

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 5399**

By Delegates Rohrbach, Statler, Mallow, DeVault,

Petitto, Jennings, Heckert, Miller, Summers,

Hillenbrand, and Householder

[Originating in the Committee on Finance; Reported

on February 21, 2024]



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 §12-4-14b of said code; and to amend and reenact §33-3-33 of said  
3 code, all relating to duties of the State Auditor; repealing section creating terminated  
4 program; directing state audit functions of volunteer and part-volunteer fire departments to  
5 the State Auditor; requiring certain periodic audits; prohibiting distributing state funds to  
6 volunteer and part-volunteer fire departments that fail to comply with audit requirements;  
7 providing for restitution be paid to volunteer and part-volunteer fire departments double the  
8 amount of property unlawfully taken; requiring posting a notice of penalty in volunteer and  
9 part-volunteer fire departments; establishing a pilot project of volunteer and part-volunteer  
10 fire departments to evaluate implementation of the State Auditor's Checkbook accounting  
11 system; clarifying what grants are subject to reporting requirements of the Grant  
12 Transparency and Accountability Act; defining terms; and making other technical  
13 clarifications.

*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 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 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~~ State Auditor the information  
190 concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant  
191 to §33-3-14d, §33-3-33, and §33-12C-7 of this code, ~~the Legislative Auditor requests,~~ and in the  
192 manner designated by the ~~Legislative~~ State 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.

**§12-4-14a. Workers' Compensation Subsidy for Volunteer Fire Departments; creation of program; Auditor to administer.**

1 [Repealed.]

**§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 (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 (e) (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.