

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3283

By Delegate Linville

[By Request of the Department of Transportation]

[Introduced February 03, 2023; Referred to the
Committee on Technology and Infrastructure then

Finance]

1 A BILL to amend and reenact §12-4-14, of the Code of West Virginia, 1931, as amended, relating
 2 to the Grant Transparency and Accountability Act; and clarifying reporting requirements for
 3 matching portions of federal grants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. West Virginia Grant Transparency and Accountability Act; Accountability of grantees receiving state funds or grants; procedures, reporting, auditing, investigations, and recovery; sworn statements by volunteer fire departments; rule making, criminal penalties.

1 (a) This section may be cited as The West Virginia Grant Transparency and Accountability
 2 Act. The West Virginia Grant Transparency and Accountability Act is intended to develop a
 3 coordinated, nonredundant process for the effective oversight and monitoring of grant recipients,
 4 thereby ensuring quality programs and limiting fraud, waste, and abuse.

5 (b) For the purposes of this section:

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

7 (2) "Grantee" means any entity receiving a state grant, including a state spending unit,
 8 local government, corporation, partnership, association, individual, or other legal entity.

9 (3) "Subgrantee" means an entity, including a state spending unit, local government,
 10 corporation, partnership, association, individual, or other legal entity, who receives grant money
 11 from a grantee who was awarded a state grant.

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

16 (5) "State grant" means funding provided by a state spending unit, regardless of the
 17 original source of the funds, to a grantee upon application for a specific purpose. The term "state

18 grant" does not include: (A) Payments for goods and services purchased by a state spending unit;
19 (B) compensation to state employees and public officials; (C) reimbursements to state employees
20 and public officials for travel or incidental expenses; (D) grants of student aid; (E) government
21 transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G)
22 funds reimbursed to a person for expenditures made for qualified purposes when receipts for the
23 expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-
24 through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. §
25 7501 *et seq.*, and the funds required to match federal funds. The term "state grant" does not
26 include formula distributions to volunteer and part-volunteer fire departments and fire companies
27 made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code and does not include money
28 received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

29 (6) "West Virginia debarred list" means the list maintained by the State Auditor that
30 contains the names of individuals and entities that are ineligible, either temporarily or permanently,
31 from receiving an award of grant funds from the state.

32 (7) "State Auditor" means the State Auditor of West Virginia, by himself or herself, or by any
33 person appointed, designated, or approved by the State Auditor to perform the service.

34 (8) "Stop payment order" means a communication from the state grant-making agency to
35 the State Auditor and the State Treasurer, following procedures by the State Auditor, causing the
36 cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee's failure
37 to comply with one or more terms of the grant or subgrant, violations of law, or the initiation of an
38 audit or investigation.

39 (9) "Stop payment procedure" means the procedure created by the State Auditor which
40 effects a stop payment order or the lifting of a stop payment order.

41 (c) (1) Any grantee who receives one or more state grants in the amount of \$50,000 or
42 more in the aggregate in a state's fiscal year shall file with the grantor and the State Auditor a
43 report of the disbursement of the state grant funds. When the grantor causes an audit, by an

44 independent certified public accountant, to be conducted of the grant funds, the audit is performed
45 using generally accepted government auditing standards, and a copy of the audit is available for
46 public inspection, no report is required to be filed under this section. An audit performed that
47 complies with Office of Management and Budget circular A-133, and submitted within the period
48 provided in this section may be substituted for the report.

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

53 (3) Subgrant of grant funds – If any grantee obtains grant funds and grants any part or all of
54 those funds to a subgrantee for a specific purpose or purposes, the granted funds shall be treated
55 as a state grant.

56 (4) Reports and sworn statements of expenditures required by this section shall be filed
57 within two years of the end of the grantee's fiscal year in which the disbursement of state grant
58 funds by the grantor was made. The report shall be made by an independent certified public
59 accountant at the cost of the grantee. State grant funds may be used to pay for the report if the
60 applicable grant provisions allow. The scope of the report is limited to showing that the state grant
61 funds were spent for the purposes intended when the grant was made.

62 (5) In the event the State Auditor determines that applicable reporting or record keeping
63 provisions for state grants are delinquent or not in compliance with this code, the State Auditor
64 shall notify the State Treasurer and no further grant funds appropriated to the grantor agency
65 under the specific grant shall be encumbered or expended until such time as the State Auditor
66 determines that all applicable reporting or record keeping provisions are brought into
67 compliance: *Provided*, That such suspension of funding does not violate federal law or regulations
68 or unreasonably prevent or detrimentally impact the ability of the agency to receive federal support
69 or funding.

70 (6) Each State grant-making agency shall designate a Chief Accountability Officer, to the
71 extent possible from within its existing staff, who shall serve as a liaison to the State Auditor and
72 shall be responsible for the state agency's implementation of and compliance with the law, rules,
73 and terms of grants. Such position may be held concurrently with any other designated position.

74 (d)(1) Grantor agencies or the State Auditor shall issue stop payment orders for failure to
75 file required reports. Any grantee failing to file a required report or sworn statement of
76 expenditures within the two-year period as provided in this section for state grant funds is barred
77 from subsequently receiving state grants until the grantee has filed the report or sworn statement
78 of expenditures and is otherwise in compliance with the provisions of this section.

79 (2) Any grantor of a state grant shall report any grantee failing to file a required report or
80 sworn statement of expenditures within the required period provided in this section to
81 the State Auditor for purposes of debarment from receiving state grants.

82 (3) The State Auditor shall maintain a searchable and publicly accessible database listing
83 all awarded state grants. All grantors shall provide a list of grantees and subgrantees to the State
84 Auditor and all other information regarding grant funds and grantees as required by law or rule.

85 (e)(1) The state agency administering the state grant shall notify the grantee of the
86 reporting requirements set forth in this section.

87 (2) All grantors awarding state grants shall, prior to awarding a state grant verify that the
88 grantee is not barred from receiving state grants pursuant to this section. The verification process
89 shall, at a minimum, include:

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

93 (B) Confirmation from the State Auditor by the grantor that the grantee has not been
94 identified as one who has failed to file a report or sworn statement of expenditures under this
95 section. Confirmation may be accomplished by accessing the computerized database

96 provided for in this section.

97 (3) If any report or sworn statement of expenditures submitted pursuant to the
98 requirements of this section provides evidence of a reportable condition or violation, the grantor
99 shall provide a copy of the report or sworn statement of expenditures to the State Auditor within
100 30 days of receipt by the grantor.

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

104 (5) Stop payment procedures – The State Auditor, in cooperation with state grant-making
105 agencies, shall promulgate legislative, procedural, and interpretive rules in accordance with the
106 provisions of §29A-3-1 *et seq.* of this code in implementing the provisions of this section which
107 shall include, but not be limited to:

108 (A) Procedures concerning issuing and lifting stop payments and other corrective actions;

109 (B) Factors to be considered in determining whether to issue a stop payment order
110 including whether or not a stop payment order is in the best interest of the state;

111 (C) Factors to be considered in determining whether a stop payment order should be lifted;

112 and

113 (D) Procedures for notification to the grantee or subgrantee of the issuance of a stop
114 payment order, the lifting of a stop payment order, and any other related information.

115 (6) Informal Conference – Whenever a grantor agency reasonably believes that grant
116 funds are subject to recovery, the grantor agency shall provide the grantee the opportunity for at
117 least one informal conference to determine the facts and issues and to resolve any conflicts before
118 taking any formal recovery actions.

119 (7) Formal Procedures for Recovery –

120 (A) If a grantor agency determines that certain grant funds are to be recovered, then, prior
121 to taking any action to recover the grant funds, the grantor agency shall provide the grantee of the

122 funds a written notice of the intended recovery. This notice shall identify the funds and the amount
123 to be recovered and the specific facts which permit recovery.

124 (B) A grantee shall have 35 days from the receipt of the notice required in paragraph (A) of
125 this subdivision to return the grant funds or request a hearing in writing to show why recovery is not
126 justified or proper.

127 (C) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then:

128 (i) The hearing shall be conducted under §29A-5-1 *et seq.* of this code, and be presided
129 over by the grantor agency head or their designee;

130 (ii) The grantor agency shall hold the hearing at which the grantee or designated
131 representative may present evidence and witnesses to show why recovery should not be
132 permitted; and

133 (iii) After the conclusion of the hearing, the grantor agency shall make a final decision and
134 issue a written final recovery order in compliance with §29A-5-3 of this code and send a copy of
135 the order to the grantee and the State Auditor.

136 (D)(i) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision then the
137 grantor agency may not take any action of recovery until at least 35 days after the grantor agency
138 has issued a final recovery order pursuant to the requirements of paragraph (C) of this subdivision.

139 (ii) If a grantee does not return the grant funds or request a hearing as permitted in
140 paragraph (B) of this subdivision, then the grantor agency may proceed with recovery of the grant
141 funds identified in the notice issued pursuant to the requirements of paragraph (A) of this
142 subdivision, at any time after the expiration of the 35 day request period established in paragraph
143 (B) of this subdivision.

144 (8) Recovery of Grant Funds by Grantor Agency – Any grant funds which have been
145 misspent or are being improperly held are subject to recovery by the grantor agency which made
146 the grant. The grantor agency making the grant shall take affirmative and timely action to recover
147 all misspent or improperly held grant funds. In order to effectuate the recovery of such grant funds,

148 the grantor agency making the grant may use any one or a combination of the following:

149 (A) Offset the amounts against existing grants or future grants to be made by the grantor
150 agency making the recovery;

151 (B) Request offsets of the amounts from existing grants or future grants to be made by
152 other grantor agencies;

153 (C) Initiate any debt collection method authorized by law against any private person,
154 business, or entity;

155 (D) Remove the grantee from the grantor agency's programs and debar the grantee's
156 participation in future grant programs for a period not to exceed three years or until removed from
157 the debarred list; or

158 (E) Request further action under subdivision (9) of this subsection to recover grant funds
159 and otherwise enforce all applicable laws.

160 (9) Recovery of State Grant Funds – The Attorney General, independently or on behalf of
161 the State Auditor, may take any action within his or her authority to recover any grant funds which
162 have been misapplied or are being improperly held and have all the powers of collection
163 established in this act in addition to any other powers authorized by law, including, without
164 limitation, to file lawsuits to recover grant funds.

165 (10) All grant funds, whose use is not restricted by law or otherwise appropriated, which
166 are recovered by the grantor, or State Auditor, and expired or unexpended grant funds remaining
167 at grant completion or termination, shall be deposited in a special revenue fund, which is hereby
168 created and established in the State Treasury to be known as the Grant Recovery Fund. The
169 moneys in the fund, with all interest or other earnings thereon, shall be expended only upon
170 appropriation by the Legislature.

171 (11) The State Auditor has authority to promulgate procedural and interpretive rules and
172 propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of
173 this code to assist in implementing the provisions of this section. The rules shall set forth uniform

174 administrative requirements and reporting procedures for state grants and subgrants to ensure
175 compliance. State granting agencies shall not impose additional or inconsistent requirements
176 unless specifically required by state or federal law.

177 (12) Conflicts of interest – The State Auditor shall adopt rules regarding conflict of interest
178 policies for state grants. Grantors, grantees, and subgrantees must disclose in writing any
179 potential conflicts of interest to the grant applicant prior to awarding the grant.

180 (f)(1) Any state agency administering a state grant shall, in the manner designated by
181 the State Auditor, notify the State Auditor of the maximum amount of funds to be disbursed, the
182 identity of the grantee authorized to receive the funds, the grantee's fiscal year and federal
183 employer identification number, and the purpose and nature of the state grant within 30 days of
184 making the state grant or authorizing the disbursement of the funds, whichever is later.

185 (2) The State Treasurer shall provide the Legislative Auditor the information concerning
186 formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-
187 14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner
188 designated by the Legislative Auditor.

189 (3) The State Auditor shall maintain a debarred list identifying grantees who have failed to
190 file reports and sworn statements required by this section. The list shall be in the form of a
191 computerized database that shall be accessible by state agencies and the public over the
192 Internet, unless public disclosure would violate federal law or regulations.

193 (g) An audit of state grant funds may be authorized at any time by the Joint Committee on
194 Government and Finance to be conducted by the State Auditor in cooperation with the Legislative
195 Auditor at no cost to the grantee.

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

198 (i) Any grantee who files a fraudulent sworn statement of expenditures under subsection
199 (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent

200 report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less
201 than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one
202 year nor more than five years, or both fined and imprisoned.

203 (j) Prohibition on use of grant funds for prohibited political activity –

204 (1) For the purpose of this section, "prohibited political activity" means activity directed
205 toward the success or failure of a political party, candidate for political office, or ballot issue, and
206 includes, without limitation, express advocacy for the election or defeat of a political party,
207 candidate, or ballot issue.

208 (2) Grantors, grantees, subgrantees, and personnel thereof shall not knowingly use grant
209 funds, or goods or services purchased with grant funds, to engage, either directly or indirectly, in a
210 prohibited political activity.

211 (3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly
212 compensated from grant funds for time spent engaging in a prohibited political activity.

213 (4) Nothing in this section shall prohibit any organization described in 26 U.S.C. §501(c)(3)
214 or 26 U.S.C. §501(c)(4) receiving a grant from the state from engaging in any federally permissible
215 activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the
216 specific funds acquired by a grant from the state or grantor shall not be used for those activities
217 that are permitted by federal law but prohibited by this section.

218 (5) A grantor, grantee, subgrantee, or personnel thereof who knowingly uses grant funds
219 for prohibited political activity in violation of this section is guilty of a felony and, upon conviction
220 thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state
221 correctional facility for not less than one year nor more than five years, or both fined and
222 imprisoned.

223 (k) Reporting – Effective on or before December 31, 2022 and every three years thereafter,
224 the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a
225 report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste and abuse.

226 The report shall include, but not be limited to, facts describing:
227 (1) The number and names of entities placed on the West Virginia Debarred List;
228 (2) The number of stop payment orders issued to grantees;
229 (3) Any savings realized as a result of the implementation of this act;
230 (4) A statement of funds recovered and funds in the recovery process;
231 (5) Any reductions in the number of duplicative audit report reviews; and
232 (6) The overall number of state grants awarded that given year and the total amount of
233 dollars awarded by each state agency.

NOTE: The purpose of this bill is to clarify that regardless of the source of funding, the funds required to match federal funds are not considered "state grants".

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