

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3055

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[Introduced March 10, 2021; Referred to the
Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated, §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5, §5-30-6, §5-30-7, §5-30-8, §5-
 3 30-9, and §5-30-10, all relating to creating the “Council on Efficient Government;”
 4 providing a purpose of ensuring that each state agency focuses on its core mission and
 5 delivers goods and services effectively and efficiently by leveraging resources and
 6 contracting with private sector vendors, if those vendors can more effectively and
 7 efficiently provide goods and services and reduce the cost of government; evaluating for
 8 feasibility, cost effectiveness, and efficiency business cases to be outsourced before a
 9 state agency proceeds with any outsourcing of goods or services; providing for a review
 10 process by the Governor’s office; defining applicability; and setting terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. COUNCIL ON EFFICIENT GOVERNMENT ACT.

§5-30-1. Title.

1 This article shall be known and may be cited as the Council on Efficient Government Act.

§5-30-2. Council on Efficient Government; members; terms; vacancies.

1 (a) The Council on Efficient Government is established consisting of the following
 2 members:

3 (1) The chief executive or administrative officer of a state agency who is appointed by the
 4 Governor.

5 (2) Two members who are engaged in private enterprise and who are appointed by the
 6 Governor.

7 (3) Two members who are engaged in private enterprise and who are appointed by the
 8 President of the Senate.

9 (4) Two members who are engaged in private enterprise and who are appointed by the
 10 Speaker of the House of Delegates.

11 (b) The terms of appointment to the council are for two years unless the chief executive

12 or administrative officer of a state agency ceases to hold office. The Governor shall appoint a
13 replacement member for the remainder of the unexpired term.

14 (c) A member of the Council who is engaged in private enterprise is not eligible to receive
15 compensation but is eligible for reimbursement of expenses, pursuant to state statute.

16 (d) A member of the Council may not participate in a council review of a business case to
17 outsource if the state agency is conducting the proposed outsourcing or, in the case of a member
18 engaged in private enterprise, if the member has a business relationship with an entity that is
19 involved or potentially could be involved in the proposed outsourcing.

20 (e) A member of the Council who is engaged in private enterprise may not delegate the
21 membership to a designee.

22 (f) A quorum shall consist of at least four members of the council.

23 (g) Any vacancy on the Council shall be filled in the same manner as the original
24 appointment, and any member appointed to fill a vacancy occurring for a reason other than the
25 expiration of a term serves only for the unexpired term of the member's predecessor.

26 (h) The Council shall select a chairperson from among its members.

§5-30-3. Powers and duties of the council; annual report.

1 (a) The Council shall:

2 (1) Review whether or not a good or service provided by a state agency could be privatized
3 to provide the same type and quality of good or service that would result in cost savings or best
4 value. The Council may hold public hearings as part of its evaluation process and shall report its
5 recommendations to the Governor, the President of the Senate and the Speaker of the House of
6 Delegates.

7 (2) Review privatization of a good or service at the request of a state agency or a private
8 enterprise.

9 (3) Review issues concerning agency competition with one or more private enterprises to
10 determine ways to eliminate any unfair competition with a private enterprise.

11 (4) Recommend privatization to a state agency if a proposed privatization is demonstrated
12 to provide a more cost efficient or more effective manner of providing a good or service.

13 (5) Comply with §5-30-4 and §5-30-5 of this code.

14 (6) Employ a standard process for reviewing business cases to outsource.

15 (7) Review and evaluate business cases to outsource as requested by the Governor or
16 the state agency head whose agency is proposing to outsource.

17 (8) No later than 30 days before a state agency's issuance of a solicitation of \$10 million
18 or more, provide to the state agency conducting the procurement, the Governor, the President of
19 the Senate and the Speaker of the House of Delegates, an advisory report for each business case
20 reviewed and evaluated by the council. The report must contain all versions of the business case,
21 an evaluation of the business case, any relevant recommendations and sufficient information to
22 assist the state agency proposing to outsource in determining whether the business case to
23 outsource should be included with the legislative budget request.

24 (9) Recommend and implement standard processes for state agency and council review
25 and evaluate state agency business cases to outsource, including templates for use by state
26 agencies in submitting business cases to the council.

27 (10) Recommend standards, processes and guidelines for use by state agencies in
28 developing business cases to outsource.

29 (11) Incorporate any lessons learned from outsourcing services and activities into council
30 standards, procedures and guidelines, as appropriate, and identify and disseminate to agencies
31 information regarding best practices in outsourcing efforts.

32 (12) Develop guidelines for assisting state employees whose jobs are eliminated as a
33 result of outsourcing.

34 (13) Receive complaints of violations of this article.

35 (14) Transmit complaints received under this section to the state agency alleged to be in
36 violation.

37 (15) Hold public hearings on complaints and determine whether the agency is in violation
38 of this article.

39 (16) Issue a written report of its findings to the complainant within 90 days after receiving
40 the state agency's response.

41 (17) Transmit to the Governor, the President of the Senate and the Speaker of the House
42 of Delegates a complete report of each meeting, including recommendations to correct violations
43 of prohibitions on competition with private enterprise and findings on necessary exceptions to the
44 prohibitions.

45 (18) Solicit petitions of interest from private sector service providers as the council
46 considers appropriate. The council may evaluate and review the petitions and may hold public
47 hearings as part of the evaluation process. The council may recommend some or all of the
48 petitions to the Governor's office for further review pursuant to state statute. A person does not
49 have a cause of action based on the failure of the council to consider a petition of interest or make
50 a recommendation.

51 (b) The council may evaluate and review all state agency exemptions and exemptions to
52 the restrictions on competition with private enterprise in this article and may determine that any
53 function or functions of state agency are in violation of this article. The council shall report its
54 findings and recommendations to the Governor, the President of the Senate and the Speaker of
55 the House of Delegates.

56 (c) The council shall prepare an annual report on:

57 (1) Recommendations on innovative methods of delivering government services that
58 would improve the efficiency, effectiveness or competition in the delivery of government services,
59 including enterprise-wide proposals.

60 (2) Outsourcing efforts of each state agency, including the number of outsourcing business
61 cases and solicitations, the number and dollar value of outsourcing contracts, descriptions of
62 performance results as applicable, any contract violations or project slippages and the status of

63 extensions, renewals and amendments of outsourcing contracts.

64 (3) Information about the council's activities.

65 (4) The status of the inventory created under §5-30-4 of this code.

66 (d) The council shall submit the annual report prescribed by subsection (c) of this section
67 to the Governor, the President of the Senate and the Speaker of the House of Delegates no later
68 than January 15 immediately following the calendar year for which the report is made. The council
69 shall provide an oral report to the Joint Committee on Government and Finance and the
70 Governor's budget office when the Legislature is not in session.

71 (e) The Auditor shall employ an adequate number of staff who collectively possess'
72 significant expertise and experience as required to carry out the responsibilities of this article.

73 (f) Each state agency shall submit to the council all information, documents and other
74 materials required by the council pursuant to this article.

75 (g) At the request of the council and on approval of the Legislative Auditor, the Auditor
76 shall provide performance audit and other required information relating to state agency budgets
77 and functions. The Auditor may assist in the development and review of the agency inventory of
78 commercial activities prescribed in §5-30-4 of this code.

79 (h) In addition to filing a copy of recommendations for privatization with an agency head,
80 the council shall file a copy of its recommendations for privatization with the Governor's office, the
81 Joint Committee on Government and Finance and the Governor's budget office for submission to
82 the relevant legislative appropriation subcommittee.

83 (i) The council may appoint advisory groups to conduct studies, research or analyses and
84 make reports and recommendations with respect to a matter within the jurisdiction of the council.
85 At least one member of the council shall serve on each advisory group.

86 (j) Subject to §5-30-5(b) of this code does not preclude a state agency from privatizing the
87 provision of a good or service independent of the council.

88 (k) Except as provided by this section, any aggrieved person may elect to directly seek

89 judicial relief.

§5-30-4. Commercial activities inventory and review.

1 (a) On or before a date selected by the Legislature, the council shall create an inventory
2 of activities of state agencies to classify whether each activity or elements of the activity are:

3 (1) A commercial activity that can be obtained, in whole or in part, from a private enterprise.

4 (2) An inherently governmental activity.

5 (b) The council shall update the inventory created under this section at least every two
6 years.

7 (c) The council shall make the inventory available to the public through electronic means.

8 (d) State agencies shall cooperate with inventory requests made by the council.

§5-30-5. Business cases to outsource; review and analysis; requirements.

1 (a) A proposal to outsource having a projected cost of more than \$10 million in any fiscal
2 year shall require:

3 (1) An initial business case analysis conducted by the state agency and submitted to the
4 Council, the Governor, the President of the Senate and the Speaker of the House of Delegates
5 at least 60 days before a solicitation is issued. The Council shall evaluate the business case
6 analysis and submit an advisory report to the state agency, the Governor, the President of the
7 Senate and the Speaker of the House of Delegates when the advisory report is completed, but at
8 least 30 days before the agency issues the solicitation.

9 (2) A final business case analysis conducted by the state agency and submitted after the
10 conclusion of any negotiations, at least 30 days before execution of a contract, to the council, the
11 Governor, the President of the Senate and the Speaker of the House of Delegates.

12 (b) A proposal to outsource having a projected cost of at least \$1 million but not more than
13 \$10 million in any fiscal year shall require:

14 (1) An initial business case analysis conducted by the state agency and submission of the
15 business case, at least 30 days before issuing a solicitation, to the Council, the Governor, the

16 President of the Senate and the Speaker of the House of Delegates.

17 (2) A final business case analysis conducted by the state agency and submitted after the
18 conclusion of any negotiations, at least 30 days before execution of a contract, to the Council, the
19 Governor, the President of the Senate and the Speaker of the House of Delegates.

20 (c) A business case to outsource having a projected cost of less than one million dollars
21 in any fiscal year shall require a final business case analysis conducted by the state agency after
22 the conclusion of any negotiations and provided to the council at least thirty days before execution
23 of a contract. The Council shall provide the business cases in its annual report to the President
24 of the Senate and the Speaker of the House of Delegates.

25 (d) For any proposed outsourcing, the state agency shall develop a business case that
26 justifies the proposal to outsource. The business case is not subject to challenge or protest. The
27 business case must include:

28 (1) A detailed description of the service or activity for which the outsourcing is proposed.

29 (2) A description and analysis of the state agency's current performance based on existing
30 performance measures if the state agency is currently performing the service or activity.

31 (3) The goals desired to be achieved through the proposed outsourcing and the rationale
32 for the goals.

33 (4) A citation to the existing or proposed legal authority for outsourcing the service or
34 activity.

35 (5) A description of available options for achieving the goals. If state employees are
36 currently performing the service or activity, at least one option involving maintaining state
37 provision of the service or activity shall be included.

38 (6) An analysis of the advantages and disadvantages of each option, including, at a
39 minimum, potential performance improvements and risks.

40 (7) A description of the current market for the contractual services that are under
41 consideration for outsourcing.

42 (8) A cost benefit analysis documenting the direct and indirect specific baseline costs,
43 savings and qualitative and quantitative benefits involved in or resulting from the implementation
44 of the recommended option or options. The analysis must specify the schedule that, at a
45 minimum, must be adhered to in order to achieve the estimated savings. All elements of cost
46 must be clearly identified in the cost benefit analysis, described in the business case and
47 supported by applicable records and reports. The state agency head shall attest that based on
48 the data and information underlying the business case and to the best of the state agency head's
49 knowledge all projected costs, savings and benefits are valid and achievable. For the purposes
50 of this paragraph:

51 (A) "Cost" means the reasonable, relevant and verifiable cost, which may include elements
52 such as personnel, materials and supplies, services, equipment, capital depreciation, rent,
53 maintenance and repairs, utilities, insurance, personnel travel, overhead and interim and final
54 payments. The appropriate elements shall depend on the nature of the specific initiative.

55 (B) "Savings" means the difference between the direct and indirect actual annual baseline
56 costs compared to the projected annual cost for the contracted functions or responsibilities in any
57 succeeding state fiscal year during the term of the contract.

58 (9) A description of differences among current state agency policies and processes and,
59 as appropriate, a discussion of options for or a plan to standardize, consolidate or revise current
60 policies and processes, if any, to reduce the customization of any proposed solution that would
61 otherwise be required.

62 (10) A description of the specific performance standards that must, at a minimum, be met
63 to ensure adequate performance.

64 (11) The projected time frame for key events from the beginning of the procurement
65 process through the expiration of a contract.

66 (12) A plan to ensure compliance with the public records law.

67 (13) A specific and feasible contingency plan addressing contractor nonperformance and

68 a description of the tasks involved in and costs required for its implementation.

69 (14) A state agency's transition plan for addressing changes in the number of agency
70 personnel, affected business processes, employee transition issues and communication with
71 affected stakeholders, such as agency clients and the public. The transition plan must contain a
72 reemployment and retraining assistance plan for employees who are not retained by the state
73 agency or employed by the contractor.

74 (15) A plan for ensuring access by persons with disabilities in compliance with applicable
75 state and federal law.

76 (16) A description of legislative and budgetary actions necessary to accomplish the
77 proposed outsourcing.

78 (e) Each contract for a proposed outsourcing pursuant to this section shall include the
79 following:

80 (1) A scope-of-work provision that clearly specifies each service or deliverable to be
81 provided, including a description of each deliverable or activity that is quantifiable, measurable
82 and verifiable. This provision must include a clause stating that if a particular service or
83 deliverable is inadvertently omitted or not clearly specified but determined to be operationally
84 necessary and verified to have been performed by the agency within the twelve months before
85 the execution of the contract, the service or deliverable will be provided by the contractor through
86 the identified contract amendment process.

87 (2) A service level agreement provision describing all services to be provided under the
88 terms of the agreement, the state agency's service requirements and performance objectives,
89 specific responsibilities of the state agency and the contractor and the process for amending any
90 portion of the service level agreement. Each service level agreement must contain an exclusivity
91 clause that allows the state agency to retain the right to perform the service or activity, directly or
92 with another contractor, if service levels are not being achieved.

93 (3) A provision that identifies all associated costs, specific payment terms and payment

94 schedules, including provisions governing incentives and financial disincentives and criteria
95 governing payment.

96 (4) A provision that identifies a clear and specific transition plan that will be implemented
97 in order to complete all required activities needed to transfer the service or activity from the state
98 agency to the contractor and operate the service or activity successfully.

99 (5) A performance standards provision that identifies all required performance standards,
100 which must include at a minimum:

101 (A) Detailed and measurable acceptance criteria for each deliverable and service to be
102 provided to the state agency under the terms of the contract that document the required
103 performance level.

104 (B) A method for monitoring and reporting progress in achieving specified performance
105 standards and levels.

106 (C) The sanctions or disincentives that will be imposed for nonperformance by the
107 contractor or state agency.

108 (6) A provision that requires the contractor and its subcontractors to maintain adequate
109 accounting records that comply with all applicable federal and state laws and generally accepted
110 accounting principles.

111 (7) A provision that authorizes the state agency to have access to and audit all records
112 related to the contract and subcontracts, or any responsibilities or functions under the contract
113 and subcontracts, for purposes of legislative oversight and a requirement for audits by a service
114 organization pursuant to professional auditing standards, if appropriate.

115 (8) A provision that requires the contractor to interview and consider for employment with
116 the contractor each displaced state employee who is interested in such employment.

117 (9) A contingency plan provision that describes the mechanism for continuing the
118 operation of the service or activity, including transferring the service or activity back to the state
119 agency or successor contractor, if the contractor fails to perform and comply with the performance

120 standards and levels of the contract and the contract is terminated.

121 (10) A provision that requires the contractor and its subcontractors to comply with public
122 records laws specifically to:

123 (A) Keep and maintain the public records that ordinarily and necessarily would be required
124 by the state agency in order to perform the service or activity.

125 (B) Provide the public with access to the public records on the same terms and conditions
126 that the state agency would provide the records.

127 (C) Ensure that records that are exempt or records that are confidential and exempt are
128 not disclosed except as authorized by law.

129 (D) Meet all requirements for retaining records and transfer to the state agency, at no cost,
130 all public records in possession of the contractor on termination of the contract and destroy any
131 duplicate public records that are exempt or confidential. All records stored electronically must be
132 provided to the state agency in a format that is compatible with the information technology
133 systems of the state agency.

134 (11) A provision that addresses ownership of intellectual property. This paragraph does
135 not provide the specific authority needed by a state agency to obtain a copyright or trademark.

136 (12) If applicable, a provision that allows the state agency to purchase from the contractor,
137 at its depreciated value, assets used by the contractor in the performance of the contract. If assets
138 have not depreciated, the state agency shall retain the right to negotiate to purchase at an agreed
139 on cost.

§5-30-6. Council accounting method.

1 The council, by rule, shall establish an accounting method that:

2 (a) Is similar to generally accepted accounting principles used by a private enterprise.

3 (b) Allows an agency to identify the total actual cost of engaging in a commercial activity
4 in a manner similar to how a private enterprise identifies the total actual cost to the private
5 enterprise, including the following:

6 (1) Labor expenses, such as compensation and benefits, costs of training, costs of paying
7 overtime, costs of supervising labor or other personnel expenses.

8 (2) Operating costs, such as vehicle maintenance and repair, marketing, advertising or
9 other sales expenses, office expenses, costs of an accounting operation such as billing, insurance
10 expenses, real estate or equipment costs, debt service costs or a proportionate amount of other
11 overhead or capital expenses, such as vehicle depreciation and depreciation of other fixed assets.

12 (3) Contract management costs.

13 (4) Other costs particular to a person supplying the good or service.

14 (c) Provides a process to estimate the taxes a state agency would pay related to engaging
15 in a commercial activity if the state agency were required to pay federal, state and local taxes to
16 the same extent as a private enterprise engaging in the commercial activity.

§5-30-7. Governor; required review of commercial activities.

1 Beginning with a fiscal year the legislature designates, the Governor, at least once every
2 two fiscal years, shall select at least three commercial activities that are being performed by a
3 state agency to be examined by the Governor's Office of Strategic Planning and Budgeting.

§5-30-8. Duties of the Governor's budget office.

1 (a) The Governor's budget office shall:

2 (1) Determine the amount of an appropriation that is no longer needed by an executive
3 branch agency because all or a portion of the agency's provision of a good or service is privatized.

4 (2) Adjust the Governor's budget recommendations to reflect the amount that is
5 determined under subdivision (1) of this subsection.

6 (3) Report its findings to the President of the Senate and the Speaker of the House of
7 Delegates.

8 (b) This section does not prevent the Governor from making a budget recommendation
9 regarding the restoration of a portion of the appropriation to a state agency that is reduced under
10 this section.

§5-30-9. Applicability.

1 This article does not apply to contracts in support of the planning, development,
2 implementation, operation or maintenance of the road, bridge and public transportation
3 construction program of the Department of Transportation.

§5-30-10. Initial terms of members of the Council on Efficient Government.

1 Notwithstanding §5-30-2 of this code, the initial members of the Council on Efficient
2 Government who are engaged in private enterprise shall assign themselves by lot to terms of one
3 or two years in office. The appointing authority shall make all subsequent appointments as
4 prescribed by statute.

NOTE: The purpose of this bill is to create the “Council on Efficient Government;” to provide a purpose of ensuring that each state agency focuses on its core mission and delivers goods and services effectively and efficiently by leveraging resources and contracting with private sector vendors, if those vendors can more effectively and efficiently provide goods and services and reduce the cost of government; and to evaluate for feasibility, cost effectiveness, and efficiency business cases to be outsourced before a state agency proceeds with any outsourcing of goods or services.

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