

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 5454

By Delegate Jennings

[Originating in the Committee on the Judiciary;

Reported on February 19, 2026]

1 A BILL to amend and reenact §15A-12-3 of the Code of West Virginia, 1931, as amended, relating
2 to the select committee for the West Virginia Fusion Center; modifying the powers of the
3 select committee; repealing the provision requiring the select committee to have security
4 clearance; providing for the select committee's access to the West Virginia Fusion Center;
5 clarifying records and systems to which the select committee does not have access;
6 providing for an annual audit of the Fusion Center by the Legislative Auditor; requiring the
7 audit be provided to the select committee by December 1 each year; establishing the
8 parameters of the annual audit; establishing best practices; precluding access to classified
9 information; allowing certain information to be withheld; clarifying the effect of violations of
10 Fusion Center rules; and allowing criminal referrals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. WEST VIRGINIA FUSION CENTER.

§15A-12-3. Joint Oversight Committee.

1 (a) The Speaker of the House of Delegates and President of the Senate shall establish a
2 select committee which shall have oversight of the ~~information collected by the West Virginia~~
3 ~~Fusion Center to ensure the proper collection, dissemination, storage, and destruction of~~
4 ~~information or intelligence~~ Fusion Center operates fairly, impartially, and effectively. The
5 committee shall be composed of: (1) The Speaker of the House of Delegates and four members of
6 the House of Delegates, to be appointed by the Speaker of the House of Delegates, no more than
7 two of whom shall be appointed from the same political party; and (2) the President of the Senate
8 and four members of the Senate, to be appointed by the President of the Senate, no more than two
9 of whom shall be from the same political party; and counsel and staff to the Speaker and the
10 Senate President: *Provided*, That in the event the membership of a political party is less than 15
11 percent in the House of Delegates or Senate, then the membership of that political party from the
12 legislative house with less than 15 percent membership may be one from that house. The
13 committee shall be chaired by the President of the Senate and the Speaker of the House of

Delegates. 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 the appropriate security clearance in order to obtain information that is classified 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.~~

(b) Members of the select committee with their counsel and 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.~~ as follows:

(1) The Fusion Center shall make facilities, systems, records, and personnel reasonably available to the select committee during regular operating hours;

(2) Access to such facilities, systems, records, and personnel outside of regular operating hours shall be by mutual agreement between the select committee and the Fusion Center;

(3) On-site access shall comply with all Fusion Center security and visitor-control procedures; and

(4) Access shall not be given to:

(A) Classified system, facilities, or information, as determined by the federal government;

(B) Local, state, or federal partner systems, networks, facilities, or data repositories that are owned or administered by other agencies; and

(C) Any personal identifiers, aliases, addresses, and particular content of personally identifiable information (PII) of persons, privacy, civil rights, and civil liberties of any person lawfully within the United States.

(c) Meetings of the select committee shall be confidential and the any 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 select committee or Legislative Auditor 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.~~

(f) The Legislative Auditor shall conduct an annual audit of the Fusion Center to ensure that the Fusion Center operates within legal parameters. The audit shall be completed and provided to the select committee by December 1 each year. The audit shall review:

(1) All non-classified operations of the Fusion Center for the preceding federal fiscal year, October 1 through September 30;

(2) All non-classified records of internal investigations where the Fusion Center knowingly participated in activity, knowingly cooperated with a federal agency, or knowingly cooperated with a contractor for any federal agency that involved illegal or improper actions;

(3) All non-classified records of disciplinary action taken against employees or contractors who have knowingly participated in activity, knowingly cooperated with a federal agency, or knowingly cooperated with a contractor for any federal agency engaged in illegal activity or improper actions;

(4) All non-classified records that demonstrate the steps taken to exclude federal agencies or federal contractors from working inside the Fusion Center when it was known or there was

reason to know that the federal agencies or federal contractors intended to engage in unlawful intelligence-gathering activity against a citizen of West Virginia;

(5) All non-classified steps taken by the Fusion Center, cabinet secretary and deputy cabinet secretary for the West Virginia Department of Homeland Security to oversee the Fusion Center that:

(A) Facilitate and implement applicable federal standards and programs;

(B) Ensure compliance with all applicable laws and federal requirements;

(C) Maintain proper separation between military and civilian capacities; and

(D) Ensure the resources of the Fusion Center are used in a legal and proper manner.

(6) All non-classified information that demonstrates compliance with the provisions of 28 C.F.R. Part 23;

(7) All certifications in writing under 28 C.F.R. §23.30 that the secretary or his/her designee has taken full responsibility and is accountable for the information maintained and disseminated by the Fusion Center and that the operation of the Fusion Center is in compliance with the applicable federal requirements;

(8) The results, findings, and corrective actions taken as a result of any audit conducted pursuant to the provisions of 28 C.F.R. §23.40;

(9) The annual training of Fusion Center employees, making recommendations for improvement, if any;

(10) All security incidents;

(11) The purchasing process of the Fusion Center, and its compliance with applicable law and regulation;

(12) The policies for safeguarding, storing, and destroying sensitive information;

(13) The physical security of the Fusion Center, its systems and space;

(14) All non-classified equipment and software used by the Fusion Center; and

(15) All memoranda of understanding entered into by the Fusion Center;

117 (g) The audit shall also recommend best practices for the Fusion Center to:

118 (1) Ensure that the Fusion Center adheres to 28 C.F.R. Part 23 and any other federal or
119 state law designed to protect privacy and the other legal rights of individuals; and,

120 (2) Provide for the smooth exchange of information among all agencies participating in the
121 Fusion Center.

122 (h) The annual audit shall not include examination of, or access to, local, state, or federal
123 partner systems, networks, facilities, or data repositories that are owned or administered by other
124 agencies. The annual audit shall also not include examination of any classified systems, facilities
125 or information.

126 (i) Any personal identifiers, aliases, addresses, and particular content of personally
127 identifiable information (PII) of persons, privacy, civil rights, and civil liberties of any person lawfully
128 within the United States are beyond the scope of the annual audit and shall be appropriately
129 anonymized and aggregated to the extent necessary for the protection of sensitive information.

130 (j) An audit finding of an intentional violation of 28 C.F.R. Part 23, other applicable state or
131 federal laws or regulations, or any egregious, illegal, malicious, or willfully negligent conduct by a
132 Fusion Center employee or embedded partner shall be grounds for revocation of access to the
133 Fusion Center and may result in termination of employment. Any such findings shall be referred to
134 the appropriate law-enforcement agency for investigation, and, if warranted, prosecution.