

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4016**

BY DELEGATES ATKINSON, FRICH, DEAN, SHOTT, SYPOLT,

GRAVES, HAMRICK, WHITE, WARD AND CAPITO

[Introduced January 25, 2018; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §6-9B-1, §6-9B-2, §6-9B-3 and §6-9B-4; to amend and reenact §12-4A-1, §12-  
3 4A-2, §12-4A-3, and §12-4A-4 of said code; to amend said code by adding thereto two  
4 new sections, designated §12-4A-2a and §12-4A-5; to amend and reenact §61-3-20 of  
5 said code; to amend said code by adding thereto a new section, designated §61-3-20b;  
6 and to amend and reenact §61-3-37 of said code, all relating to combatting waste, fraud,  
7 and misuse of public funds through investigations, accountability and transparency;  
8 setting forth legislative findings; defining terms; creating open governmental finances;  
9 directing Auditor to develop and maintain a searchable financial transparency website;  
10 setting forth the necessary contents of the searchable website; authorizing the Auditor to  
11 set forth specifications and guidance to governmental agencies; clarifying authority and  
12 purpose of receiving and investigating reports of possible fraud, misappropriation,  
13 mismanagement or waste of public funds; setting forth duties of Auditor to receive and  
14 investigate reports; clarifying modes of communicating reports; allowing reports to be  
15 made anonymously; establishing investigative powers of Auditor to investigate possible  
16 fraud, misappropriation, mismanagement or waste of public funds; authorizing the Auditor  
17 and others to examine into financial affairs of a state governmental office or political  
18 subdivision and all boards, commissions, authorities, agencies or other offices created  
19 under authority thereof; authorizing the Auditor and others to issue subpoenas and  
20 compulsory process, direct the service thereof by any sheriff, compel the attendance of  
21 witnesses and the production of books and papers, and administer oaths; authorizing the  
22 Auditor and others to interview witnesses and require production of items; authorizing the  
23 Auditor and others to assist in other entities in the investigation and prosecution of crimes;  
24 authorizing the Auditor's Office to be deemed a criminal justice agency; authorizing the  
25 sharing of confidential documents, material or information; requiring recipient of  
26 confidential information to agree to maintain confidentiality and privileged nature of the

27 document and material; directing Auditor to forward a summary report and evidence to  
28 certain entities when evidence exists of potential criminal violations; clarifying that Auditor  
29 investigative powers does not preempt authority or duty of other law enforcement or  
30 regulatory agencies; clarifying that Auditor investigative powers does not prevent or  
31 prohibit the voluntary disclosure of information to other law enforcement or regulatory  
32 agencies; clarifying that Auditor investigative powers does not limit powers granted  
33 elsewhere to the Auditor; directing the Auditor to track and compile instances of possible  
34 fraud, misappropriation, mismanagement or waste of public funds; directing the Auditor to  
35 annually publish a report detailing the compiled instances of possible fraud,  
36 misappropriation, mismanagement or waste of public funds; setting forth the contents of  
37 the report; directing the Auditor to provide an annual report to the Legislature's  
38 Commission on Special Investigations disclosing the nature and disposition of completed  
39 investigations; authorizing the Auditor to issue publicly an audit, special report or fraud  
40 report at the completion of an investigation; amending the criminal offense of  
41 embezzlement to remove the larceny distinction; increasing the penalties for criminal  
42 offense of embezzlement; authorizing an award of restitution to an investigating entity to  
43 cover certain expenses; creating a new criminal offense constituting larceny and penalties  
44 for improper receipt or concealment of public funds; and increasing the penalties for the  
45 criminal offense of making a false statement as to the financial condition of a person, firm  
46 or corporation.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

### **ARTICLE 9B. OPEN GOVERNMENTAL FINANCES.**

#### **§6-9B-1. Legislative findings.**

1 (a) The Legislature finds that taxpayers should be able to easily access the details of how

2 the state is spending their tax dollars and what performance results are achieved for those  
3 expenditures. It is the intent of the Legislature, therefore, to direct the State Auditor to create and  
4 maintain a searchable financial transparency website detailing where, how much, and for what  
5 purpose taxpayer moneys in state government are expended.

6 (b) It is also the intent of the Legislature that the searchable website be made compatible  
7 for future inclusion of counties or municipalities that desire to have their own searchable financial  
8 transparency website.

**§6-9B-2. Definitions.**

1 For the purpose of this article:

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

4 (b) "Funding action or expenditure" includes details on the type of spending (grant,  
5 contract, appropriations, etc.). This includes, but is not limited to, tax exemptions, tax credits or  
6 any expenditure from any civil contingency or similar fund. Where possible, a hyperlink to the  
7 actual grants or contracts shall be provided.

8 (c) "Funding source" means the state account from which the expenditure is appropriated.

9 (d) "Governmental Agency" means a state department, office, board, commission, bureau,  
10 division, institution or institution of higher education under the direction and control of the  
11 Executive Branch, Legislative Branch or Judicial Branch of state government. This includes  
12 individual state agencies and programs, elected offices, as well as those programs and activities  
13 that cross agency lines.

14 (e) "Recipients" means any individual, person, corporation, association, union, limited  
15 liability corporation, limited liability partnership, legal business entity including nonprofit  
16 organizations, grantee, contractor or any county, municipal or other local government entity.

17 (f) "Searchable financial transparency website" means a website that allows the public at  
18 no cost to search and aggregate information regarding the state's budget and spending.

**§6-9B-3. Searchable financial transparency website created.**

1           No later than July 1, 2018, the State Auditor shall develop and make publicly available a  
2 single, searchable financial transparency website containing the information specified in §6-9B-4  
3 of this code for the current year. The searchable database shall also contain the required  
4 information for at least the previous three fiscal years.

**§6-9B-4. Contents of the searchable website.**

1           (a) The Auditor shall include as part of the searchable financial transparency website the  
2 following content:

3           (1) The name and the address, principal location or residence of the recipients of funds;

4           (2) The amount of funds expended;

5           (3) The funding or expending governmental agency;

6           (4) The funding source of the revenue expended;

7           (5) The budget program or activity of the expenditure;

8           (6) Information as to the funding action or expenditure; and

9           (7) Any other relevant information specified by the Legislature.

10           (b) The searchable financial transparency website shall be updated as new data becomes  
11 available. All governmental agencies shall provide to the Auditor, in a format specified by the  
12 Auditor, all data that is required to be included in the searchable financial database website no  
13 later than 30 days after the data becomes available to the agency. The Auditor shall provide  
14 guidance and specifications to governmental agency heads to ensure compliance with this  
15 section.

16           (c) The Auditor shall make publicly known those governmental agencies that have failed  
17 to comply with the requirements of this article.

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.****ARTICLE 4A. CENTRALIZED MANAGEMENT OF INVESTIGATING COMPLAINTS.**

**§12-4A-1. Legislative findings.**

1           (a) The Legislature finds that there is no centralized state authority responsible for  
2 receiving and referring reports of possible fraud, misappropriation of, mismanagement or waste  
3 of state public funds. It is the intent of the Legislature to see that all state public funds are utilized  
4 for the maximum benefit of the people of the State of West Virginia. The Legislature finds that it  
5 is important to provide the people of this state with both a forum and an opportunity to report  
6 suspected fraud, waste or abuse of ~~state~~ public funds, and to have those reports properly  
7 investigated.

8           (b) The Legislature finds that there is a need to assist county prosecutors and law  
9 enforcement in the investigation of possible fraud, misappropriation, mismanagement or waste of  
10 public funds which often require extensive document collection and review, as well as the  
11 retention of forensic accountants and other experts.

**§12-4A-2. General purpose.**

1           The State Auditor ~~shall have authority to~~ may receive and investigate reports of possible  
2 fraud, misappropriation, mismanagement or waste of ~~state funds of the State of West Virginia~~  
3 public funds, and to confer, assist, and cooperate with ~~and to refer such reports to the commission~~  
4 ~~on special investigations,~~ county prosecutors and law-enforcement agencies in furtherance of  
5 investigations.

**§12-4A-2a. Definitions.**

1           As used in this article,

2           (a) “Anonymously” means (1) an unknown source making a report of possible fraud,  
3 misappropriation, mismanagement or waste of public funds; or (2) a known individual who, at the  
4 time of the report, has intentionally designated and indicated an intent to remain anonymous a  
5 report of possible fraud, misappropriation of, mismanagement or waste of public funds. If  
6 anonymity is pursuant to §12-4A-2a(a)(2) of this code, the Auditor may not, after receipt of the  
7 report, disclose the identity of the reporting individual without the consent of the individual, unless

8 the Auditor determines the disclosure is unavoidable during the course of the investigation.

9 (b) "Auditor" or "State Auditor" means the State Auditor of West Virginia, by himself or  
10 herself, or by any person appointed, designated or approved by the State Auditor to perform the  
11 service.

12 (c) "Confidential" means the investigations conducted by Auditor and the materials placed  
13 in the files of the Auditor as a result of any such investigation shall be confidential by law and  
14 privileged, may not be open to public inspection, and exempt from the provisions of §29B-1-1 et  
15 seq. of this code. The Auditor may use the documents, materials or other information in the  
16 furtherance of any audit, report, or legal action brought as a part of the Auditor's official duties.  
17 The Auditor may also use the documents, materials or other information if they are required for  
18 evidence in criminal proceedings or other action by the state or federal government and in such  
19 context, may be discoverable as ordered by a court of competent jurisdiction exercising its  
20 discretion.

21 (d) "Modes of communication" means a manner of communication free of cost to the user  
22 including, but not limited to, telephone hotline, electronic mail, or social media.

23 (e) "Political Subdivision" means and includes a county, municipality or any agency,  
24 authority, board, county board of education, commission, instrumentality or subunit of a county or  
25 municipality.

26 (f) "Public Funds" means moneys, funds or assets, of any character, including federal  
27 moneys, belonging to or in the custody of the state, a state governmental office, a political  
28 subdivision, or any spending unit thereof.

29 (g) "Staff" means individuals employed or contracted by the State Auditor to perform or  
30 assist an investigation. All staff retained by the State Auditor shall maintain identification and  
31 credentials signifying their retention by the State Auditor, and display the identification if upon  
32 request.

33 (h) "State governmental office" means a state department, office, board, commission,

34 bureau, division, institution or institution of higher education under the direction and organization  
35 of the Executive Branch, Legislative Branch or Judicial Branch of state government. This includes  
36 individual state agencies and programs, elected offices, as well as those programs and activities  
37 that cross agency lines.

**§12-4A-3. Duties generally.**

1 (a) The State Auditor may employ staff, including specifically a certified fraud examiner or  
2 a forensic a certified public accountant specializing in fraud and forensics, to receive and review  
3 investigate reports of suspected fraud, misappropriation, mismanagement or waste of state public  
4 funds which shall be filed in that office. ~~Such~~ The reports and investigations shall be confidential,  
5 except that the State Auditor or his or her designee may supply information necessary to  
6 effectuate this article. ~~to the appropriate governmental entities~~

7 (b) The State Auditor shall establish modes of communication sufficient to receive reports  
8 of suspected fraud, misappropriation of, mismanagement or waste of state public funds. Reports  
9 of suspected fraud, misappropriation, mismanagement or waste may be filed by any citizen or  
10 employee of the State of West Virginia. The Auditor shall make available an option for making a  
11 report under this article anonymously.

12 (c) Nothing in this article ~~shall~~ may be construed to limit the authority of any other  
13 governmental entity to conduct an internal investigation of suspected fraud, misappropriation,  
14 mismanagement or waste.

**§12-4A-4. Enforcement Investigative powers.**

1 (a) The authority to enforce the provisions of this article ~~shall be~~ is vested in the State  
2 Auditor.

3 (b) Upon receipt of a report of possible fraud, misappropriation, mismanagement or waste  
4 of public moneys, the State Auditor may examine into the financial affairs of a state governmental  
5 office or political subdivision and all boards, commissions, authorities, agencies or other offices  
6 created under authority thereof, as considered necessary to make a complete investigation.

7           (c) The State Auditor or any authorized assistant may issue subpoenas and compulsory  
8 process, direct the service thereof by any sheriff, compel the attendance of witnesses and the  
9 production of books and papers at any designated time and place, selected in their respective  
10 county, and administer oaths.

11           (d) The State Auditor may interview witnesses and require production from state  
12 governmental offices or political subdivisions of books, records, documents, papers, computers,  
13 laptops, computer hard drives, electronic records including, but not limited to, emails, electronic  
14 files, electronic documents and metadata, or any other thing, in any form in which it may exist, as  
15 the State Auditor believes should be examined to make a complete investigation: *Provided, That*  
16 a request for production directed to a state governmental office or political subdivision may be in  
17 the form of a written letter from the State Auditor in lieu of a subpoena.

18           (e) The State Auditor may assist the West Virginia Legislature's Commission on Special  
19 Investigations, county prosecutors, United States Attorneys, and state and federal law-  
20 enforcement agencies, including municipal police departments and county sheriff departments, in  
21 the investigation and prosecution of crimes related to fraud, misappropriation, mismanagement  
22 or waste of public funds.

23           (f) The State Auditor's Office may be considered a criminal justice agency enabling the  
24 Auditor and those employees assisting in an investigation to be able to provide and receive  
25 information with other criminal justice agencies.

26           (g) The State Auditor may share otherwise confidential documents, materials or  
27 information with appropriate governmental entities and agencies in furtherance of an  
28 investigation: *Provided, That* the recipient agrees to maintain the confidentiality and privileged  
29 status of the document, material or information.

30           (h) Upon completion of an investigation in which evidence exists of potential criminal  
31 violations, the State Auditor shall promptly forward a summary report and any such evidence of  
32 suspected fraud, misappropriation of, mismanagement or waste of state funds to the commission

33 ~~on special investigations and, if potentially criminal in nature~~ to the prosecuting attorney of the  
 34 county in which ~~such~~ the criminal violation is alleged to have taken place or, if appropriate, to the  
 35 law-enforcement agency or prosecutor with jurisdiction over the potential criminal violation. ~~in the~~  
 36 ~~area as well as to the commission on special investigations.~~

37 ~~(b)~~ (i) If ~~such~~ these reports are made about an agency that has its own investigative body,  
 38 then the State Auditor may refer evidence of the fraud, misappropriation, mismanagement or  
 39 waste to that investigative body.

40 (j) Nothing in this article may be construed to:

41 (1) Preempt the authority or relieve the duty of other law-enforcement or regulatory  
 42 agencies to investigate, examine and prosecute suspected violations of law;

43 (2) Prevent or prohibit a person from disclosing voluntarily information concerning possible  
 44 fraud, misappropriation, mismanagement or waste of public funds to a law-enforcement or  
 45 regulatory agency other than the State Auditor; or

46 (3) Limit the powers granted elsewhere by the laws of this state to the State Auditor or his  
 47 or her agents to investigate and examine possible violations of law.

**§12-4A-5. Tracking and Reporting.**

1 (a) Beginning July 1, 2018, the State Auditor shall track and compile all instances of  
 2 possible fraud, misappropriation, mismanagement or waste of public funds reported to the  
 3 Auditor's Office.

4 (b) On or before February 1 of each year, the State Auditor shall publish a report detailing  
 5 the compiled instances tracked in §12-4A-5(a) of this code for the prior calendar year. The report  
 6 does not have to identify the alleged subject of each report, but shall provide the following  
 7 numerical data:

8 (1) The number of reports made to the State Auditor;

9 (2) The type of alleged misconduct;

10 (3) Whether an investigation was undertaken;

- 11           (4) The alleged amount of public funds involved;
- 12           (5) The type of governmental office or entity that is the subject of the reported misconduct;
- 13   and
- 14           (6) The disposition of the reports.
- 15           (c) On or before February 1 of each year, the State Auditor shall provide an annual report
- 16 to the Legislature’s Commission on Special Investigations disclosing the nature and disposition
- 17 of completed investigated reports received pursuant to this article and referred to a prosecutor’s
- 18 office or other entity.
- 19           (d) At the conclusion of an investigation, the State Auditor may issue and make public an
- 20 audit, special report or fraud report detailing the nature of an investigation and any findings or
- 21 recommendations made as a part of the investigation. If such an investigation is made public,
- 22 the Auditor shall make publicly available certain material and information referenced in the
- 23 released report: *Provided*, That the Auditor may redact from public disclosure information to
- 24 protect the privacy of any individual or entity; *Provided, however*, That the Auditor may forgo
- 25 release of information deemed potentially detrimental to, or the subject of, a criminal prosecution.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-20. Embezzlement.**

1           (a) If any officer, agent, clerk or servant of this state, or of any county, district, school  
2 district or municipal corporation, or of any banking institution, or other corporation, or any officer  
3 of public trust in this state, or any agent, clerk or servant of any firm or person, or company or  
4 association of persons not incorporated, embezzles or fraudulently converts to his or her own use,  
5 bullion, money, bank notes, drafts, security for money, or any effects or property of any other  
6 person, which ~~shall have~~ comes into his or her possession, or been placed under his or her care  
7 or management, by virtue of his or her office, place or employment, he or she ~~shall be~~ is guilty of

8 ~~the larceny thereof~~ a felony and, upon conviction thereof, shall be imprisoned in a state  
9 correctional facility not less than one nor more than five years: *Provided*, That if ~~such~~ the guilty  
10 ~~person be~~ is an officer, agent, clerk or servant of any banking institution, he ~~or she shall be~~ is  
11 guilty of a felony and, upon conviction thereof, shall be imprisoned in ~~the penitentiary~~ a state  
12 correctional facility not less than 10 years. And it ~~shall not be~~ is not necessary to describe in the  
13 indictment, or to identify upon the trial, the particular bullion, money, bank note, draft or security  
14 for money which is so taken, converted to his or her own use or embezzled by him or her.

15 (b) And whenever any officer, agent, clerk or servant of this state, or of any county, district,  
16 school district or municipal corporation, ~~shall~~ appropriates or uses for his or her own benefit, or  
17 for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or  
18 funds belonging to this state or to any such county, district, school district or municipal corporation,  
19 he ~~or she~~ shall be held to have embezzled the same and ~~be~~ is guilty of ~~the larceny thereof~~ a felony  
20 and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one  
21 nor more than five years. In the prosecution of any such officer, agent, clerk or servant of this  
22 state or of any county, district, school district or municipal corporation charged with appropriation  
23 or use for his or her own benefit or the benefit of any other person, any bullion, money, bank  
24 notes, drafts, security for money or funds belonging to this state or to any county, district, school  
25 district or municipal corporation, it ~~shall not be~~ is not necessary to describe in the indictment, or  
26 to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or  
27 funds appropriated or used for his or her own benefit or for the benefit of any other person.

1 (c) In addition to the penalties and fines assessed by a court upon conviction, the court  
2 may, upon request of the prosecuting attorney, order restitution be made to the investigating entity  
3 to cover expenses associated with the retention of experts or additional investigative staff that  
4 were necessary to assist in the accounting of moneys or property involved in the crime: *Provided*,  
5 That any such award of restitution for the time and amount of work performed be reasonable and  
6 appropriate in comparison to the underlying conviction.

**§61-3-20b. Improper receipt of public funds.**

1           (a) If any person receives from another person, or aids in concealing, any public funds in  
 2 which he or she knows or has reason to believe has been stolen, misappropriated or embezzled,  
 3 he or she is guilty of the larceny thereof, and may be prosecuted although the principal offender  
 4 be not convicted.

5           (b) For purposes of §61-3-18(a) of this code:

6           (1) “Embezzled” means a violation of §61-3-20 of this code;

7           (2) “Political Subdivision” means and includes a county, municipality or any agency,  
 8 authority, board, county board of education, commission, instrumentality or subunit of a county or  
 9 municipality.

10          (3) “Public Funds” means moneys, funds or assets, of any character, including federal  
 11 moneys, belonging to or in the custody of the state, a state governmental office, a political  
 12 subdivision, or any spending unit thereof.

13          (4) “State governmental office” means a state department, office, board, commission,  
 14 bureau, division, institution or institution of higher education under the direction and organization  
 15 of the Executive Branch, Legislative Branch or Judicial Branch of state government. This includes  
 16 individual state agencies and programs, elected offices, as well as those programs and activities  
 17 that cross agency lines.

**§61-3-37. False statement as to financial condition of person, firm or corporation; penalty.**

1           Any person who ~~shall~~ knowingly makes or causes to be made, either directly or indirectly,  
 2 or through any agency whatsoever, any false statement in writing, with intent that it ~~shall~~ be relied  
 3 upon, respecting the financial condition, or means or ability to pay, of himself or herself, or any  
 4 other person, firm or corporation, in whom or in which he or she is interested, or for whom or for  
 5 which he or she is acting, for the purpose of procuring in any form whatsoever, either the delivery  
 6 of personal property, the payment of cash, the making of a loan or credit, the extension of a credit,  
 7 the discount of an account receivable, or the making, acceptance, discount, sale or indorsement

8 of a bill of exchange, or promissory note, for the benefit either of himself or herself or of ~~such that~~  
9 person, firm or corporation; or who, knowing that a false statement in writing has been made,  
10 respecting the financial condition or means or ability to pay, of himself or herself, or ~~such that~~  
11 person, firm or corporation in which he or she is interested, or for whom he or she is acting,  
12 procures, upon the faith thereof, for the benefit either of himself or herself, or of ~~such that~~ person,  
13 firm or corporation, either or any of the things of benefit mentioned herein; or who, knowing that  
14 a statement in writing has been made, respecting the financial condition or means or ability to pay  
15 of himself or herself or ~~such that~~ person, firm or corporation in which he or she is interested, or  
16 for whom he or she is acting, represents on a later day, either orally or in writing, that ~~such the~~  
17 statement theretofore made, if then again made on such day, would be then true, when in fact  
18 such statement, if then made, would be false, and procures upon the faith thereof, for the benefit  
19 either of himself or herself or of such other person, firm or corporation, either or any of the things  
20 of benefit mentioned herein, ~~shall be~~ is guilty of a ~~misdemeanor~~ felony and, upon conviction  
21 thereof, shall be ~~punished by confinement in jail for not more~~ imprisoned in a state correctional  
22 facility not less than one year nor more than five years, or by a fine of not more than ~~\$1,000~~  
23 \$10,000, or both fine and imprisonment, ~~in the discretion of the court.~~

NOTE: The purpose of this bill is to combat waste, fraud, and misuse of public funds through investigations, accountability and transparency. The bill directs that Auditor to establish and maintain a searchable financial transparency website. The bill clarifies the role of the Auditor to receive and investigate complaints of possible fraud, misappropriation, mismanagement or waste of public moneys. The Auditor is additionally directed to track and publish annual reports on complaints of possible fraud, misappropriation, mismanagement or waste of public moneys. The bill clarifies and increases the penalties for the offense of embezzlement and the offense of making a false statement as to financial condition. The bill also creates a new criminal offense of improper receipt or concealment of public funds.

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