

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5354

By Delegate Riley

[Originating in the Committee on Finance;

Reported on February 9, 2024]

1 A BILL to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, related to
2 clarifying what grants are subject to reporting requirements of the Grant Transparency and
3 Accountability Act, defining the terms used throughout the Act, and making other technical
4 clarifications.

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 state grant
4 recipients, 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~~ that receives grant
11 money from a grantee ~~who~~ that 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~~ entity receiving the state funds grant.

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

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

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

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

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

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

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

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

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

63 (5) In the event the State Auditor determines that applicable reporting or record keeping
64 provisions for state grants are delinquent or not in compliance with this code, the State Auditor
65 shall notify the State Treasurer and no further state grant funds appropriated to the grantor agency
66 under the specific state grant shall be encumbered or expended until such time as the State
67 Auditor determines that all applicable reporting or record keeping provisions are brought into

68 compliance: *Provided*, That such suspension of funding does not violate federal law or regulations
69 or unreasonably prevent or detrimentally impact the ability of the agency grantor to receive federal
70 support or funding.

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

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

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

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

88 (e)(1) The ~~state agency~~ grantor administering the state grant shall notify the grantee of the
89 reporting requirements set forth in this section.

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

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

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

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

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

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

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

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

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

115 and

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

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

122 (7) *Formal Procedures for Recovery* –

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

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

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

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

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

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

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

142 (ii) If a grantee does not return the state grant funds or request a hearing as permitted in
143 paragraph (B) of this subdivision, then the grantor agency may proceed with recovery of the state

144 grant funds identified in the notice issued pursuant to the requirements of paragraph (A) of this
145 subdivision, at any time after the expiration of the 35 day request period established in paragraph
146 (B) of this subdivision.

147 (8) *Recovery of State Grant Funds by Grantor Agency* – Any state grant funds which have
148 been misspent or are being improperly held are subject to recovery by the grantor ~~agency which~~
149 ~~made the grant~~. The grantor ~~agency making the grant~~ shall take affirmative and timely action to
150 recover all misspent or improperly held state grant funds. In order to effectuate the recovery of
151 such state grant funds, the grantor ~~agency making the grant~~ may use any one or a combination of
152 the following:

153 (A) Offset the amounts against existing state grants or future state grants to be made by
154 the grantor ~~agency~~ making the recovery;

155 (B) Request offsets of the amounts from existing state grants or future state grants to be
156 made by other ~~grantor agencies~~ grantors;

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

159 (D) Remove the grantee from the grantor ~~agency's~~ programs and debar the grantee's
160 participation in future state grant programs for a period not to exceed three years or until removed
161 from the West Virginia debarred list; or

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

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

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

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

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

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

189 (2) The State Treasurer shall provide the Legislative Auditor the information concerning
190 formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-
191 14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner
192 designated by the Legislative Auditor.

193 (3) The State Auditor shall maintain a the West Virginia debarred list identifying grantees
194 who have failed to file reports and sworn statements required by this section. The list shall be in the

195 form of a computerized database that shall be accessible by ~~state agencies~~ grantors and the
196 public over the Internet, unless public disclosure would violate federal law or regulations.

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

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

202 (i) Any grantee who files a fraudulent sworn statement of expenditures under subsection
203 (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent
204 report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less
205 than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one
206 year nor more than five years, or both fined and imprisoned.

207 (j) *Prohibition on use of state grant funds for prohibited political activity –*

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

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

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

217 (4) Nothing in this section shall prohibit any organization described in 26 U.S.C. § 501(c)(3)
218 or 26 U.S.C. § 501(c)(4) receiving a state grant ~~from the state~~ from engaging in any federally
219 permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided

220 that the specific funds acquired by a state grant ~~from the state~~ or grantor shall not be used for
221 those activities that are permitted by federal law but prohibited by this section.

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

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

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

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

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

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

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

236 (6) The overall number of state grants awarded that given year and the total amount of
237 dollars awarded by each ~~state agency~~ grantor.