

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2439

BY DELEGATES MAYNARD, AZINGER, COOPER, JENNINGS,

LOVEJOY, MILLER, SPONAUGLE AND SYPOLT

[Passed March 5, 2019; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new
3 section, designated §12-4-14b; and to amend and reenact §29-3-5f of said code, all
4 relating to fire service equipment and training funds for volunteer and part-volunteer fire
5 companies and departments; authorizing fire departments to file bank statements and
6 check images instead of sworn statements of expenditures; prohibiting the commingling
7 of funds; requiring retention of payment records; defining terms; changing deadline dates;
8 authorizing forfeiture and redistribution of funds of delinquent fire departments; prohibiting
9 the conversion of funds through returns or refunds of goods or services; providing for
10 deductions from quarterly distributions to offset improper expenditures by a fire company
11 or department; clarifying the responsibility for proposing legislative rules; requiring written
12 notifications of delinquencies and misapplications of funds; providing a procedure to
13 contest findings of Legislative Auditor; removing certain criminal penalties; and updating
14 outdated language.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

**§8-15-8b. Authorized expenditures of revenues from the Municipal Pensions and
Protection Fund and the Fire Protection Fund; deductions for unauthorized
expenditures; record retention.**

1 (a) Money received from the state for volunteer and part-volunteer fire companies and
2 departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not be
3 commingled with moneys received from any other source, except money received as a grant from
4 the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code. Distributions

5 from the Municipal Pensions and Protection Fund and the Fire Protection Fund allocated to
6 volunteer and part-volunteer fire companies and departments may be expended only for the
7 following:

8 (1) Personal protective equipment, including protective head gear, bunker coats, pants,
9 boots, combination of bunker pants and boots, coats, and gloves;

10 (2) Equipment for compliance with the national fire protection standard or automotive fire
11 apparatus, NFPA-1901;

12 (3) Compliance with insurance service office recommendations relating to fire
13 departments;

14 (4) Rescue equipment, communications equipment, and ambulance equipment: *Provided,*
15 That no moneys received from the Municipal Pensions and Protection Fund or the Fire Protection
16 Fund may be used for equipment for personal vehicles owned or operated by volunteer fire
17 company or department members;

18 (5) Capital improvements reasonably required for effective and efficient fire protection
19 service and maintenance of the capital improvements;

20 (6) Retirement of debts;

21 (7) Payment of utility bills;

22 (8) Payment of the cost of immunizations, including any laboratory work incident to the
23 immunizations, for firefighters against hepatitis-b and other blood-borne pathogens: *Provided,*
24 That the vaccine shall be purchased through the state immunization program or from the lowest-
25 cost vendor available: *Provided, however,* That volunteer and part-volunteer fire companies and
26 departments shall seek to obtain no-cost administration of the vaccinations through local boards
27 of health: *Provided further,* That in the event any volunteer or part-volunteer fire company or
28 department is unable to obtain no-cost administration of the vaccinations through a local board of
29 health, the company or department shall seek to obtain the lowest cost available for the
30 administration of the vaccinations from a licensed health care provider;

31 (9) Any filing fee required to be paid to the Legislative Auditor's Office under §12-4-14 of
32 this code relating to sworn statements of annual expenditures submitted by volunteer or part-
33 volunteer fire companies or departments that receive state funds or grants;

34 (10) Property/casualty insurance premiums for protection and indemnification against loss
35 or damage or liability;

36 (11) Operating expenses reasonably required in the normal course of providing effective
37 and efficient fire protection service, which include, but are not limited to, gasoline, bank fees,
38 postage, and accounting costs;

39 (12) Dues paid to national, state, and county associations;

40 (13) Workers' compensation premiums;

41 (14) Life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters;
42 and

43 (15) Educational and training supplies and fire prevention promotional materials, not to
44 exceed \$500 per year.

45 (b) If any volunteer fire company or part-volunteer fire department spends any amount of
46 money received from the Municipal Pensions and Protection Fund or the Fire Protection Fund for
47 an item, service, or purpose not authorized by this section, that amount, when determined by an
48 official audit, review, or investigation, shall be deducted from future distributions to the volunteer
49 fire company or part-volunteer fire department.

50 (c) If any volunteer fire company or part-volunteer fire department purchases goods or
51 services authorized by this section, but then returns the goods or cancels the services for a refund,
52 then any money refunded shall be deposited back into the same, dedicated bank account used
53 for the deposit of distributions from the Municipal Pensions and Protection Fund and the Fire
54 Protection Fund.

55 (d) A volunteer fire company or part-volunteer fire department shall retain, for five calendar
56 years, all invoices, receipts, and payment records for the goods and services paid with money

57 received from the state for volunteer and part-volunteer fire companies and departments,
58 pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code and money received as a grant from
59 the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

§12-4-14. Accountability of grantees 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 state grant.

3 (2) "Grantee" means any entity receiving a state grant, including a state spending unit,
4 local government, corporation, partnership, association, individual, or other legal entity.

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

9 (4) "State grant" means funding provided by a state spending unit, regardless of the
10 original source of the funds, to a grantee upon application for a specific purpose. The term "state
11 grant" does not include: (A) Payments for goods and services purchased by a state spending unit;
12 (B) compensation to state employees and public officials; (C) reimbursements to state employees
13 and public officials for travel or incidental expenses; (D) grants of student aid; (E) government
14 transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G)
15 funds reimbursed to a person for expenditures made for qualified purposes when receipts for the
16 expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-
17 through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. §
18 7501, *et seq.* The term "state grant" does not include formula distributions to volunteer and part-
19 volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-

20 7 of this code and does not include money received from the Fire Service Equipment and Training
21 Fund as provided in §29-3-5f of this code.

22 (b) (1) Any grantee who receives one or more state grants in the amount of \$50,000 or
23 more in the aggregate in a state's fiscal year shall file with the grantor a report of the disbursement
24 of the state grant funds. When the grantor causes an audit, by an independent certified public
25 accountant, to be conducted of the grant funds, the audit is performed using generally accepted
26 government auditing standards, and a copy of the audit is available for public inspection, no report
27 is required to be filed under this section. An audit performed that complies with Office of
28 Management and Budget circular A-133, and submitted within the period provided in this section
29 may be substituted for the report.

30 (2) Any grantee who receives a state grant in an amount less than \$50,000 or who is not
31 required to file a report because an audit has been conducted or substituted as provided by
32 subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures
33 made under the grant.

34 (3) Reports and sworn statements of expenditures required by this subsection shall be
35 filed within two years of the end of the grantee's fiscal year in which the disbursement of state
36 grant funds by the grantor was made. The report shall be made by an independent certified public
37 accountant at the cost of the grantee. State grant funds may be used to pay for the report if the
38 applicable grant provisions allow. The scope of the report is limited to showing that the state grant
39 funds were spent for the purposes intended when the grant was made.

40 (c)(1) Any grantee failing to file a required report or sworn statement of expenditures within
41 the two-year period provided in subdivision (3), subsection (b) of this section for state grant funds
42 is barred from subsequently receiving state grants until the grantee has filed the report or sworn
43 statement of expenditures and is otherwise in compliance with the provisions of this section.

44 (2) Any grantor of a state grant shall report any grantee failing to file a required report or
45 sworn statement of expenditures within the required period provided in this section to the
46 Legislative Auditor for purposes of debarment from receiving state grants.

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

49 (2) All grantors awarding state grants shall, prior to awarding a state grant, take reasonable
50 actions to verify that the grantee is not barred from receiving state grants pursuant to this section.
51 The verification process shall, at a minimum, include:

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

55 (B) Confirmation from the Legislative Auditor by the grantor that the grantee has not been
56 identified as one who has failed to file a report or sworn statement of expenditures under this
57 section. Confirmation may be accomplished by accessing the computerized database provided in
58 subsection (e) of this section.

59 (3) If any report or sworn statement of expenditures submitted pursuant to the
60 requirements of this section provides evidence of a reportable condition or violation, the grantor
61 shall provide a copy of the report or sworn statement of expenditures to the Legislative Auditor
62 within 30 days of receipt by the grantor.

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

66 (5) The Secretary of the Department of Administration has authority to promulgate
67 procedural and interpretive rules and propose legislative rules for promulgation in accordance
68 with the provisions of §29A-3-1 *et seq.* of this code to assist in implementing the provisions of this
69 section.

70 (e)(1) Any state agency administering a state grant shall, in the manner designated by the
71 Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be disbursed,
72 the identity of the grantee authorized to receive the funds, the grantee's fiscal year and federal
73 employer identification number, and the purpose and nature of the state grant within 30 days of
74 making the state grant or authorizing the disbursement of the funds, whichever is later.

75 (2) The State Treasurer shall provide the Legislative Auditor the information concerning
76 formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-
77 14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner
78 designated by the Legislative Auditor.

79 (3) The Legislative Auditor shall maintain a list identifying grantees who have failed to file
80 reports and sworn statements required by this section. The list may be in the form of a
81 computerized database that may be accessed by state agencies over the Internet.

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

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

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

**§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
4 §29-3-5f 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 account” means a bank account established by a volunteer fire company or
9 a part-volunteer fire department and maintained for the exclusive use and accounting of money
10 from formula distributions and equipment and training grants.

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

16 (c) *Reviews and audits.* — The Legislative Auditor is authorized to conduct regular reviews
17 or audits of deposits and expenditures from formula distribution and equipment and training grant
18 funds by volunteer and part-volunteer fire companies or departments. The Legislative Auditor may
19 assign an employee or employees to perform audits or reviews at his or her direction. The State
20 Treasurer shall provide the Legislative Auditor information, in the manner designated by the
21 Legislative Auditor, concerning formula distributions and equipment and training grants paid to
22 volunteer and part-volunteer fire departments. The volunteer fire company or part-volunteer fire
23 department shall cooperate with the Legislative Auditor, the Legislative Auditor’s employees, and
24 the State Auditor in performing their duties under the laws of this state.

25 (d) *State Auditor.* — Whenever the State Auditor performs an audit of a volunteer fire
26 department for any purpose, the Auditor shall also conduct an audit of other state funds received
27 by the fire department pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code. The Auditor

28 shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an
29 audit performed by the Auditor in lieu of performing an audit under this section.

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

34 (1) Failure to file, in a timely manner, copies of bank statements and check images with
35 the Legislative Auditor;

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

37 (3) Misapplication of state funds; or

38 (4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14
39 of this code for a state grant other than an equipment and training grant.

40 (f) *Delinquency in filing.* — If, after February 1, a volunteer or part-volunteer fire company
41 or department has failed to file the required bank statements and check images with the
42 Legislative Auditor, the Legislative Auditor shall notify the delinquent company or department at
43 two separate times in writing of the delinquency and of possible forfeiture of its Fire Service
44 Equipment and Training Fund distribution for the year. If the required bank statements and check
45 images are not filed with the Legislative Auditor by March 31, unless the time period is extended
46 by the Legislative Auditor, the Legislative Auditor shall then notify the Treasurer who shall withhold
47 payment of any amount that would otherwise be distributed to the fire company or fire department.
48 Prior to each subsequent quarterly disbursement of funds by the Treasurer, the Legislative Auditor
49 shall notify each delinquent company or department twice per each quarter in which the company
50 or department is delinquent. The Legislative Auditor may choose the method or methods of
51 notification most likely to be received by the delinquent company or department.

52 (g) *Noncooperation.* — If, in the course of an audit or review by the Legislative Auditor, a
53 volunteer or part-volunteer fire company or department fails to provide documentation of its

54 accounts and expenditures in response to a request of the Legislative Auditor, the Legislative
55 Auditor shall notify the State Treasurer who shall withhold payment of any amount that would
56 otherwise be distributed to the fire department under the provisions of §33-3-14d, §33-3-33, and
57 §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the fire
58 department has cooperated with the review or audit.

59 (h) *Reporting of other grants.* — Nothing in this section alters the duties and
60 responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-
61 4-14 of this code if that company or department has received funds from any state grant program
62 other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified
63 by a grantor that a fire company or department has failed to file a report or a sworn statement of
64 expenditures for a state grant it received, the Legislative Auditor shall notify the State Treasurer
65 who shall withhold further distributions to the company or department in the manner provided in
66 this section.

67 (i) *Escrow and forfeiture of moneys withheld.* — The Volunteer Fire Department Audit
68 Account previously created in the Treasury is hereby continued. When the State Treasurer
69 receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company
70 or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld
71 into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the
72 volunteer or part-volunteer fire company or department has come into compliance in less than
73 one year from the date of deposit into this special revenue account, then the Treasurer shall
74 release and distribute the withheld amounts to the fire company or department, except that any
75 interest that has accrued thereon shall be credited to the general revenue of the state. If, after
76 one year from payment of the amount withheld into the special revenue account, the Legislative
77 Auditor informs the State Treasurer of continued noncooperation by the fire department, the
78 delinquent fire company or fire department forfeits the amounts withheld and the State Treasurer

79 shall pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f
80 of this code.

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant.

1 (a) There is hereby created in the Treasury a special revenue fund to be known as the
2 Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Marshal
3 are authorized from collections. The fund may only be used for the purpose of providing grants to
4 equip volunteer and part-volunteer fire companies and departments and their members, and to

5 train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any
6 fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue
7 Fund.

8 (b) The State Fire Marshal shall establish a grant program for equipment and training for
9 volunteer and part-volunteer fire companies and departments. Such grant program shall be open
10 to all volunteer and part-volunteer fire companies and departments. In making grants pursuant to
11 this section, the State Fire Marshal shall consider:

12 (1) The number of emergency and nonemergency calls responded to by the department;

13 (2) The activities and responses of the department;

14 (3) The revenues received by the department from federal, state, county, municipal, local,
15 and other sources; and

16 (4) The department's assets, expenditures, and other liabilities, including whether the fire
17 company or department has availed itself of available statewide contracts.

18 (c) The State Fire Marshal shall propose legislative rules for promulgation in accordance
19 with §29A-3-1 *et seq.* of this code to implement the grant program established pursuant to this
20 section.

21 (d) The Legislative Auditor shall notify the State Fire Marshal of any volunteer or part-
22 volunteer fire company or department that is ineligible to receive grant funds due to the
23 department's failure to file required bank statements or financial reports or failure to comply with
24 an audit or review by the Legislative Auditor. A fire company or fire department reported by the
25 Legislative Auditor shall be ineligible to receive funds under this section until the Legislative
26 Auditor notifies the State Fire Marshal that the company or department has come into compliance.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor