

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 345**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

[Introduced January 18, 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 adding the definition of “grantee” to include state spending units and local governments;  
 3 and requiring grantees to report state grant spending information to grantors.

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

**ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.**

**§12-4-14. Accountability of ~~persons~~ 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) ~~“Person”~~ “Grantee” means any entity receiving a state grant, including a state spending  
 4 unit, local government, corporation, partnership, association, individual or other legal entity. ~~The~~  
 5 ~~term “person” does not include a state spending unit or a local government as defined in section~~  
 6 ~~one-a, article nine, chapter six of this code~~

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

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

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

24 (b) (1) Any ~~person~~ grantee who receives one or more state grants in the amount of \$50,000  
25 or more in the aggregate in a state's fiscal year shall file with the 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~~ grantee who receives a state grant in an amount less than \$50,000 or who  
33 is not required to file a report because an audit has been conducted or substituted as provided by  
34 subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures  
35 made under the grant.

36 (3) Reports and sworn statements of expenditures required by §12-4-14(b)(1) and §12-4-  
37 14(b)(2) of this code shall be filed within two years of the end of the ~~person's~~ grantee's fiscal year  
38 in which the disbursement of state grant funds by the grantor was made. The report shall be made  
39 by an independent certified public accountant at the cost of the ~~person receiving the state grant~~  
40 grantee. State grant funds may be used to pay for the report if the applicable grant provisions  
41 allow. The scope of the report is limited to showing that the state grant funds were spent for the  
42 purposes intended when the grant was made.

43 (c) (1) Any ~~person~~ grantee failing to file a required report or sworn statement of  
44 expenditures within the two-year period provided in §12-4-14(b)(3) of this code for state grant  
45 funds disbursed after July 1, 2003, is barred from subsequently receiving state grants until the

46 ~~person~~ grantee has filed the report or sworn statement of expenditures and is otherwise in  
47 compliance with the provisions of this section.

48 (2) Any grantor of a state grant shall report any ~~persons~~ grantee failing to file a required  
49 report or sworn statement of expenditures within the required period provided in §12-4-14(b)(3)  
50 of this code for a state grant disbursed after July 1, 2003, to the Legislative Auditor for purposes  
51 of debarment from receiving state grants.

52 (d) (1) The state agency administering the state grant shall notify the ~~person~~ grantee of  
53 the 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~~ grantee is not barred from receiving state grants pursuant to this  
56 section. The verification process shall, at a minimum, include:

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

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

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~~ grantee's fiscal  
78 year and federal employer identification number and the purpose and nature of the state grant  
79 within 30 days of making the state grant or authorizing the disbursement of the funds, whichever  
80 is later. If the state grant was awarded prior to October 1, 2005, the grantor shall provide the  
81 information 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 §33-3-  
84 14D, §33-3-33, §33-12C-7 of this code, the Legislative Auditor requests and in the manner  
85 designated by the Legislative Auditor.

86 (3) The Legislative Auditor shall maintain a list identifying ~~persons~~ grantees who have  
87 failed to file reports and sworn statements required by this section. The list may be in the form of  
88 a 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, §33-12C-7 of this code shall either:

93 (A) File a report, as defined in §12-4-14(a)(3) of this code with the Legislative Auditor  
94 within the same time frames as are required for sworn statements of annual expenditures to be  
95 filed under this section. The report shall be made by an independent certified public accountant  
96 at the cost of the volunteer or part-volunteer fire department. The scope of the report is limited to  
97 showing that the funds distributed were spent for authorized purposes; or

98 (B) File a sworn statement of annual expenditures with the Legislative Auditor on or before  
99 February 14 of each year. The sworn statement of expenditures shall be signed by the chief or  
100 director of the volunteer fire department and shall be made under oath and acknowledged before  
101 a notary public.

102 (2) If the sworn statement or report required by this subsection is not filed on or before  
103 May 15, unless the time period is extended by the Legislative Auditor, the Legislative Auditor may  
104 conduct an audit of the volunteer or part-volunteer fire department.

105 (3) If the sworn statement of annual expenditures or report required by this subsection is  
106 not filed with the Legislative Auditor by July 1, unless the time period is extended by the Legislative  
107 Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any  
108 amount that would otherwise be distributed to the fire department under the provisions of §33-3-  
109 14D, §33-3-33, §33-12C-7 of this code until the report is complete. Moneys withheld pursuant to  
110 this subdivision are to be deposited in the special revenue account created in the State Treasury  
111 in §12-4-14(g)(4) of this code.

112 (4) The Legislative Auditor may assign an employee or employees to perform audits or  
113 reviews at the direction of the Legislative Auditor of the disbursement of state grant funds to  
114 volunteer fire departments. The volunteer fire department shall cooperate with the Legislative  
115 Auditor, the Legislative Auditor's employees and the State Auditor in performing their duties under  
116 this section. If the Legislative Auditor determines a volunteer fire department is not cooperating,  
117 the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount  
118 that would otherwise be distributed to the fire department under the provisions of §33-3-14D, §33-  
119 3-33, §33-12C-7 of this code until the Legislative Auditor informs the Treasurer that the fire  
120 department has cooperated as required by this section. The State Treasurer shall pay the amount  
121 withheld into a special revenue account hereby created in the State Treasury and designated the  
122 "Volunteer Fire Department Audit Account". If, after one year from payment of the amount withheld  
123 into the special revenue account, the Legislative Auditor informs the State Treasurer of continued

124 noncooperation by the fire department, the State Treasurer shall pay the amount withheld to the  
125 fund from which it was distributed to be redistributed the following year pursuant to the applicable  
126 provisions of those sections.

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

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

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

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

NOTE: The purpose of this bill is to add the definition of grantee to include state spending units and local governments and to require grantees to report state grant spending information to grantors.

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