

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4295

FISCAL
NOTE

BY DELEGATES WESTFALL, ESPINOSA AND HOTT

[Introduced January 20, 2022; Referred to the
Committee on Banking and Insurance then Veterans'
Affairs and Homeland Security then Government
Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §15-5-20b; to amend and reenact §33-2-23 of said code; and to amend and
3 reenact §33-3-14 and §33-3-14a of said code, all relating to the State Office of the National
4 Flood Insurance Program; transferring the State Office of the National Flood Insurance
5 Program from the Offices of the Insurance Commissioner to the Division of Emergency
6 Management; authorizing the director of the Division of Emergency Management to
7 employ staff for the State Office of the National Flood Insurance Program; providing that
8 state-owned property in any nonparticipating community shall be governed by appropriate
9 rules promulgated by the Division of Emergency Management; requiring the State Office
10 of the National Flood Insurance Program and floodplain managers to develop a strategic
11 plan to meet goals and objectives, which plan shall be reviewed and approved by the State
12 Resiliency Officer and State Resiliency Board; requiring the State Office of the National
13 Flood Insurance Program to establish floodplain management guidelines in special hazard
14 areas which are in conformity with federal regulations; providing the State Office of the
15 National Flood Insurance Program shall cooperate with the State Resiliency Office to the
16 fullest extent practicable to assist that office in fulfilling its duties; transferring the assets
17 of the State Office of the National Flood Insurance Program from the Offices of the
18 Insurance Commissioner to the Division of Emergency Management; and requiring the
19 state treasurer to distribute funds from the flood insurance tax fund to finance the
20 operations and responsibilities of the State Office of the National Flood Insurance
21 Program.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-20b. Continuation of the State Office of the National Flood Insurance Program; transfer to the Division of Emergency Management; funding; responsibilities.

1 (a) The Legislature, finding that the National Flood Insurance Program is a voluntary
2 federal program under which federal flood insurance is made available to participating
3 communities and is of vital importance to the citizens of West Virginia, does hereby continue the
4 State Office of the National Flood Insurance Program. Effective July 1, 2022, the State Office of
5 the National Flood Insurance Program shall transfer from the Offices of the Insurance
6 Commissioner to the Division of Emergency Management as established pursuant to §15-5-3 of
7 this code. The Division of Emergency Management shall provide office space, equipment, and
8 supplies for the State Office of the National Flood Insurance Program, which shall be funded, in
9 part, from the special revenue fund established in §33-3-14(c) of this code.

10 (b) The State Office of the National Flood Insurance Program shall issue guidance and
11 instructions as necessary to effectively administer the program. The State Office of the National
12 Flood Insurance Program shall conduct trainings as required by §15-5-20a of this code and adopt
13 adequate land use and development criteria that are consistent with the minimum standards
14 established by the National Flood Insurance Program. The State Office of the National Flood
15 Insurance Program shall be under the supervision of the director of the Division of Emergency
16 Management who shall employ staff as needed to operate the program.

17 (c) Any state-owned property that is located in a nonparticipating local community shall be
18 governed by rules proposed by the Division of Emergency Management for legislative approval
19 in accordance with §29A-3-1 et seq. of this code.

20 (d) The State Office of the National Flood Insurance Program, in consultation with the
21 Director of the Division of Emergency Management, and with the assistance of floodplain
22 managers around the state, shall develop and publish a strategic plan to establish shared goals,
23 define a path to meet those goals, and shall invite other governmental units to adopt these goals
24 and objectives. The strategic plan shall be initially presented by the Director of the Division of

25 Emergency Management to the State Resiliency Officer and to the State Resiliency Office Board
 26 who shall review and approve the strategic plan, and that plan shall be so presented and approved
 27 no less than biannually thereafter. The strategic plan shall be made available to the public.

28 (e) The State Office of the National Flood Insurance Program shall establish floodplain
 29 management guidelines for any state property in special hazard areas which, at a minimum,
 30 satisfy the criteria set forth in 44 CFR §§60.3, 60.4, and 60.5 (2022).

31 (f) Notwithstanding any other provision of this code to the contrary, the State Office of the
 32 National Flood Insurance Program shall cooperate with the State Resiliency Office to the fullest
 33 extent practicable to assist that office in fulfilling its duties.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-23. ~~Creation~~ Transfer of assets of the State Office of the National Flood Insurance Program; ~~responsibilities.~~

1 ~~(a) The Legislature, finding that the National Flood Insurance Program is a voluntary~~
 2 ~~federal program under which federal flood insurance is made available to participating~~
 3 ~~communities is of vital importance to the citizens of West Virginia, does hereby create the State~~
 4 ~~Office of the National Flood Insurance Program, to be housed in the office of the Insurance~~
 5 ~~Commissioner of West Virginia, and which office shall administer this program.~~

6 ~~(b) The State Office of the National Flood Insurance Program shall have a coordinator~~
 7 ~~who shall issue such regulations, guidance, and instructions as necessary to effectively~~
 8 ~~administer the program. The coordinator shall conduct trainings and will adopt and enforce~~
 9 ~~adequate land use and development criteria that are consistent with the minimum standards~~
 10 ~~established by the National Flood Insurance Program and shall report to the Insurance~~
 11 ~~Commissioner.~~

12 ~~(c) Any state-owned property that is located in a nonparticipating local community will be~~

13 ~~governed by the rules promulgated by the Insurance Commissioner and filed in the Code of State~~
14 ~~Rules.~~

15 ~~(d) The coordinator, in consultation with the Insurance Commissioner, and with the~~
16 ~~assistance of floodplain managers around the state, shall develop and publish a strategic plan to~~
17 ~~establish shared goals, define a path to meet those goals, and shall invite other governmental~~
18 ~~units to adopt these goals and objectives. The strategic plan shall be initially presented by the~~
19 ~~Coordinator to the State Resiliency Officer and to the State Resiliency Office Board who shall~~
20 ~~review and approve the strategic plan, and that plan shall be so presented and approved no less~~
21 ~~than biannually thereafter. The strategic plan shall be made available to the public.~~

22 ~~(e) The coordinator shall establish and enforce flood plain management regulations for~~
23 ~~any state property in special hazard areas which, at a minimum, satisfy the criteria set forth in 44~~
24 ~~CFR §§60.3, 60.4, and 60.5 (2019).~~

25 ~~(f) Notwithstanding any other provision of this code to the contrary, the coordinator shall~~
26 ~~cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in~~
27 ~~fulfilling its duties~~

28 Effective July 1, 2022, the assets of the State Office of the National Flood Insurance
29 Program, which Office has been transferred to the Division of Emergency Management pursuant
30 to §15-5-20b of this code, are hereby assigned and transferred to the Division of Emergency
31 Management. The Director of the Division of Emergency Management may decline certain assets
32 from being transferred pursuant to this section if he or she believes the assets are unnecessary
33 for the proper operation of the State Office of the National Flood Insurance Program.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

**§33-3-14. Annual financial statement and premium tax return; remittance by insurer of
premium tax, less certain deductions; special revenue fund funds created.**

34 (a) Every insurer transacting insurance in West Virginia shall file with the commissioner,
35 on or before March 1, each year, a financial statement made under oath of its president or

36 secretary and on a form prescribed by the commissioner. The insurer shall also, on or before
37 March 1 of each year subject to the provisions of §33-3-14c of this code, under the oath of its
38 president or secretary, make a premium tax return for the previous calendar year on a form
39 prescribed by the commissioner showing the gross amount of direct premiums, whether
40 designated as a premium or by some other name, collected, and received by it during the previous
41 calendar year on policies covering risks resident, located, or to be performed in this state and
42 compute the amount of premium tax chargeable to it in accordance with the provisions of this
43 article, deducting the amount of quarterly payments as required to be made pursuant to the
44 provisions of §33-3-14c of this code, if any, less any adjustments to the gross amount of the direct
45 premiums made during the calendar year, if any, and transmit with the return to the commissioner
46 a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium
47 and also includes any additional tax due under §33-3-14a of this code. All taxes, except those
48 received on write your own federal flood insurance premium taxes or private flood insurance
49 market premium taxes, received by the commissioner shall be paid into the insurance tax fund
50 created in §33-3-14(b) of this code. ~~Provided, That no later than June 30 of each year, \$1,667,000~~
51 ~~of the portion of taxes received by the commissioner from insurance policies for medical liability~~
52 ~~insurance as defined in §33-20F-3 of this code and from any insurer on its medical malpractice~~
53 ~~line shall be temporarily dedicated to replenishing moneys appropriated from the tobacco~~
54 ~~settlement account pursuant to §4-11A-2(c) of this code. Upon determination by the commissioner~~
55 ~~that these moneys have been fully replenished to the tobacco settlement account, the~~
56 ~~commissioner shall resume depositing taxes received from medical malpractice premiums as~~
57 ~~provided in §33-3-14(b) of this code~~

58 (b) There is created in the state Treasury a special revenue fund, administered by the
59 treasurer, designated the "insurance tax fund". This fund is not part of the General Revenue Fund
60 of the state. It consists of all amounts deposited in the fund pursuant to §33-3-14(a), §33-3-14a,
61 §33-3-15, and §33-3-17 of this code, ~~except those received on write your own federal flood~~

62 ~~insurance premium taxes~~, any appropriations to the fund, all interest earned from investment of
63 the fund, and any gifts, grants, or contributions received by the fund: Provided, That this
64 subsection shall not apply to funds received on federal flood insurance premium taxes or private
65 market flood insurance premium taxes, which are subject to §33-3-14(c) of this code. The
66 treasurer shall, no later than the last business day of each month, transfer amounts from the
67 insurance tax fund to the General Revenue Fund that the treasurer determines are not necessary
68 for making premium tax refunds under this article or §33-43-1 et seq. of this code.

69 ~~(c) After the transfers authorized in this section, the treasurer shall, no later than the last~~
70 ~~business day of each month, transfer amounts the treasurer determines are not necessary for~~
71 ~~making refunds under this article to the credit of the General Revenue Fund~~

72 ~~(d)~~ (c) There is created in the state Treasury a special revenue fund, administered by the
73 treasurer, designated the "flood insurance tax fund". This fund is not part of the General Revenue
74 Fund of the state. All taxes collected pursuant to §33-3-14(a) of this code from federal flood
75 insurance policy premium taxes or private market flood insurance premium taxes shall be
76 deposited into the flood insurance tax fund. The flood insurance tax fund shall contain collections,
77 any appropriations to the fund, and any gifts, grants, and contributions received. The Treasurer
78 shall distribute funds from the flood insurance tax fund for the operations and responsibilities of
79 the State Office of the National Flood Insurance Program, as provided in §15-5-20b of this code,
80 for activities which promote and enhance floodplain management issues, and for subgrants to
81 local units of government and other eligible entities after full consideration of the
82 recommendations of the Division of Emergency Management.

83 ~~(e) The treasurer is restricted to, and shall distribute from, the flood insurance tax fund for~~
84 ~~activities which promote and enhance flood plain management issues, and for subgrants to local~~
85 ~~units of government and other eligible entities after full consideration of the recommendations of~~
86 ~~the Office of Emergency Services~~

§33-3-14a. Additional premium tax.

1 For the purpose of providing additional revenue for the state General Revenue Fund, there
2 is hereby levied and imposed, in addition to the taxes imposed by §33-3-14 of this code, an
3 additional premium tax equal to one percent of taxable premiums. Except as otherwise provided
4 in this section, all provisions of this article relating to the levy, imposition, and collection of the
5 regular premium tax imposed by §33-3-14 of this code shall be applicable to the levy, imposition,
6 and collection of the additional tax imposed by this section. All moneys received from the
7 additional tax imposed by this section, less deductions allowed by this article or §33-43-1 et seq.
8 of this code for refunds and for costs of administration, shall be received by the commissioner
9 and shall be paid by him or her into the state Treasury in accordance with §33-3-14(b) of this code
10 for the benefit of the state fund General Revenue Fund: *Provided*, That each year, the first
11 \$833,000 of the portion of taxes received by the commissioner from insurance policies for medical
12 liability insurance as defined in section three, article twenty-f of this chapter and from any insurer
13 on its medical malpractice line, shall be temporarily dedicated to replenishing moneys
14 appropriated from the tobacco settlement account pursuant to subsection (c), section two, article
15 eleven-a of chapter four of this code moneys received pursuant to this section pertaining to federal
16 flood insurance policy premium taxes or private market flood insurance premium taxes shall be
17 deposited and distributed in accordance with §33-3-14(c) of this code. ~~Upon determination by the~~
18 ~~commissioner that these moneys have been fully replenished to the tobacco settlement account,~~
19 ~~the commissioner shall resume depositing taxes received from medical malpractice premiums as~~
20 ~~provided herein.~~

NOTE: The purpose of this bill is to transfer the State Office of the National Flood Insurance Program from the Offices of the Insurance Commissioner to the Division of Emergency Management.

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