

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 505

FISCAL
NOTE

BY SENATOR UNGER

[Introduced March 1, 2021; referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend and reenact §4-2-1 and §4-2-4 of the Code of West Virginia, 1931, as amended;
 2 to amend said code by adding thereto a new section, designated §4-2-6a; and to amend
 3 and reenact §4-3-3c of said code, all relating to the establishment of the Office of
 4 Regulatory and Fiscal Affairs under the Joint Committee on Government and Finance;
 5 clarifying the duties of the Legislative Auditor; creating the Office of Regulatory and Fiscal
 6 Affairs as an advisory body to the Legislature; establishing processes for the conduct of
 7 fiscal notes and economic impact analysis; requiring state agencies to provide information
 8 to the Office of Regulatory and Fiscal Affairs upon request; authorizing certain members
 9 of the Legislature to request an economic impact analysis of the rules of the state;
 10 permitting the chairs of the Joint Committee on Government and Finance to request
 11 certain performance reviews and analysis of existing statutes; and clarifying the
 12 organization of joint legislative agencies.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; DUTIES;
 COMPENSATION.**

§4-2-1. Purpose of article.

1 The purpose of this article is to provide for the more expeditious and efficient study and
 2 management of the financial problems which at each session confront the Legislature, to provide
 3 a way for the Legislature to analyze the economic impact of existing and new rules, and to provide
 4 a tighter and more economical control by the Legislature over the revenues and expenditures of
 5 the state.

§4-2-4. Duties of Auditor; filing reports.

1 (a) It is the duty of the Legislative Auditor to:
 2 (1) Compile fiscal information for the Senate and the House of Delegates, to including the
 3 fiscal information and economic analysis required by §4-2-6a of this code;

4 (2) Make a continuous audit and analysis of the state budget, revenues and expenditures,
5 during and between sessions of the Legislature; ~~to~~

6 (3) Make post audits of the revenues and expenditures of the spending units of the state
7 government, at least once every two years, if practicable; ~~to~~

8 (4) Report any misapplication of state funds or erroneous, extravagant or unlawful
9 expenditures by any spending unit; ~~to~~ and

10 (5) Ascertain facts and to make recommendations to the Legislature concerning post-audit
11 findings, the revenues and expenditures of the state and of the organization and functions of the
12 state and its spending units.

13 (b) The Legislative Auditor may collect, and the department, agency or board shall pay,
14 any or all of the costs associated with conducting the post audits from the department, agency or
15 board being audited, when necessary and desirable. The Legislative Auditor shall render to the
16 department, agency or board liable for the costs a statement of the costs as soon after the costs
17 were incurred as practicable, and it is the duty of the department, agency or board to pay promptly
18 in the manner that other claims and accounts are paid. All money received by the Legislative
19 Auditor from this source shall be expended only for the purpose of covering the costs associated
20 with such services, unless otherwise directed by the Legislature.

21 (c) A copy of each report of audit when completed and certified shall be filed ~~in the office~~
22 ~~of~~ with the Department of ~~finance and~~ Administration as a public record and a copy shall be filed
23 with the Attorney General for any action he or she may consider necessary.

**§4-2-6a. Office of Regulatory and Fiscal Affairs established; fiscal note and economic
impact analysis process authorized.**

1 (a) In order to better ascertain both the fiscal impact of proposed legislation and the
2 economic impact of legislative rules promulgated pursuant to §29A-3-1 et seq. of this code, the
3 Office of Regulatory and Fiscal Affairs is hereby established under the Joint Committee on
4 Government and Finance as an advisory body to the West Virginia Legislature. The office, under

5 the supervision and management of the Legislative Auditor, shall provide the Legislature with
6 fiscal and economic analysis of proposed legislation and legislative rules as set forth in this
7 section.

8 (b) Fiscal notes. –

9 (1) Prior to any committee of the Legislature reporting a bill to the floor, any bill which
10 either increases or decreases the revenue or fiscal liability of the state, or any county, municipality
11 or other subdivision of the state by \$1 million, or in any manner changes or modifies any existing
12 tax or rate of taxation shall have attached thereto a fiscal note from the Office of Regulatory and
13 Fiscal Affairs. It is the responsibility of the legislator introducing a bill to obtain the fiscal note from
14 the office when required.

15 (2) Whenever a committee of either house reports a measure with an amendment which
16 alters the fiscal impact of the measure by more than \$1 million, there shall be attached thereto a
17 fiscal note delineating the fiscal impact of the proposed amendment, to the extent practicable.
18 The committee chairperson, or alternatively the amendment sponsor, shall request any such note
19 from the office.

20 (3) To the extent that any floor amendment would alter the fiscal impact of a measure by
21 more than \$1 million, and no fiscal note accompanies the proposed floor amendment, any
22 member of the house considering the amendment may offer a motion that consideration of the
23 amendment be postponed one day, pending the completion of a fiscal note by the Office of
24 Regulatory and Fiscal Affairs.

25 (4) The Office of Regulatory and Fiscal Affairs is responsible for obtaining any and all
26 information necessary to complete a required fiscal note, which shall conform to the requirements
27 as to form and content as prescribed by the Clerks of the Senate and the House of Delegates:
28 Provided, That every fiscal note shall include the following:

29 (A) An estimate in dollars, if available, from the Office of Regulatory and Fiscal Affairs of
30 the immediate and long-range fiscal impacts of the measure. If no dollar estimate is available, the

31 fiscal note shall set forth the reasons therefor;

32 (B) A detailed breakdown of the costs of the fiscal impacts of the measure, including, but
33 not limited to, any fiscal impact on personal services, current expenses, repairs and alterations,
34 assets, or such other relevant information as the Office of Regulatory and Fiscal Affairs considers
35 appropriate;

36 (C) The name of the agency, if any, furnishing information required by the office for
37 completion of the fiscal note;

38 (D) An analysis of any fiscal notes prepared by the agency or agencies impacted by the
39 measure;

40 (E) Any discernable economic impact the measure may have on the revenues of the state;
41 and

42 (F) To the extent practicable, an assessment of the potential compliance costs to the public
43 of conforming to the proposed measure.

44 (5) To the extent that additional information is required by the Office of Regulatory and
45 Fiscal Affairs from another agency, the information shall be provided by the agency to the office
46 within 24 hours of the request. Any officer or agency involved in the preparation of the required
47 information for a fiscal note shall keep in strict confidence the subject matter of the proposed
48 legislation, and corresponding fiscal note, unless authorized otherwise by the sponsor of the
49 legislation prior to its introduction in the Legislature.

50 (6) The requirement of a fiscal note may be waived by a majority vote of either house of
51 the Legislature, or by a majority of the members of a committee considering the measure, and
52 failure to include a fiscal note is not grounds to challenge the constitutionality of any measure.

53 (7) A fiscal note is not required for the Budget Bill, any supplemental appropriation or any
54 measure impacting state funds for retirement or pension purposes only.

55 (c) *Economic impact analysis.* –

56 (1) The Office of Regulatory and Fiscal Affairs, in conjunction with an economist employed

57 by the Joint Committee on Government and Finance, shall perform an economic impact analysis
58 pursuant to the provisions of this subsection for any legislative rule submitted to the Legislature
59 in accordance with §29A-3-9 of this code.

60 (2) When an agency finally approves a proposed legislative rule for submission to the
61 Legislature, the Office of Regulatory and Fiscal Affairs shall conduct an initial economic analysis
62 of the rule to determine the potential fiscal and economic impact of the rule. In performing its
63 analysis, the office may consider, but not exclusively rely upon, any fiscal note or economic impact
64 statement provided by the agency in accordance with §29A-3-11(a)(5) of this code. If the office
65 independently determines that the rule could have a fiscal or economic impact greater than \$1
66 million, then the office shall perform a full economic impact analysis in accordance with
67 subdivision (3) of this subsection.

68 (3) An economist employed by the Joint Committee on Government and Finance shall
69 conduct an economic impact analysis for any agency-approved legislative rule with a fiscal or
70 economic impact greater than \$1 million, as determined by the Office of Regulatory and Fiscal
71 Affairs. The economic impact analysis conducted shall include the following:

72 (A) A statement of need;

73 (B) The legal basis for the rule and whether the rule is mandatory by law or discretionary
74 on the part of the proposing agency;

75 (C) An examination of alternatives to the proposed rule;

76 (D) An evaluation of costs and benefits, including:

77 (i) Estimated primary or direct benefits;

78 (ii) Estimated cost savings or financial benefits to the citizens of West Virginia;

79 (iii) Estimated compliance costs for regulated entities;

80 (iv) Estimated secondary or indirect costs;

81 (v) Estimated impact on state revenue;

82 (vi) Estimated impact on state expenditures, including estimated administrative expenses;

83 (vii) Estimated opportunity cost of compliance resulting from the removal of private capital
84 from the market;

85 (viii) An evaluation of any potential adverse impacts on small businesses;

86 (ix) Any estimated costs, savings or impacts of proposed alternatives to the rule; and

87 (x) The net financial impact of the rule as well as any proposed alternatives to the rule.

88 (E) The sources consulted by the economist, and

89 (F) Any key assumptions made or areas of uncertainty.

90 (4) An economic impact analysis shall also be performed pursuant to the provisions of this
91 subsection for any legislative rule being renewed in accordance with §29A-3-19(d) of this code.

92 (5) The Office of Regulatory and Fiscal Affairs shall conduct an economic impact analysis
93 for any rule, including any existing legislative rule or agency proposed rule, upon request of either
94 the President of the Senate or the Speaker of the House of Delegates, either of the chairs of the
95 Legislative Rule-Making Review Committee, or either Minority Leader for the Senate or the House
96 of Delegates: *Provided*, That no such person may request an economic impact analysis for more
97 than three rules during a calendar year.

98 (6) A copy of any economic impact analysis shall be filed with the Secretary of State for
99 publication with the agency-approved rule.

100 (7) The requirements of this subsection do not apply to legislative exempt rules in
101 accordance with §29A-3-4 of this code.

102 (d) Upon request of the chairs of the Joint Committee on Government and Finance, and
103 under the supervision of the Legislative Auditor, the Office of Regulatory and Fiscal Affairs may
104 assist with a performance review or economic analysis of specific laws, rules of the state to
105 determine the effectiveness of the measure in achieving initial legislative intent, the continuing
106 impact of such a measure, and whether the measure under review should be continued, amended
107 or terminated.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-3c. Reorganization of joint legislative agencies.

- 1 (a) The Joint Committee on Government and Finance has the authority over and direction
 2 of joint legislative agencies, personnel and services, including, but not limited to, the following:
- 3 (1) The Commission on Special Investigations provided for in §4-5-1 *et seq.* of this code;
- 4 (2) The ~~Court of~~ West Virginia Legislative Claims Commission provided for in §14-2-1 *et*
 5 *seq.* of this code and crime victims compensation provided for in §14-2A-1 *et seq.* of this code;
- 6 (3) The Legislative Auditor provided for in §4-2-1 *et seq.* of this code;
- 7 (4) The Legislative Rule-Making Review Committee provided for in §29A-3-1 *et seq.* of
 8 this code;
- 9 (5) The Office of Regulatory and Fiscal Affairs provided for in §4-2-6a of this code;
- 10 ~~(5)~~ (6) The legislative reference library provided for in section three of this article;
- 11 ~~(6)~~ (7) The legislative automated systems division;
- 12 ~~(7)~~ (8) Legislative Services;
- 13 ~~(8)~~ (9) Public information; and
- 14 ~~(9)~~ (10) Joint services provided by one or more of the joint agencies set forth in this
 15 subsection. The following joint services are included:
- 16 (A) Bill drafting;
- 17 (B) Budget analysis;
- 18 (C) Duplicating;
- 19 (D) Financial, payroll, personnel and purchasing for joint agencies and personnel;
- 20 (E) Fiscal analysis;
- 21 (F) Post audits, full performance evaluations and preliminary performance reviews;
- 22 (G) Research; and
- 23 (H) Joint services to other joint legislative committees created and authorized by this code,
 24 to joint standing committees of the Senate and House of Delegates, to standing committees of
 25 the Senate and House of Delegates and to legislative interim committees.

26 (b) Notwithstanding any other provision of this chapter to the contrary, the Joint Committee
27 on Government and Finance has the authority to reorganize and restructure the joint legislative
28 agencies, personnel and services as provided in subsection (a) of this section for the purposes of
29 improving their efficiency and the service they provide to the Legislature and to improve the
30 management thereof by the joint committee. To accomplish these purposes, the joint committee
31 may create divisions as it determines necessary and transfer and assign the joint agencies,
32 personnel and services to the divisions. The divisions, joint agencies, personnel and services
33 shall operate under the direction and policies of the joint committee: *Provided*, That ~~nothing in this~~
34 section ~~shall be construed to~~ does not permit the joint committee to alter or redefine the powers,
35 duties and responsibilities vested in the Commission on Special Investigations pursuant to §4-5-
36 1 *et seq.* of this code.

NOTE: The purpose of this bill is to establish under the Joint Committee on Government and Finance an Office of Regulatory and Fiscal Affairs, which is tasked with assisting the West Virginia Legislature with the completion of fiscal notes and economic impact analysis related to proposed legislation and legislative rules, as well as existing state statutes and rules.

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