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2005 SEP 30 P 4: 26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
4TH Extraordinary Session, 2005

ENROLLED

SENATE BILL NO. 4006

(By Senators Jomblin, Mr. President, and Sprucose,)
By Request of the Executive)

PASSED September 13, 2005

In Effect from Passage

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Senate Bill No. 4006

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed September 13, 2005; in effect from passage.]

AN ACT to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, relating to accountability of persons receiving state funds or grants; requiring reports or sworn statements for certain state funds or grants; giving Secretary of the Department of Administration rule-making authority; providing for the barring of persons from receiving state grants or funds; providing for the submission of information on sworn statements or reports to the Legislative Auditor; authorizing the Legislative Auditor to perform audits in certain circumstances; requiring the Legislative Auditor to inform the State Treasurer if certain reports or sworn statements are not submitted within a certain period; and providing criminal penalties for filing a fraudulent sworn statement of expenditures, a fraudulent sworn statement or a fraudulent report.

Be it enacted by the Legislature of West Virginia:

That §12-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Accountability of persons receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

1 (a) For the purposes of this section:

2 (1) "Grantor" means a state spending unit awarding a
3 state grant.

4 (2) "Person" includes any corporation, partnership,
5 association, individual or other legal entity. The term
6 "person" does not include a state spending unit or a local
7 government as defined in section one-a, article nine,
8 chapter six of this code.

9 (3) "Report" means an engagement, such as an agreed-
10 upon procedures engagement or other attestation engage-
11 ment, performed and prepared by a certified public
12 accountant to test whether state grants were spent as
13 intended. The term "report" does not mean a full-scope
14 audit or review of the person receiving state funds.

15 (4) "State grant" means funding provided by a state
16 spending unit, regardless of the original source of the
17 funds, to a person upon application for a specific purpose.
18 The term "state grant" does not include: (A) Payments for
19 goods and services purchased by a state spending unit; (B)
20 compensation to state employees and public officials; (C)
21 reimbursements to state employees and public officials for
22 travel or incidental expenses; (D) grants of student aid; (E)
23 government transfer payments; (F) direct benefits provided
24 under state insurance and welfare programs; (G) funds
25 reimbursed to a person for expenditures made for quali-
26 fied purposes when receipts for the expenditures are
27 required prior to receiving the funds: *Provided*, That
28 notwithstanding the provisions of this subdivision, fund-

29 ing provided pursuant to section twelve, article two,
30 chapter five-b is included within the term “state grant”;
31 (H) retirement benefits; and (I) federal pass-through funds
32 that are subject to the federal Single Audit Act Amend-
33 ments of 1996, 31 U. S. C. 7501, *et seq.* The term “state
34 grant” does not include formula distributions to volunteer
35 and part-volunteer fire departments made pursuant to
36 sections fourteen-d and thirty-three, article three, chapter
37 thirty-three of this code and section seven, article twelve-c
38 of said chapter.

39 (b) (1) Any person who receives one or more state grants
40 in the amount of fifty thousand dollars or more in the
41 aggregate in a state’s fiscal year shall file with the grantor
42 a report of the disbursement of the state grant funds.
43 When the grantor causes an audit, by an independent
44 certified public accountant, to be conducted of the grant
45 funds, the audit is performed using generally accepted
46 government auditing standards and a copy of the audit is
47 available for public inspection, no report is required to be
48 filed under this section. An audit performed that complies
49 with Office of Management and Budget circular A-133, as
50 published on the twenty-seventh day of June, two thou-
51 sand three, and submitted within the period provided in
52 this section may be substituted for the report.

53 (2) Any person who receives a state grant in an amount
54 less than fifty thousand dollars or who is not required to
55 file a report because an audit has been conducted or
56 substituted as provided by subdivision (1) of this subsec-
57 tion shall file with the grantor a sworn statement of
58 expenditures made under the grant.

59 (3) Reports and sworn statements of expenditures
60 required by subdivisions (1) and (2) of this subsection shall
61 be filed within two years of the end of the person’s fiscal
62 year in which the disbursement of state grant funds by the
63 grantor was made. The report shall be made by an inde-
64 pendent certified public accountant at the cost of the
65 person receiving the state grant. State grant funds may be

66 used to pay for the report if the applicable grant provi-
67 sions allow. The scope of the report is limited to showing
68 that the state grant funds were spent for the purposes
69 intended when the grant was made.

70 (c) (1) Any person failing to file a required report or
71 sworn statement of expenditures within the two-year
72 period provided in subdivision (3), subsection (b) of this
73 section for state grant funds disbursed after the first day
74 of July, two thousand three, is barred from subsequently
75 receiving state grants until the person has filed the report
76 or sworn statement of expenditures and is otherwise in
77 compliance with the provisions of this section.

78 (2) Any grantor of a state grant shall report any persons
79 failing to file a required report or sworn statement of
80 expenditures within the required period provided in
81 subdivision (3), subsection (b) of this section for a state
82 grant disbursed after the first day of July, two thousand
83 three, to the Legislative Auditor for purposes of debarment
84 from receiving state grants.

85 (d) (1) The state agency administering the state grant
86 shall notify the grantee of the reporting requirements set
87 forth in this section.

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

93 (A) A requirement that the person seeking the state grant
94 provide a sworn statement from an authorized representa-
95 tive that the person has filed all reports and sworn state-
96 ments of expenditures for state grants received as required
97 under this section; and

98 (B) Confirmation from the Legislative Auditor by the
99 grantor that the person has not been identified as one who
100 has failed to file a report or sworn statement of expendi-

101 tures under this section. Confirmation may be accom-
102 plished by accessing the computerized database provided
103 in subsection (e) of this section.

104 (3) If any report or sworn statement of expenditures
105 submitted pursuant to the requirements of this section
106 provides evidence of a reportable condition or violation,
107 the grantor shall provide a copy of the report or sworn
108 statement of expenditures to the Legislative Auditor
109 within thirty days of receipt by the grantor.

110 (4) The grantor shall maintain copies of reports and
111 sworn statements of expenditures required by this section
112 and make the reports or sworn statements of expenditures
113 available for public inspection, as well as for use in audits
114 and performance reviews of the grantor.

115 (5) The Secretary of the Department of Administration
116 has authority to promulgate procedural and interpretive
117 rules and propose legislative rules for promulgation in
118 accordance with the provisions of article three, chapter
119 twenty-nine-a of this code to assist in implementing the
120 provisions of subsections (a), (b), (c) and (d) of this section.

121 (e)(1) Any state agency administering a state grant shall,
122 in the manner designated by the Legislative Auditor,
123 notify the Legislative Auditor of the maximum amount of
124 funds to be disbursed, the identity of the person authorized
125 to receive the funds, the person's fiscal year and federal
126 employer identification number and the purpose and
127 nature of the state grant within thirty days of making the
128 state grant or authorizing the disbursement of the funds,
129 whichever is later. If the state grant was awarded prior to
130 the first day of October, two thousand five, the grantor
131 shall provide the information required by this section by
132 the first day of December, two thousand five.

133 (2) The State Treasurer shall provide the Legislative
134 Auditor the information concerning formula distributions
135 to volunteer and part-volunteer fire departments, made

136 pursuant to sections fourteen-d and thirty-three, article
137 three, chapter thirty-three of this code and section seven,
138 article twelve-c of said chapter, the Legislative Auditor
139 requests and in the manner designated by the Legislative
140 Auditor.

141 (3) The Legislative Auditor shall maintain a list identify-
142 ing persons who have failed to file reports and sworn
143 statements required by this section. The list may be in the
144 form of a computerized database that may be accessed by
145 state agencies over the Internet.

146 (f) An audit of state grant funds may be authorized at
147 any time by the Joint Committee on Government and
148 Finance to be conducted by the Legislative Auditor at no
149 cost to the grantee.

150 (g) (1) Volunteer and part-volunteer fire departments
151 receiving formula distributions pursuant to sections
152 fourteen-d and thirty-three, article three, chapter thirty-
153 three of this code and section seven, article twelve-c of
154 said chapter shall either:

155 (A) File a report, as defined in subdivision (3), subsection
156 (a) of this section with the Legislative Auditor within the
157 same time frames as are required for sworn statements of
158 annual expenditures to be filed under this section. The
159 report shall be made by an independent certified public
160 accountant at the cost of the volunteer or part-volunteer
161 fire department. The scope of the report is limited to
162 showing that the funds distributed were spent for autho-
163 rized purposes; or

164 (B) File a sworn statement of annual expenditures with
165 the Legislative Auditor on or before the fourteenth day of
166 February of each year. The sworn statement of expendi-
167 tures shall be signed by the chief or director of the volun-
168 teer fire department and shall be made under oath and
169 acknowledged before a notary public.

170 (2) If the sworn statement or report required by this
171 subsection is not filed on or before the fifteenth day of
172 May, unless the time period is extended by the Legislative
173 Auditor, the Legislative Auditor may conduct an audit of
174 the volunteer or part-volunteer fire department.

175 (3) If the sworn statement of annual expenditures or
176 report required by this subsection is not filed with the
177 Legislative Auditor by the first day of July, unless the time
178 period is extended by the Legislative Auditor, the Legisla-
179 tive Auditor shall notify the State Treasurer who shall
180 withhold payment of any amount that would otherwise be
181 distributed to the fire department under the provisions of
182 sections fourteen-d and thirty-three, article three, chapter
183 thirty-three of this code and section seven, article twelve-c
184 of said chapter until the report is complete. Moneys
185 withheld pursuant to this subdivision are to be deposited
186 in the special revenue account created in the State Trea-
187 sury in subdivision (4) of this subsection.

188 (4) The Legislative Auditor may assign an employee or
189 employees to perform audits or reviews at the direction of
190 the Legislative Auditor of the disbursement of state grant
191 funds to volunteer fire departments. The volunteer fire
192 department shall cooperate with the Legislative Auditor,
193 the Legislative Auditor's employees and the State Auditor
194 in performing their duties under this section. If the
195 Legislative Auditor determines a volunteer fire depart-
196 ment is not cooperating, the Legislative Auditor shall
197 notify the State Treasurer who shall withhold payment of
198 any amount that would otherwise be distributed to the fire
199 department under the provisions of sections fourteen-d
200 and thirty-three, article three, chapter thirty-three of this
201 code and section seven, article twelve-c of said chapter
202 until the Legislative Auditor informs the Treasurer that
203 the fire department has cooperated as required by this
204 section. The State Treasurer shall pay the amount with-
205 held into a special revenue account hereby created in the
206 State Treasury and designated the "Volunteer Fire Depart-

207 ment Audit Account". If, after one year from payment of
208 the amount withheld into the special revenue account, the
209 Legislative Auditor informs the State Treasurer of contin-
210 ued noncooperation by the fire department, the State
211 Treasurer shall pay the amount withheld to the fund from
212 which it was distributed to be redistributed the following
213 year pursuant to the applicable provisions of those sec-
214 tions.

215 (5) Whenever the State Auditor performs an audit of a
216 volunteer fire department for any purpose the Auditor
217 shall also conduct an audit of other state funds received by
218 the fire department pursuant to sections fourteen-d and
219 thirty-three, article three, chapter thirty-three of this code
220 and section seven, article twelve-c of said chapter. The
221 Auditor shall send a copy of the audit to the Legislative
222 Auditor. The Legislative Auditor may accept an audit
223 performed by the Auditor in lieu of performing an audit
224 under this section.

225 (6) If the Legislative Auditor is notified by a grantor that
226 a fire department has failed to file a report or a sworn
227 statement of expenditures for a state grant it received, the
228 Legislative Auditor shall notify the Treasurer who shall
229 withhold further distributions to the fire department in
230 the same manner provided in subdivision (3) of this
231 subsection.

232 (h) Any report submitted pursuant to the provisions of
233 this section may be filed electronically in accordance with
234 the provisions of article one, chapter thirty-nine-a of this
235 code.

236 (i) Any person who files a fraudulent sworn statement of
237 expenditures under subsection (b) or (g) of this section, a
238 fraudulent sworn statement under subsection (d) of this
239 section or a fraudulent report under this section is guilty
240 of a felony and, upon conviction thereof, shall be fined not
241 less than one thousand dollars nor more than five thou-
242 sand dollars or imprisoned in a state correctional facility

243 for not less than one year nor more than five years, or both
244 fined and imprisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White
.....
Chairman Senate Committee

R. Ben
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Russell E. Gibbs
.....
Clerk of the Senate

Bryan D. Ben
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *30th*
Day of *September*, 2005.

[Signature]
.....
Governor

**PRESENTED TO THE
GOVERNOR**

Date 9/16/05

Time 4:25 pm