

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4195

By Delegate Linville

[Introduced January 10, 2024 Referred
to the Committee on Technology and Infrastructure]

1 A BILL to amend and reenact §12-4-14, of the Code of West Virginia, 1931, as amended; all
2 relating to Grant Transparency and Accountability Act; clarifying reporting requirements for
3 matching portions of federal grants; providing that a grantee who, by their action or
4 inaction, causes Federal funds to be returned shall hold the state harmless, and shall
5 make commensurate reimbursement to the state; providing that a political subdivision of
6 this state, which has received infrastructure grant money to fund a project, shall reimburse
7 the infrastructure fund if the project is thereafter sold, granted, convey, or otherwise
8 alienated; and updating internal citations.

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:

19 (A) Payments for goods and services purchased by a state spending unit;

20 (B) compensation to state employees and public officials;

21 (C) reimbursements to state employees and public officials for travel or incidental
22 expenses;

23 (D) grants of student aid;

24 (E) government transfer payments;

25 (F) direct benefits provided under state insurance and welfare programs;

26 (G) funds reimbursed to a person for expenditures made for qualified purposes when
27 receipts for the expenditures are required prior to receiving the funds;

28 (H) retirement benefits; ~~and~~

29 (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments
30 of 1996, 31 U.S.C. § 7501 *et seq.*

31 (J) grants made by the West Virginia Water Development Authority; and

32 (K) the funds required to match federal funds. The term “state grant” does not include
33 formula distributions to volunteer and part-volunteer fire departments and fire companies made
34 pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code and does not include money received
35 from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

36 (6) “West Virginia debarred list” means the list maintained by the State Auditor that
37 contains the names of individuals and entities that are ineligible, either temporarily or permanently,
38 from receiving an award of grant funds from the state.

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

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

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

48 (c)(1) Any grantee who receives one or more state grants in the amount of \$50,000 or more
49 in the aggregate in a state's fiscal year shall file with the grantor and the State Auditor a report of
50 the disbursement of the state grant funds. When the grantor causes an audit, by an independent
51 certified public accountant, to be conducted of the grant funds, the audit is performed using
52 generally accepted government auditing standards, and a copy of the audit is available for public
53 inspection, no report is required to be filed under this section. An audit performed that complies
54 with Office of Management and Budget circular A-133, and is submitted within the period provided
55 in this section, may be substituted for the report.

56 (2) Any grantee who receives a state grant in an amount less than \$50,000 or who is not
57 required to file a report because an audit has been conducted or substituted as provided by
58 ~~subdivision (1) of this subsection~~ §12-4-14(c)(1) shall file with the grantor and State Auditor a
59 sworn statement of expenditures made under the grant.

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

63 (4) Reports and sworn statements of expenditures required by this section shall be filed
64 within two years of the end of the grantee's fiscal year in which the disbursement of state grant

65 funds by the grantor was made. The report shall be made by an independent certified public
66 accountant at the cost of the grantee. State grant funds may be used to pay for the report if the
67 applicable grant provisions allow. The scope of the report is limited to showing that the state grant
68 funds were spent for the purposes intended when the grant was made.

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

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

81 (7) Any grantee who, by their action or inaction, causes Federal funds to be returned,
82 repaid, or otherwise clawed back from the State, shall hold the state harmless, and shall make
83 commensurate reimbursement to the state in accordance with the provisions of this section.

84 (8) When a political subdivision of this state, including any economic development
85 corporation, has received infrastructure grant funding to fund a project, and

86 (A) the project is thereafter sold, granted, conveyed, or otherwise alienated, then, the
87 project sponsor shall reimburse the granting authority the amount of the infrastructure grant, plus
88 applicable interest at the market rate; or

89 (B) when a party is granted an indefeasible right to the use of any portion of said project,
90 then, the project sponsor shall reimburse the granting authority the amount of the infrastructure

91 grant, plus applicable interest at the market rate: *Provided*, That rate-regulated public utilities,
92 regulated by the Public Service Commission may seek, and the Public Service Commission may
93 grant, an exemption from this requirement on a project by project basis.

94 (C) In the alternative, upon application, the State Auditor may approve repayment of a
95 grant by converting the grant into a loan from the granting entity. The proceeds from the repayment
96 of any grant or grant which has been converted to a loan shall retain their character as proceeds
97 available for grants. The amount of repayment may be reduced by the applicable share of
98 accumulated depreciation of the project or the applicable share of accumulated accelerated
99 depreciation of the project as determined by the State Auditor. The State Auditor shall review any
100 agreement between the project sponsor and the person or entity purchasing the project to
101 determine whether the agreement was structured so that no proceeds would become available for
102 the repayment of the grant funds. If the State Auditor finds that the transaction was structured by
103 the parties to intentionally preclude the availability of proceeds for the repayment of the
104 infrastructure grant funds, then the State Auditor may require the project sponsor to repay the full
105 amount of any infrastructure grant.

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

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

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

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

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

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

125 (B) Confirmation from the State Auditor by the grantor that the grantee has not been
126 identified as one who has failed to file a report or sworn statement of expenditures under this
127 section. Confirmation may be accomplished by accessing the computerized database provided for
128 in this section.

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

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

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

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

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

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

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

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

151 (7) Formal Procedures for Recovery –

152 (A) If a grantor agency determines that certain grant funds are to be recovered, then, prior
153 to taking any action to recover the grant funds, the grantor agency shall provide the grantee of the
154 funds a written notice of the intended recovery. This notice shall identify the funds and the amount
155 to be recovered and the specific facts which permit recovery.

156 (B) A grantee shall have 35 days from the receipt of the notice required in ~~paragraph (A) of~~
157 ~~this subdivision~~ §12-4-14(e)(7)(A) to return the grant funds or request a hearing in writing to show
158 why recovery is not justified or proper.

159 (C) If a grantee requests a hearing pursuant to ~~paragraph (B) of this subdivision~~ §12-4-
160 14(e)(7)(B), then:

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

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

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

169 (D)(i) If a grantee requests a hearing pursuant to ~~paragraph (B) of this subdivision~~ §12-4-
170 14(e)(7)(B), then the grantor agency may not take any action of recovery until at least 35 days after
171 the grantor agency has issued a final recovery order pursuant to the requirements of ~~paragraph~~
172 ~~(C) of this subdivision~~ §12-4-14(e)(7)(B).

173 (ii) If a grantee does not return the grant funds or request a hearing as permitted in
174 ~~paragraph (B) of this subdivision~~ §12-4-14(e)(7)(B), then the grantor agency may proceed with
175 recovery of the grant funds identified in the notice issued pursuant to the requirements of
176 ~~paragraph (A) of this subdivision~~ §12-4-14(e)(7)(A), at any time after the expiration of the 35-day
177 request period established in ~~paragraph (B) of this subdivision~~ §12-4-14(e)(7)(B).

178 (8) Recovery of Grant Funds by Grantor Agency – Any grant funds which have been
179 misspent or are being improperly held are subject to recovery by the grantor agency which made
180 the grant. The grantor agency making the grant shall take affirmative and timely action to recover
181 all misspent or improperly held grant funds. In order to effectuate the recovery of such grant funds,
182 the grantor agency making the grant may use any one or a combination of the following:

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

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

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

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

192 (E) Request further action under ~~subdivision (9) of this subsection~~ §12-4-14(e)(9) to
193 recover grant funds and otherwise enforce all applicable laws.

194 (9) Recovery of State Grant Funds – The Attorney General, independently or on behalf of

195 the State Auditor, may take any action within his or her authority to recover any grant funds which
196 have been misapplied or are being improperly held and have all the powers of collection
197 established in this act in addition to any other powers authorized by law, including, without
198 limitation, to file lawsuits to recover grant funds.

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

205 (11) The State Auditor has authority to promulgate procedural and interpretive rules and
206 propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of
207 this code to assist in implementing the provisions of this section. The rules shall set forth uniform
208 administrative requirements and reporting procedures for state grants and subgrants to ensure
209 compliance. State granting agencies shall not impose additional or inconsistent requirements
210 unless specifically required by state or federal law.

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

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

219 (2) The State Treasurer shall provide the Legislative Auditor the information concerning
220 formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-

221 14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner
222 designated by the Legislative Auditor.

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

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

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

232 (i) Any grantee who files a fraudulent sworn statement of expenditures under ~~subsection~~
233 ~~(b) of the section~~§12-4-14(b), a fraudulent sworn statement under ~~subsection (d) of this~~
234 ~~section~~§12-4-14(d), or a fraudulent report under ~~this section~~ any provision of §12-4-14 is guilty of a
235 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or
236 imprisoned in a state correctional facility for not less than one year nor more than five years, or
237 both fined and imprisoned.

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

239 (1) For the purpose of this section, “prohibited political activity” means activity directed
240 toward the success or failure of a political party, candidate for political office, or ballot issue, and
241 includes, without limitation, express advocacy for the election or defeat of a political party,
242 candidate, or ballot issue.

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

246 (3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly

247 compensated from grant funds for time spent engaging in a prohibited political activity.

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

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

258 (k) Reporting – Effective on or before December 31, 2022 and every three years thereafter,
259 the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a
260 report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste and abuse.
261 The report shall include, but not be limited to, facts describing:

262 (1) The number and names of entities placed on the West Virginia Debarred List;

263 (2) The number of stop payment orders issued to grantees;

264 (3) Any savings realized as a result of the implementation of this act;

265 (4) A statement of funds recovered and funds in the recovery process;

266 (5) Any reductions in the number of duplicative audit report reviews; and

267 (6) The overall number of state grants awarded that given year and the total amount of
268 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.

