

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5399

FISCAL
NOTE

By Delegates Rohrbach, Statler, Mallow, DeVault,
Petitto, Jennings, Heckert, Miller, Summers,
Hillenbrand, and Householder

[Introduced January 31, 2024; Referred to the
Committee on Filed for introduction]

1 A BILL to repeal §12-4-14a of the Code of West Virginia, 1931, as amended, and to amend and
 2 reenact §12-4-14 and §12-4-4b of said code; and to amend and reenact §33-3-33 of said
 3 code, all relating to volunteer and part-volunteer fire departments expenditures; repealing
 4 an expired code section; directing state audit functions of volunteer and part-volunteer fire
 5 departments to the State Auditor; requiring periodic audits; prohibiting distributing state
 6 funds to volunteer and part-volunteer fire departments that fail to comply with audit
 7 requirements; providing for restitution be paid to volunteer and part-volunteer fire
 8 departments double the amount of property unlawfully taken; requiring posting a notice of
 9 penalty in volunteer and part-volunteer fire departments; and establishing a pilot project of
 10 volunteer and part-volunteer fire departments to evaluate implementation of the State
 11 Auditor’s Checkbook accounting system.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

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.* The term "state grant" does not include formula distributions to volunteer and part-
26 volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7
27 of this code and does not include money received from the Fire Service Equipment and Training
28 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 more
42 in the aggregate in a state's fiscal year shall file with the grantor and the State Auditor a report of
43 the disbursement of the state grant funds. When the grantor causes an audit, by an independent
44 certified public accountant, to be conducted of the grant funds, the audit is performed using
45 generally accepted government auditing standards, and a copy of the audit is available for public
46 inspection, no report is required to be filed under this section. An audit performed that complies
47 with Office of Management and Budget circular A-133, and submitted within the period provided in
48 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 compliance:
67 *Provided*, That such suspension of funding does not violate federal law or regulations or
68 unreasonably prevent or detrimentally impact the ability of the agency to receive federal support or
69 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 the State
81 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 30
100 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 the
135 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~~ State Auditor the information
186 concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant
187 to §33-3-14d, §33-3-33, and §33-12C-7 of this code, ~~the Legislative Auditor requests, and in the~~
188 manner designated by the ~~Legislative~~ State 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 Internet,
192 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
215 permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided

216 that the specific funds acquired by a grant from the state or grantor shall not be used for those
217 activities 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.

**§12-4-14b. Accountability of volunteer and part-volunteer fire companies or departments
receiving state funds for equipment and training; review or audit of expenditures;
withholding of state funds for delinquency or misuse; notifications.**

1 (a) *Definitions*. — For the purposes of this section:

2 “Equipment and training grant” means a grant of money to a volunteer fire company or a
3 part-volunteer fire department from the Fire Service Equipment and Training Fund created in §29-
4 3-5f of this code;

5 “Formula distribution” means a distribution of money to volunteer and part-volunteer fire
6 companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code;
7 and

8 “State funds accounts” means every bank account and investment account established by
9 a volunteer or part-volunteer fire company or department into which the volunteer or part-volunteer
10 fire company or department has deposited or invested money from formula distributions and
11 equipment and training grants.

12 (b) *Filing required documentation.* — Every volunteer and part-volunteer fire company or
13 department seeking to receive formula distributions or an equipment and training grant shall file
14 copies of bank statements and check images from the company’s or department’s state funds
15 accounts for the previous calendar year with the ~~Legislative~~ Auditor on or before February 1 of
16 each year.

17 (c) *Reviews and audits.* — Effective July 1, 2024, the State Auditor shall assume all audit
18 functions established pursuant to this section previously administered by the Legislative Auditor.
19 The ~~Legislative State~~ Auditor is authorized to conduct regular reviews or audits of deposits and
20 expenditures from formula distribution and equipment and training grant funds by volunteer and
21 part-volunteer fire companies or departments. An audit shall be performed at a minimum at least
22 once every 5 years. The ~~Legislative State~~ Auditor may assign an employee or employees to
23 perform audits or reviews at his or her direction. The State Treasurer shall provide the ~~Legislative~~
24 ~~State~~ Auditor information, in the manner designated by the ~~Legislative State~~ Auditor, concerning
25 formula distributions and equipment and training grants paid to volunteer or part-volunteer fire
26 companies and departments. The volunteer or part-volunteer fire company or department shall
27 cooperate with the ~~Legislative Auditor, the Legislative Auditor’s employees, and the State Auditor~~
28 in performing their duties under the laws of this state.

29 (d) ~~State Auditor~~ Scope of Audits- Whenever the State Auditor performs an audit of a
30 volunteer or part-volunteer fire company or department for any purpose, the Auditor shall also

31 conduct an audit of other state funds received by the company or department pursuant to §33-3-
32 14d, §33-3-33, and §33-12C-7 of this code. ~~The Auditor shall send a copy of the audit to the~~
33 ~~Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of~~
34 ~~performing an audit under this section.~~

35 (e) *Withholding of funds.* —The Treasurer is authorized to withhold payment of a formula
36 distribution or an equipment and training grant from a volunteer or part-volunteer fire company or
37 department, when properly notified by the ~~Legislative~~ Auditor pursuant to this section, of any of the
38 following conditions:

39 (1) Failure to file, in a timely manner, copies of bank statements and check images with the
40 ~~Legislative~~ State Auditor;

41 (2) Failure to cooperate with a review or audit conducted by the ~~Legislative~~ State Auditor;

42 (3) Misapplication of state funds; or

43 (4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of
44 this code for a state grant other than an equipment and training grant: Provided, That any sworn
45 statement required to be submitted by a volunteer or part-volunteer fire department must be
46 signed by the chief and treasurer of that department.

47 (f) *Delinquency in filing.* — If, after February 1, a volunteer or part-volunteer fire company
48 or department has failed to file the required bank statements and check images with the
49 ~~Legislative~~ State Auditor, the ~~Legislative~~ State Auditor shall notify the delinquent company or
50 department at two separate times in writing of the delinquency and of possible forfeiture of its Fire
51 Service Equipment and Training Fund distribution for the year. If the required bank statements and
52 check images are not filed with the ~~Legislative~~ State Auditor by March 31, unless the time period is
53 extended by the ~~Legislative~~ State Auditor, the ~~Legislative~~ State Auditor shall then notify the
54 Treasurer who shall withhold payment of any amount that would otherwise be distributed to the
55 company or department. Prior to each subsequent quarterly disbursement of funds by the
56 Treasurer, the ~~Legislative~~ State Auditor shall notify each delinquent company or department twice

57 per each quarter in which the company or department is delinquent. The ~~Legislative~~ State Auditor
58 may choose the method or methods of notification most likely to be received by the delinquent
59 company or department.

60 (g) *Noncooperation.* — If, in the course of an audit or review by the ~~Legislative~~ State
61 Auditor, a volunteer or part-volunteer fire company or department fails to provide documentation of
62 its accounts and expenditures in response to a request of the ~~Legislative~~ State Auditor, the
63 ~~Legislative~~ State Auditor shall notify the State Treasurer who shall withhold payment of any
64 amount that would otherwise be distributed to the company or department under the provisions of
65 ~~§33-3-14d, §33-3-33, and §33-12C-7 of this code,~~ from any other state funding source until the
66 ~~Legislative~~ State Auditor informs the State Treasurer that the company or department has
67 cooperated with the review or audit.

68 (h) *Reporting of other grants.* — Nothing in this section alters the duties and responsibilities
69 of a volunteer or part-volunteer fire company or department imposed under §12-4-14 of this code if
70 that company or department has received funds from any state grant program other than from the
71 Fire Service Equipment and Training Fund. If the ~~Legislative~~ State Auditor is notified by a grantor
72 that a volunteer or part-volunteer fire company or department has failed to file a report or a sworn
73 statement of expenditures for a state grant it received, the ~~Legislative~~ State Auditor shall notify the
74 State Treasurer who shall withhold further distributions to the company or department in the
75 manner provided in this section.

76 (i) *Escrow and forfeiture of moneys withheld.* — The Volunteer Fire Department Audit
77 Account previously created in the Treasury is hereby continued. When the State Treasurer
78 receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company
79 or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld
80 into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the
81 volunteer or part-volunteer fire company or department has come into compliance in less than one
82 year from the date of deposit into this special revenue account, then the Treasurer shall release

83 and distribute the withheld amounts to the company or department, except that any interest that
84 has accrued thereon shall be credited to the general revenue of the state. If, after one year from
85 payment of the amount withheld into the special revenue account, the ~~Legislative State~~ Auditor
86 informs the State Treasurer of continued noncooperation by the company or department, the
87 delinquent company or department forfeits the amounts withheld and the State Treasurer shall pay
88 the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of this
89 code.

90 (j) Misuse of state money. — If the ~~Legislative State~~ Auditor determines that a volunteer or
91 part-volunteer fire company or department has used formula distribution money for purposes not
92 authorized by §8-15-8b of this code or has used equipment and training grant money for purposes
93 not authorized by the grant program, the ~~Legislative State~~ Auditor shall give a written notice of
94 noncompliance to the company or department. If a volunteer or part-volunteer fire company or
95 department disagrees or disputes the finding, the company or department may contest the finding
96 by submitting a written objection to the ~~Legislative State~~ Auditor within five working days of receipt
97 of the ~~Legislative State~~ Auditor's finding. The department or company shall then have 60 days
98 from the date of the ~~Legislative State~~ Auditor's finding to provide documentation to substantiate
99 that the expenditures were made for authorized purposes. If the volunteer or part-volunteer fire
100 company or department does not dispute the findings of the ~~Legislative State~~ Auditor or if the
101 company or department is not able to substantiate an authorized purpose for the expenditure, the
102 ~~Legislative State~~ Auditor shall notify the Treasurer of the amount of misapplied money and the
103 Treasurer shall deduct that amount from future distributions to that company or department until
104 the full amount of unauthorized expenditure is offset.

105 (k) Unlawful misuse of fire department property- Any person that is convicted of petit or
106 grand larceny pursuant to §61-3-13 of this code or embezzlement pursuant to §61-3-20 of this
107 code, for the unlawful fraudulent conversion or taking of any money or other property of any
108 volunteer or part-volunteer fire department, in addition to any other criminal penalty invoked by a

109 court, shall be required by the court to pay restitution to the fire department double the amount of
 110 the value of any money or other property lost or taken. Any person so convicted shall also be
 111 barred from assuming any position of trust in any fire department where he or she would be
 112 allowed to access or control the disposition or management of any fire department money or other
 113 assets.

114 (l) *Notice of Penalty*- Each part-volunteer or volunteer fire department shall post in a
 115 location within the fire department where other notices are normally posted or in a conspicuous
 116 place accessible to all fire fighters, the following notice:

117 “NOTICE- Any person convicted of theft or embezzlement of any money or other asset of
 118 the fire department, in addition to other penalties incurred by law, shall be required to reimburse
 119 the fire department double the amount of the value of the property taken. This collection can result
 120 in the confiscation of a person’s personal or real property, including any vehicle or home to satisfy
 121 payment.”

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; Public Employees Insurance Agency and municipal pension plans; special fund created; allocation of proceeds; effective date.

1 (a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-
 2 volunteer fire departments and certain retired teachers and the Teachers Retirement Reserve
 3 Fund, there is hereby authorized and imposed on and after July 1, 1992, on the policyholder of any
 4 fire insurance policy or casualty insurance policy issued by any insurer, authorized or
 5 unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable
 6 premium for each such policy. After June 30, 2005, the surcharge shall be imposed as specified in
 7 subdivisions (2) and (3) of this subsection.

8 (2) After June 30, 2005, through December 31, 2005, for the purpose of providing
9 additional revenue for volunteer fire departments, part-volunteer fire departments and to provide
10 additional revenue to the Public Employees Insurance Agency and municipal pension plans, there
11 is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire
12 insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or
13 by any risk retention group, a policy surcharge equal to one percent of the taxable premium for
14 each such policy.

15 (3) After December 31, 2005, for the purpose of providing additional revenue for volunteer
16 fire departments and part-volunteer fire departments, there is hereby authorized and imposed on
17 the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer,
18 authorized or unauthorized, or by any risk retention group, a policy surcharge equal to fifty-five one
19 hundredths of one percent of the taxable premium for each such policy.

20 (4) For purposes of this section, casualty insurance may not include insurance on the life of
21 a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on
22 a debtor to provide indemnity for payments becoming due on a specific loan or other credit
23 transaction while the debtor is disabled as defined in the policy. The policy surcharge may not be
24 subject to premium taxes, agent commissions, or any other assessment against premiums.

25 (b) The policy surcharge shall be collected and remitted to the commissioner by the
26 insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is
27 issued by a risk retention group, by the risk retention group. The amount required to be collected
28 under this section shall be remitted to the commissioner on a quarterly basis on or before the
29 twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except
30 for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the
31 succeeding year.

32 (c) Any person failing or refusing to collect and remit to the commissioner any policy
33 surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing

34 is liable for a civil penalty of up to \$100 for each day of delinquency, to be assessed by the
35 commissioner. The commissioner may suspend the insurer, broker, or risk retention group until all
36 surcharge payments and penalties are remitted in full to the commissioner.

37 (d)(1) All money from the policy surcharge shall be collected by the Commissioner who
38 shall disburse the money received from the surcharge into a special account in the State Treasury,
39 designated the Fire Protection Fund. The net proceeds of this portion of the tax and the interest
40 thereon, after appropriation by the Legislature, shall be distributed quarterly on the first day of the
41 months of January, April, July, and October to each volunteer fire company or department on an
42 equal share basis by the State Treasurer. After June 30, 2005, the money received from the
43 surcharge shall be distributed as specified in subdivisions (2) and (3) of this subsection.

44 (2)(A) After June 30, 2005, through December 31, 2005, all money from the policy
45 surcharge shall be collected by the commissioner who shall disburse one half of the money
46 received from the surcharge into the Fire Protection Fund for distribution as provided in
47 subdivision (1) of this subsection.

48 (B) The remaining portion of moneys collected shall be transferred into the fund in the
49 State Treasury of the Public Employees Insurance Agency into which are deposited the
50 proportionate shares made by agencies of this state of the Public Employees Insurance Agency
51 costs of those agencies, until November 1, 2005. After October 31, 2005, through December 31,
52 2005, the remain portion shall be transferred to the special account in the state Treasury, known as
53 the Municipal Pensions and Protection Fund.

54 (3) After December 31, 2005, all money from the policy surcharge shall be collected by the
55 commissioner who shall disburse all of the money received from the surcharge into the Fire
56 Protection Fund for distribution as provided in subdivision (1) of this subsection.

57 (4) Before each distribution date to volunteer fire companies or departments, the State Fire
58 Marshal shall report to the state Treasurer:

59 (A) The names and addresses of all volunteer and part-volunteer fire companies and

60 departments within the state which meet the eligibility requirements established in §8-15-8a of this
61 code during the preceding quarter;

62 (B) The number of volunteer firefighters and the number of full-time paid members
63 providing services to each volunteer and part-volunteer fire company and department during the
64 preceding quarter;

65 (C) A full accounting of each volunteer and part-volunteer fire company and department
66 eligible to receive a distribution under this section's revenues and expenditures for the last two
67 calendar years; and

68 (D) A list of each volunteer and part-volunteer fire company and department has
69 implemented the State Auditor's West Virginia Checkbook fiscal reporting system on or before
70 January 1, 2026.

71 (e) The State Auditor shall select up to ten volunteer or part-volunteer fire companies to
72 participate in a pilot project utilizing the State Auditor's West Virginia Checkbook fiscal reporting
73 system to assess how the transmission to this new account reporting system will work within
74 volunteer or part-volunteer fire companies. The State Auditor shall establish this pilot program
75 effective July 1, 2024, and report to the Joint Committee on Government and Finance by January
76 1, 2025. The report shall include an assessment on how this accounting system is working within
77 the pilot project's fire companies and any recommendations on additional training or other actions
78 needed to effectively assist volunteer and part-volunteer fire companies transitions into this new
79 reporting system.

80 ~~(e)-(f)~~ Notwithstanding any other provision of this subsection, each volunteer and part-
81 volunteer fire company and department shall implement the State Auditor's West Virginia
82 Checkbook fiscal reporting system on or before January 1, 2026, in order to remain eligible to
83 receive any funds pursuant to this section.

84 ~~(f)~~ ~~(g)~~ The allocation, distribution, and use of revenues provided in the Fire Protection Fund
85 are subject to the provisions of §8-15-8a and §8-15-8b of this code.

NOTE: The purpose of this bill is to modify state auditing practices and requirements to facilitate efficient financial management of volunteer and part-volunteer fire departments; directing state audit functions of these departments to the State Auditor; freezing state funding to any fire departments that fail to cooperate with a state audit; requiring that both the fire chief and treasurer sign any sworn statements required to be submitted to the state auditor; requiring that volunteer and part-volunteer fire departments be audited at least once every 5 years; providing for restitution be paid to volunteer and part-time fire departments double the amount of property unlawfully stolen or embezzled; requiring posting a notice of this penalty in volunteer and part-volunteer fire departments; and establishing a pilot project to evaluate how volunteer and part-volunteer fire departments implement the State Auditor's Checkbook accounting system.

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