

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2558

BY DELEGATES HANSHAW (MR. SPEAKER), AND MILEY

[Introduced January 21, 2019; Referred
to the Committee on Government Organization then
Finance.]

1 A BILL to amend §12-4-14 of the Code of West Virginia, 1931, as amended, relating to adding
 2 the definition of grantee to include state spending units and local governments; requiring
 3 grantees to report state grant spending information to grantors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

§12-4-14. Accountability of ~~persons~~ grantees receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

1 (a) For the purposes of this section:

2 (1) "Grantor" means a state spending unit awarding a state grant.

3 (2) ~~"Person"~~ "Grantee" means any entity receiving a state grant, including a state spending
 4 unit, local government, corporation, partnership, association, individual or other legal entity. ~~The~~
 5 ~~term "person" does not include a state spending unit or a local government as defined in section~~
 6 ~~one-a, article nine, chapter six of this code~~

7 (3) "Report" means an engagement, such as an agreed-upon procedures engagement or
 8 other attestation engagement, performed and prepared by a certified public accountant to test
 9 whether state grants were spent as intended. The term "report" does not mean a full-scope audit
 10 or review of the person receiving state funds.

11 (4) "State grant" means funding provided by a state spending unit, regardless of the
 12 original source of the funds, to a ~~person~~ grantee upon application for a specific purpose. The term
 13 "state grant" does not include: (A) Payments for goods and services purchased by a state
 14 spending unit; (B) compensation to state employees and public officials; (C) reimbursements to
 15 state employees and public officials for travel or incidental expenses; (D) grants of student aid;
 16 (E) government transfer payments; (F) direct benefits provided under state insurance and welfare
 17 programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when
 18 receipts for the expenditures are required prior to receiving the funds: *Provided*, That
 19 notwithstanding the provisions of this subdivision, funding provided pursuant to §5B-2-12 of this

20 code is included within the term "state grant"; (H) retirement benefits; and (I) federal pass-through
21 funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. 7501, *et*
22 *seq.* The term "state grant" does not include formula distributions to volunteer and part-volunteer
23 fire departments made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code.

24 (b) (1) Any ~~person~~ grantee who receives one or more state grants in the amount of \$50,000
25 or more in the aggregate in a state's fiscal year shall file with the grantor a report of the
26 disbursement of the state grant funds. When the grantor causes an audit, by an independent
27 certified public accountant, to be conducted of the grant funds, the audit is performed using
28 generally accepted government auditing standards and a copy of the audit is available for public
29 inspection, no report is required to be filed under this section. An audit performed that complies
30 with Office of Management and Budget circular A-133, as published on June 27, 2003, and
31 submitted within the period provided in this section may be substituted for the report.

32 (2) Any ~~person~~ grantee who receives a state grant in an amount less than \$50,000 or who
33 is not required to file a report because an audit has been conducted or substituted as provided by
34 subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures
35 made under the grant.

36 (3) Reports and sworn statements of expenditures required by §12-4-14(b)(1) and §12-4-
37 14(b)(2) of this code shall be filed within two years of the end of the ~~person's~~ grantee's fiscal year
38 in which the disbursement of state grant funds by the grantor was made. The report shall be made
39 by an independent certified public accountant at the cost of the ~~person receiving the state grant~~
40 grantee. State grant funds may be used to pay for the report if the applicable grant provisions
41 allow. The scope of the report is limited to showing that the state grant funds were spent for the
42 purposes intended when the grant was made.

43 (c) (1) Any ~~person~~ grantee failing to file a required report or sworn statement of
44 expenditures within the two-year period provided in §12-4-14(b)(3) of this code for state grant
45 funds disbursed after July 1, 2003, is barred from subsequently receiving state grants until the

46 ~~person~~ grantee has filed the report or sworn statement of expenditures and is otherwise in
47 compliance with the provisions of this section.

48 (2) Any grantor of a state grant shall report any ~~persons~~ grantee failing to file a required
49 report or sworn statement of expenditures within the required period provided in §12-4-14(b)(3)
50 of this code for a state grant disbursed after July 1, 2003, to the Legislative Auditor for purposes
51 of debarment from receiving state grants.

52 (d) (1) The state agency administering the state grant shall notify the ~~person~~ grantee of
53 the reporting requirements set forth in this section.

54 (2) All grantors awarding state grants shall, prior to awarding a state grant, take reasonable
55 actions to verify that the ~~person~~ grantee is not barred from receiving state grants pursuant to this
56 section. The verification process shall, at a minimum, include:

57 (A) A requirement that the ~~person~~ grantee seeking the state grant provide a sworn
58 statement from an authorized representative that the ~~person~~ grantee has filed all reports and
59 sworn statements of expenditures for state grants received as required under this section; and

60 (B) Confirmation from the Legislative Auditor by the grantor that the ~~person~~ grantee has
61 not been identified as one who has failed to file a report or sworn statement of expenditures under
62 this section. Confirmation may be accomplished by accessing the computerized database
63 provided in §12-4-14(e) of this code.

64 (3) If any report or sworn statement of expenditures submitted pursuant to the
65 requirements of this section provides evidence of a reportable condition or violation, the grantor
66 shall provide a copy of the report or sworn statement of expenditures to the Legislative Auditor
67 within 30 days of receipt by the grantor.

68 (4) The grantor shall maintain copies of reports and sworn statements of expenditures
69 required by this section and make the reports or sworn statements of expenditures available for
70 public inspection, as well as for use in audits and performance reviews of the grantor.

71 (5) The Secretary of the Department of Administration has authority to promulgate

72 procedural and interpretive rules and propose legislative rules for promulgation in accordance
73 with the provisions of §29A-3-1 *et seq.* of this code to assist in implementing the provisions of
74 subsections §12-4-14(a) through §12-4-14(d) of this code.

75 (e) (1) Any state agency administering a state grant shall, in the manner designated by
76 the Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be
77 disbursed, the identity of the ~~person~~ authorized to receive the funds, the ~~person's~~ grantee's fiscal
78 year and federal employer identification number and the purpose and nature of the state grant
79 within 30 days of making the state grant or authorizing the disbursement of the funds, whichever
80 is later. If the state grant was awarded prior to October 1, 2005, the grantor shall provide the
81 information required by this section by December 1, 2005.

82 (2) The State Treasurer shall provide the Legislative Auditor the information concerning
83 formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-
84 14d, §33-3-33, §33-12C-7 of this code, the Legislative Auditor requests and in the manner
85 designated by the Legislative Auditor.

86 (3) The Legislative Auditor shall maintain a list identifying ~~persons~~ grantees who have
87 failed to file reports and sworn statements required by this section. The list may be in the form of
88 a computerized database that may be accessed by state agencies over the Internet.

89 (f) An audit of state grant funds may be authorized at any time by the Joint Committee on
90 Government and Finance to be conducted by the Legislative Auditor at no cost to the grantee.

91 (g) (1) Volunteer and part-volunteer fire departments receiving formula distributions
92 pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code shall either:

93 (A) File a report, as defined in §12-4-14(a)(3) of this code with the Legislative Auditor
94 within the same time frames as are required for sworn statements of annual expenditures to be
95 filed under this section. The report shall be made by an independent certified public accountant
96 at the cost of the volunteer or part-volunteer fire department. The scope of the report is limited to
97 showing that the funds distributed were spent for authorized purposes; or

98 (B) File a sworn statement of annual expenditures with the Legislative Auditor on or before
99 February 14 of each year. The sworn statement of expenditures shall be signed by the chief or
100 director of the volunteer fire department and shall be made under oath and acknowledged before
101 a notary public.

102 (2) If the sworn statement or report required by this subsection is not filed on or before
103 May 15, unless the time period is extended by the Legislative Auditor, the Legislative Auditor may
104 conduct an audit of the volunteer or part-volunteer fire department.

105 (3) If the sworn statement of annual expenditures or report required by this subsection is
106 not filed with the Legislative Auditor by July 1, unless the time period is extended by the Legislative
107 Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any
108 amount that would otherwise be distributed to the fire department under the provisions of §33-3-
109 14d, §33-3-33, §33-12C-7 of this code until the report is complete. Moneys withheld pursuant to
110 this subdivision are to be deposited in the special revenue account created in the State Treasury
111 in §12-4-14(g)(4) of this code.

112 (4) The Legislative Auditor may assign an employee or employees to perform audits or
113 reviews at the direction of the Legislative Auditor of the disbursement of state grant funds to
114 volunteer fire departments. The volunteer fire department shall cooperate with the Legislative
115 Auditor, the Legislative Auditor's employees and the State Auditor in performing their duties under
116 this section. If the Legislative Auditor determines a volunteer fire department is not cooperating,
117 the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount
118 that would otherwise be distributed to the fire department under the provisions of §33-3-14d, §33-
119 3-33, §33-12C-7 of this code until the Legislative Auditor informs the Treasurer that the fire
120 department has cooperated as required by this section. The State Treasurer shall pay the amount
121 withheld into a special revenue account hereby created in the State Treasury and designated the
122 "Volunteer Fire Department Audit Account". If, after one year from payment of the amount withheld
123 into the special revenue account, the Legislative Auditor informs the State Treasurer of continued

124 noncooperation by the fire department, the State Treasurer shall pay the amount withheld to the
125 fund from which it was distributed to be redistributed the following year pursuant to the applicable
126 provisions of those sections.

127 (5) Whenever the State Auditor performs an audit of a volunteer fire department for any
128 purpose the Auditor shall also conduct an audit of other state funds received by the fire
129 department pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code. The Auditor shall send a
130 copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed
131 by the Auditor in lieu of performing an audit under this section.

132 (6) If the Legislative Auditor is notified by a grantor that a fire department has failed to file
133 a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor
134 shall notify the Treasurer who shall withhold further distributions to the fire department in the same
135 manner provided in §12-4-14(g)(3) of this code.

136 (h) Any report submitted pursuant to the provisions of this section may be filed
137 electronically in accordance with the provisions of §39A-1-1 *et seq.* of this code.

138 (i) Any ~~person~~ grantee who files a fraudulent sworn statement of expenditures under §12-
139 4-14(b) or §12-4-14(g) of this code, a fraudulent sworn statement under §12-4-14(d) of this code
140 or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be
141 fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for
142 not less than one year nor more than five years, or both fined and imprisoned.

NOTE: The purpose of this bill is to add the definition of grantee to include state spending units and local governments and to require grantees to report state grant spending information to grantors.

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