

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 864

By Senator Weld

[Passed March 9, 2024; in effect from passage]

1 AN ACT to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, all
2 related to the Grant Transparency and Accountability Act; clarifying what grants are
3 subject to reporting requirements; defining terms; and making technical 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, that receives grant money
11 from a grantee 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 entity receiving the state grant.

16 (5) "State grant" means funding provided by a grantor, regardless of the original source of
17 the funds, to a grantee upon application for a specific purpose. The term "state grant" does not

18 include: (A) Payments for goods and services purchased by a state spending unit; (B)
19 compensation to state employees and public officials; (C) reimbursements to state employees and
20 public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer
21 payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds
22 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; (I) federal pass-
24 through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. §
25 7501 *et seq.*, and the funds required to match the federal funds; (J) distributions to volunteer and
26 part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-
27 12C-7 of this code; (K) money received from the Fire Service Equipment and Training Fund as
28 provided in §29-3-5f of this code; and (L) grants made by the West Virginia Water Development
29 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.

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 grantor to the State Auditor and
36 the State Treasurer, following procedures established by the State Auditor, causing the cessation
37 of payments to a grantee or subgrantee as a result of the grantee or subgrantee's failure to comply
38 with one or more terms of the state grant or subgrant, violations of law, or the initiation of an audit
39 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 under
66 the specific state grant shall be encumbered or expended until such time as the State Auditor
67 determines that all applicable reporting or record-keeping provisions are brought into compliance:
68 *Provided*, That such suspension of funding does not violate federal law or regulations, or

69 unreasonably prevent or detrimentally impact, the ability of the agency grantor to receive federal
70 support or funding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 and

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

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

121 (7) *Formal Procedures for Recovery* –

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

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

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

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

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

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

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

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

145 (8) *Recovery of State Grant Funds by Grantor Agency* – Any state grant funds which have
146 been misspent or are being improperly held are subject to recovery by the grantor. The grantor

147 shall take affirmative and timely action to recover all misspent or improperly held state grant funds.
148 In order to effectuate the recovery of such state grant funds, the grantor may use any one, or a
149 combination of, the following:

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

152 (B) Request offsets of the amounts from existing state grants or future state grants to be
153 made by other grantors;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

222 state correctional facility for not less than one year nor more than five years, or both fined and
223 imprisoned.

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

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

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

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

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

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

233 (6) The overall number of state grants awarded that given year and the total amount of
234 dollars awarded by each grantor.