

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 274

BY SENATORS SYPOLT, BOSO, STOLLINGS, CLINE,

BALDWIN, MARONEY, AND SMITH

[Introduced January 11, 2019; Referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, relating
2 to accounting for the use of funds from state grants and from formula distributions to
3 volunteer and part-volunteer fire departments; requiring fire departments to file bank
4 statements and check images instead of a sworn statement of expenditures; changing
5 threshold dates; removing criminal penalties; and updating outdated language.

Be it enacted by the Legislature of West Virginia:

**§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 state grant.

3 (2) "Person" includes any corporation, partnership, association, individual or other legal
4 entity. The term "person" does not include a state spending unit or a local government as defined
5 in §6-9-1a of this code.

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

10 (4) "State grant" means funding provided by a state spending unit, regardless of the
11 original source of the funds, to a person upon application for a specific purpose. The term "state
12 grant" does not include: (A) Payments for goods and services purchased by a state spending unit;
13 (B) compensation to state employees and public officials; (C) reimbursements to state employees
14 and public officials for travel or incidental expenses; (D) grants of student aid; (E) government
15 transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G)
16 funds reimbursed to a person for expenditures made for qualified purposes when receipts for the
17 expenditures are required prior to receiving the funds: *Provided*, That notwithstanding the
18 provisions of this subdivision, funding provided pursuant to §5B-2-12 of this code is included

19 within the term "state grant"; (H) retirement benefits; and (I) federal pass-through funds that are
20 subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, *et seq.* The term
21 "state grant" does not include formula distributions to volunteer and part-volunteer fire
22 departments and fire companies made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 ~~of said~~
23 ~~chapter of this code.~~

24 (b) (1) Any person who receives one or more state grants in the amount of \$50,000 or
25 more in the aggregate in a state's fiscal year shall file with ~~the~~ each grantor a report of the
26 disbursement of the state grant funds. When the grantor causes an audit, by an independent
27 certified public accountant, to be conducted of the grant funds, the audit is performed using
28 generally accepted government auditing standards and a copy of the audit is available for public
29 inspection, no report is required to be filed under this section. An audit performed that complies
30 with Office of Management and Budget Circular A-133, ~~as published on June 27, 2003~~ and
31 submitted within the period provided in this section may be substituted for the report.

32 (2) Any person who receives a state grant in an amount less than \$50,000 or who is not
33 required to file a report because an audit has been conducted or substituted, as provided by §12-
34 4-14(b)(1) of this code, shall file with the grantor a sworn statement of expenditures made under
35 the grant.

36 (3) Reports and sworn statements of expenditures required by ~~subdivisions (1) and (2) of~~
37 this subsection shall be filed within two years of the end of the person's fiscal year in which the
38 disbursement of state grant funds by the grantor was made. The report shall be made by an
39 independent certified public accountant at the cost of the person receiving the state grant. State
40 grant funds may be used to pay for the report if the applicable grant provisions allow. The scope
41 of the report is limited to showing that the state grant funds were spent for the purposes intended
42 when the grant was made.

43 (c) (1) Any person failing to file a required report or sworn statement of expenditures within
44 the two-year period provided in §12-4-14(b)(3) of this code for state grant funds ~~disbursed after~~

45 ~~July 1, 2003~~, is barred from subsequently receiving state grants until the person has filed the
46 report or sworn statement of expenditures and is otherwise in compliance with the provisions of
47 this section.

48 (2) Any grantor of a state grant shall report any persons failing to file a required report or
49 sworn statement of expenditures within the required period provided in ~~subdivision (3), subsection~~
50 ~~(b) of this section for a state grant disbursed after July 1, 2003~~ to the Legislative Auditor for
51 purposes of debarment from receiving state grants.

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

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

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

60 (B) Confirmation from the Legislative Auditor by the grantor that the person has not been
61 identified as one who has failed to file a report or sworn statement of expenditures under this
62 section. Confirmation may be accomplished by accessing the computerized database provided in
63 §12-4-14(e) of this code.

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

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

71 (5) The Secretary of the Department of Administration has authority to promulgate
72 procedural and interpretive rules and propose legislative rules for promulgation in accordance
73 with the provisions of §29A-3-1 *et seq.* of this code to assist in implementing the provisions of
74 subsections (a), (b), (c) and (d) of this section.

75 (e) (1) Any state agency administering a state grant shall, in the manner designated by
76 the Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be
77 disbursed, the identity of the person authorized to receive the funds, the person's fiscal year and
78 federal employer identification number and the purpose and nature of the state grant within 30
79 days of making the state grant or authorizing the disbursement of the funds, whichever is later. If
80 ~~the state grant was awarded prior to October 1, 2005, the grantor shall provide the information~~
81 ~~required by this section by December 1, 2005~~

82 (2) The State Treasurer shall provide the Legislative Auditor the information concerning
83 formula distributions to volunteer and part-volunteer fire departments, made pursuant to
84 §33-3-14d, §33-3-33, and §33-12C-7 ~~of said chapter~~ of this code, the Legislative Auditor requests
85 and in the manner designated by the Legislative Auditor.

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

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

91 (g) (1) Volunteer and part-volunteer fire departments receiving formula distributions
92 pursuant to §33-3-14d, §33-3-33, and §33-12C-7 ~~of said chapter shall either~~ of this code shall

93 ~~(A) File a report, as defined in subdivision (3), subsection (a) of this section with the~~
94 ~~Legislative Auditor within the same time frames as are required for sworn statements of annual~~
95 ~~expenditures to be filed under this section. The report shall be made by an independent certified~~
96 ~~public accountant at the cost of the volunteer or part-volunteer fire department. The scope of the~~

97 ~~report is limited to showing that the funds distributed were spent for authorized purposes; or~~

98 ~~(B) File a sworn statement of annual expenditures~~ file a copy of the bank statements and

99 check images for all months of the preceding calendar year for each grant-receiving account with

100 the Legislative Auditor on or before February 14 1 of each year. ~~The sworn statement of~~

101 ~~expenditures shall be signed by the chief or director of the volunteer fire department and shall be~~

102 ~~made under oath and acknowledged before a notary public.~~

103 ~~(2) If the sworn statement or report required by this subsection is not filed on or before~~

104 ~~May 15, unless the time period is extended by the Legislative Auditor, the Legislative Auditor may~~

105 ~~conduct an audit of the volunteer or part-volunteer fire department.~~

106 ~~(3) (2) If the sworn statement of annual expenditures or report~~ bank statements and check

107 images required by this subsection ~~is~~ are not filed with the Legislative Auditor by ~~July 1~~ March 31,

108 unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall notify

109 the State Treasurer who shall withhold payment of any amount that would otherwise be distributed

110 to the fire department under the provisions of §33-3-14d, §33-3-33, and §33-12C-7 ~~of said chapter~~

111 of this code until the report is complete. Moneys withheld pursuant to this subdivision are to be

112 deposited in the special revenue account created ~~in the Treasury~~ in §12-4-14(g)(3) of this code.

113 ~~(4) (3)~~ The Legislative Auditor may assign an employee or employees to perform audits

114 or reviews at the direction of the Legislative Auditor of the disbursement of state grant funds to

115 volunteer fire departments. The volunteer fire department shall cooperate with the Legislative

116 Auditor, the Legislative Auditor's employees and the State Auditor in performing their duties under

117 this section. If the Legislative Auditor determines a volunteer fire department is not cooperating,

118 the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount

119 that would otherwise be distributed to the fire department under the provisions of §33-3-14d,

120 §33-3-33, and §33-12C-7 ~~of said chapter~~ of this code until the Legislative Auditor informs the

121 State Treasurer that the fire department has cooperated as required by this section. The State

122 Treasurer shall pay the amount withheld into a special revenue account hereby created in the

123 Treasury and designated the "Volunteer Fire Department Audit Account". If, after one year from
124 payment of the amount withheld into the special revenue account, the Legislative Auditor informs
125 the State Treasurer of continued noncooperation by the fire department, the State Treasurer shall
126 pay the amount withheld to the fund from which it was distributed to be redistributed the following
127 year pursuant to the applicable provisions of those sections.

128 ~~(5)~~ (4) Whenever the State Auditor performs an audit of a volunteer fire department for
129 any purpose the Auditor shall also conduct an audit of other state funds received by the fire
130 department pursuant to §33-3-14d, §33-3-33, and §33-12C-7 ~~of said chapter~~ of this code. The
131 Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may
132 accept an audit performed by the Auditor in lieu of performing an audit under this section.

133 ~~(6)~~ (5) If the Legislative Auditor is notified by a grantor that a fire department has failed to
134 file a report or a sworn statement of expenditures for a state grant it received, the Legislative
135 Auditor shall notify the State Treasurer who shall withhold further distributions to the fire
136 department in the same manner provided in §12-4-14(g)(3) of this code.

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

139 (i) Any person who files a fraudulent sworn statement of expenditures under ~~subsection~~
140 ~~(b) or (g) of this section~~ §12-4-14(b) of this code, a fraudulent sworn statement under ~~subsection~~
141 ~~(d) of this section~~ §12-4-14(d) of this code, or a fraudulent report under this section is guilty of a
142 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or
143 imprisoned in a state correctional facility for not less than one year nor more than five years, or
144 both fined and imprisoned.

NOTE: The purpose of this bill is to change the procedure for volunteer and part-volunteer fire departments to report on their spending of state funds by requiring the submission of bank statements and check images instead of certified reports, and to correct outdated language. This bill has been recommended for introduction and passage by the Joint Committee on Volunteer Fire Departments and Emergency Medical Services.

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