prohibitions and restrictions applicable to the West Virginia Fusion Center and to add certain criminal penalties for violations of prohibitions and restrictions applicable to the West Virginia Fusion Center.

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