

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2573

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CRISS, RILEY, ANDERSON, GEARHEART, GRAVES AND LINVILLE

[Passed April 10, 2021; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §5B-10-1, §5B-10-2, §5B-10-3, §5B-10-4, §5B-10-5, §5B-10-6, §5B-10-7,
3 §5B-10-8 and §5B-10-9, and to amend and reenact §12-4-14 of said code; all generally
4 relating to providing transparency regarding the spending of public monies; enacting the
5 West Virginia Development Achievements Transparency Act; providing a short title for the
6 West Virginia Development Achievements Transparency Act; providing legislative
7 purpose and findings; providing for definitions; outlining reporting requirements for entities
8 providing a development subsidy; directing the Auditor to create a searchable website to
9 view development subsidy data; detailing the items required to be provided on the
10 Auditor's searchable website; protecting confidentiality of certain subsidy data; providing
11 that a granting body may compile information from a recipient corporation; providing that
12 a granting body shall review information from a recipient corporation to ensure reasonable
13 accuracy; providing that the State Auditor shall publish a list detailing any granting body
14 or recipient corporation that fails to comply with article 9, chapter 5B of this code; providing
15 that the Auditor shall publish a list of any granting body or recipient corporation that
16 intentionally submits false, misleading, or fraudulent information; providing that the Auditor
17 shall notify the Joint Committee on Government and Finance of any granting body or
18 recipient corporation that intentionally submits false, misleading or fraudulent information;
19 permitting the Auditor to hold public hearings or training sessions to ensure compliance
20 with the article; reenacting §12-4-14 of this code as the West Virginia Grant Transparency
21 and Accountability Act; providing a short title for West Virginia Grant Transparency and
22 Accountability Act; providing legislative intent; defining terms; providing that any grantee
23 of state grant funds that grants said funds to a subgrantee, such funds shall be treated as
24 a state grant; providing that the Auditor shall notify the Treasurer regarding any grantor
25 agency that fails to comply with reporting and recordkeeping provisions of this code and
26 that such agency shall not encumber or expend grant funds until State Auditor determines

27 that reporting and recordkeeping are brought into compliance with this code; requiring
28 each state grantmaking agency designate a Chief Accountability Officer; allowing grantor
29 agencies or the State Auditor to issue stop payment orders; requiring the State Auditor to
30 maintain a searchable and publicly accessible database of state grants; requiring State
31 Auditor, in cooperation with state grant making agencies, to promulgate legislative,
32 procedural and interpretive rules regarding stop payment procedures; providing for
33 informal conference to resolve conflicts between grantor agency and grantee when grantor
34 agency reasonably believes grant funds are subject to recovery; providing formal
35 procedures for grantor agency to follow to determine if grant funds are subject to recovery,
36 including notice and hearing requirements; requiring grantor agencies to take affirmative
37 and timely action to recover misspent and improperly held grant funds, once said funds
38 are determined to be misspent or improperly held; providing grantor agencies methods to
39 recover misspent or improperly held grant funds; allowing the Attorney General to take
40 action to recover any grants funds that have been misapplied or improperly held; creating
41 a special revenue fund known as the Grant Recovery Fund for recovered grant funds for
42 which the use is not restricted by law or otherwise appropriated; providing for rulemaking
43 by the State Auditor; requiring the State Auditor to adopt conflicts of interest policies for
44 state grants and requiring grantors, grantees, and subgrantees to disclose such conflicts;
45 changing the notification requirement from the Legislative Auditor to the State Auditor for
46 state agencies administering a state grant; requiring the State Auditor to maintain a
47 debarred list in the form of a computerized database accessible by state agencies and the
48 public, with public disclosure to the extent allowed by federal law; defining prohibited
49 political activity; requiring grantors, grantees, subgrantees, and personnel thereof to not
50 use grant funds for prohibited political activities or to be knowingly compensated with grant
51 funds for prohibited political activities; providing exception for 501(c)(3) and 501(c)(4)
52 organizations that receive state grant funds for federally permissible advocacy; providing

53 criminal penalties; and providing for reporting by the State Auditor to the Joint Legislative
54 Committee on Government and Finance that demonstrates efficiencies cost savings, and
55 reductions in fraud, waste and abuse.

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

ARTICLE 10. WEST VIRGINIA DEVELOPMENT ACHIEVEMENTS TRANSPARENCY ACT.

§5B-10-1. Short title.

1 This article shall be known and cited as the “West Virginia Development Achievements
2 Transparency Act” or the “West Virginia DATA Act”.

§5B-10-2. Purpose and findings.

1 (a) The Legislature finds that public tax dollars are expended annually, whether directly in
2 the form of grants or indirectly in the form of tax credits and incentives, for the purpose of
3 developing and improving economic industries within the State of West Virginia.

4 (b) The Legislature further finds that the State of West Virginia should inform state
5 taxpayers about these direct or indirect expenditures, the objectives of the expenditures, and
6 whether the state met the intended objectives of the expenditures.

7 (c) The Legislature further finds that any funds deposited into the Grant Recovery Fund
8 pursuant to §12-4-14(e)(10) of this code should be appropriated by the Legislature to the granting
9 body that originally granted the funds to a grantee or subgrantee.

§5B-10-3. Definitions.

1 For the purpose of this article:

2 “Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person
3 appointed, designated, or approved by the State Auditor to perform the service.

4 “Business type” means the legal form of organization of a corporate parent or recipient
5 corporation, including, but not limited to, a corporation, partnership, sole proprietorship, or limited
6 liability company.

7 “Corporate parent” means any person, association, corporation, joint venture, partnership,
8 or other entity that owns or controls 50 percent or more of a recipient corporation.

9 “Confidential information” means any internal, deliberative, preliminary, proprietary,
10 personal, or protected economic development or taxpayer information as defined in §5B-10-6 of
11 this code, §11-10-5d of this code, or Chapter 29B of this code, that is exempt from public
12 disclosure.

13 “Date of subsidy” means the date that a granting body provides the initial monetary value
14 of a development subsidy to a recipient corporation: *Provided*, That where the subsidy is for the
15 installation of new equipment, such date shall be the date the recipient corporation puts the
16 equipment into service: *Provided, however*, That where the subsidy is for improvements to
17 property, such date shall be the date the improvements are finished, or the date the recipient
18 corporation occupies the property, whichever is earlier.

19 “Development subsidy” means any financial transaction of public funds with an aggregate
20 value of at least \$10,000 for the purpose of stimulating economic development within the state,
21 including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones,
22 empowerment zones, tax increment financing, sponsorships, fee waivers, land price subsidies,
23 matching funds, tax abatements, tax exemptions, and tax credits.

24 “Duration of subsidy” means as many years as a subsidy benefits a recipient corporation,
25 such as the time period of a grant, the number of years a tax credit may be claimed and/or carried
26 forward, the number of years or term length of a loan, or the number of years a property tax
27 reduction applies.

28 “Full-time job” means a job in which an individual is employed by a recipient corporation
29 for at least 35 hours per week.

30 “Granting body” means any agency, board, office, public-private partnership, public benefit
31 corporation or authority of the state or local government that provides a development subsidy to
32 a recipient corporation.

33 “NAICS code” means the assigned code maintained by the North American Industry
34 Classification System which describes a particular industry.

35 “New Employee” means a full-time employee who represents a net increase in the number
36 of individuals employed by the recipient corporation in the state. “New employee” does not include
37 an employee who performs a job that was previously performed by another employee of the
38 recipient corporation if that job existed for at least six months before hiring the employee.

39 “Official report” means a formal, written report prepared by a granting body delivered to a
40 third party, including, but not limited to, the Joint Committee on Government and Finance,
41 Governor’s Office, or the public.

42 “Part-time job” means a job in which an individual is employed by a recipient corporation
43 for less than 35 hours per week.

44 “Project site” means the site of a project for which any development subsidy is provided,
45 as specified by street address, city name, and zip code.

46 “Recipient corporation” means any person, association, corporation, joint venture,
47 partnership or other entity that receives a development subsidy.

48 “Subsidy type” means the classification of a development subsidy transaction, including,
49 but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones,
50 tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax
51 abatements, tax exemptions, and tax credits.

52 “Subsidy value” means the face value of any and all development subsidies provided to a
53 recipient corporation. The face value of a loan means the amount of the loan.

54 “Temporary job” means a job in which an individual is hired for a season or for a limited
55 period of time.

§5B-10-4. Reporting requirements.

1 (a) Within 30 days of the end of the fiscal year, each granting body shall provide the Auditor
2 with the information required in §5B-10-6 of this code for each development subsidy provided to

3 a recipient corporation by a granting body: *Provided*, That no development subsidy approved and
4 legally obligated by the State of West Virginia shall be exempt from disclosure under this article.

5 (b) The Auditor shall provide guidance to each granting body regarding the standard and
6 manner of reporting specified in this section.

7 (c) The Auditor may accept one or multiple official reports of a granting body to satisfy the
8 requirements of this section provided the information provided in the official reports discloses the
9 information required by §5B-10-6 of this code.

10 (d) The West Virginia Department of Economic Development may fulfill the requirements
11 of this section on behalf of any granting bodies.

12 (e) The West Virginia Department of Economic Development may fulfill the requirements
13 of this section by providing any agreements entered into or signed by the West Virginia
14 Department of Economic Development which obligates public funds as of the date the agreement
15 is entered into, signed or otherwise made public.

§5B-10-5. Auditor's searchable economic development website created.

1 No later than January 1, 2022, the Auditor shall develop and make publicly available a
2 searchable financial transparency website containing the information specified in §5B-10-6 of this
3 code.

§5B-10-6. Contents of the searchable website.

1 (a) The Auditor shall include as part of the searchable economic development
2 transparency website the following content for each fiscal year and the previous three fiscal years:

3 (1) The name of the recipient corporation of a development subsidy: *Provided*, That if a
4 name of a recipient corporation of a development subsidy be considered confidential information,
5 the granting body shall provide the business type of the recipient corporation instead of the name;

6 (2) The name of the corporate parent of the recipient corporation, if applicable: *Provided*,
7 That should a name of a corporate parent of a recipient corporation of a development subsidy be

8 considered confidential information, the granting body shall provide the business type of the
9 corporate parent instead of the name;

10 (3) The project site: *Provided*, That should the project site be considered confidential
11 information, the granting body shall provide the city, state, and zip code, but not the street
12 address;

13 (4) The NAICS code or codes of the recipient corporation;

14 (5) The date of subsidy;

15 (6) The subsidy value;

16 (7) The duration of subsidy;

17 (8) The subsidy type;

18 (9) The number of new employees the development subsidy is expected to create within
19 the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs;

20 (10) The number of new employees the development subsidy has actually created within
21 the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs: *Provided*,
22 That this number may be estimated if an accurate count is not available, but the granting body
23 shall clearly disclose that the reported number is an estimate;

24 (11) Any other direct or indirect benefits to the state the granting body intends the
25 development subsidy to achieve, including, but not limited to, creation of public infrastructure,
26 vocational training, apprenticeships, workforce development, or state tourism visitor or permanent
27 resident population increases;

28 (12) Any other direct or indirect benefit to the state actually achieved by the development
29 subsidy, including, but not limited to, creation of public infrastructure, vocational training,
30 apprenticeships, workforce development, or state tourism visitor or permanent resident population
31 increases; and

32 (13) The name or names of the granting body or bodies providing the development
33 subsidy.

§5B-10-7. Confidentiality.

1 (a) Nothing in this article may be construed as requiring the West Virginia Department of
2 Economic Development or the West Virginia Tax Department to release confidential information
3 as defined in this article.

4 (b) If information regarding a development subsidy is confidential information, a granting
5 body shall redact only those confidential items but shall disclose any other information pertaining
6 to a development subsidy that is not confidential information.

7 (c) The Auditor may consult with the granting body to determine the confidentiality of
8 development subsidy data required in §5B-10-6 of this code and determine the appropriate
9 disclosures on the searchable economic development website created in §5B-10-5 of this code
10 to preserve confidentiality.

11 (d) The Auditor shall identify any redacted items not appearing on the searchable
12 economic development transparency website and the justification as to why the items were
13 redacted.

§5B-10-8. Source and accuracy of information; failure to report.

1 (a) To fulfill the requirements of this article, a granting body may independently compile
2 the information required in §5B-10-6 of this code or request the information from a recipient
3 corporation.

4 (b) A granting body shall review information received from a recipient corporation to
5 ensure it is reasonably accurate but is not required to audit or certify the accuracy of the
6 information.

7 (c) The Auditor shall publish a list on the searchable economic development transparency
8 website detailing any granting body or recipient corporation who fails to comply with the
9 requirements of this article.

10 (d) The Auditor shall publish a list on the searchable economic development transparency
11 website detailing any granting body or recipient corporation who intentionally submits false,
12 misleading, or fraudulent information: *Provided*, That the Auditor shall notify the Joint Committee
13 on Government and Finance of any granting body or recipient corporation who intentionally
14 submits false, misleading, or fraudulent information to the Auditor.

§5B-10-9. Public hearings.

1 The Auditor may conduct public hearings or training sessions to assist any recipient
2 corporation or granting body in complying with the requirements of this article.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

**§12-4-14. West Virginia Grant Transparency and Accountability Act; Accountability of
grantees receiving state funds or grants; procedures, reporting, auditing,
investigations, and recovery; sworn statements by volunteer fire departments; rule
making, criminal penalties.**

1 (a) This section may be cited as The West Virginia Grant Transparency and Accountability
2 Act. The West Virginia Grant Transparency and Accountability Act is intended to develop a
3 coordinated, nonredundant process for the effective oversight and monitoring of grant recipients,
4 thereby ensuring quality programs and limiting fraud, waste, and abuse.

5 (b) For the purposes of this section:

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

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

9 (3) "Subgrantee" means an entity, including a state spending unit, local government,
10 corporation, partnership, association, individual, or other legal entity, who receives grant money
11 from a grantee who was awarded a state grant.

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

16 (5) "State grant" means funding provided by a state spending unit, regardless of the
17 original source of the funds, to a grantee upon application for a specific purpose. The term "state
18 grant" does not include: (A) Payments for goods and services purchased by a state spending unit;
19 (B) compensation to state employees and public officials; (C) reimbursements to state employees
20 and public officials for travel or incidental expenses; (D) grants of student aid; (E) government
21 transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G)
22 funds reimbursed to a person for expenditures made for qualified purposes when receipts for the
23 expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-
24 through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. §
25 7501 *et seq.* The term "state grant" does not include formula distributions to volunteer and part-
26 volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-
27 7 of this code and does not include money received from the Fire Service Equipment and Training
28 Fund as provided in §29-3-5f of this code.

29 (6) "West Virginia debarred list" means the list maintained by the State Auditor that
30 contains the names of individuals and entities that are ineligible, either temporarily or
31 permanently, from receiving an award of grant funds from the state.

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

34 (8) "Stop payment order" means a communication from the state grant-making agency to
35 the State Auditor and the State Treasurer, following procedures by the State Auditor, causing the
36 cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee's failure

37 to comply with one or more terms of the grant or subgrant, violations of law, or the initiation of an
38 audit or investigation.

39 (9) "Stop payment procedure" means the procedure created by the State Auditor which
40 effects a stop payment order or the lifting of a stop payment order.

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

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

53 (3) Subgrant of grant funds – If any grantee obtains grant funds and grants any part or all
54 of those funds to a subgrantee for a specific purpose or purposes, the granted funds shall be
55 treated as a state grant.

56 (4) Reports and sworn statements of expenditures required by this section shall be filed
57 within two years of the end of the grantee's fiscal year in which the disbursement of state grant
58 funds by the grantor was made. The report shall be made by an independent certified public
59 accountant at the cost of the grantee. State grant funds may be used to pay for the report if the
60 applicable grant provisions allow. The scope of the report is limited to showing that the state grant
61 funds were spent for the purposes intended when the grant was made.

62 (5) In the event the State Auditor determines that applicable reporting or record keeping
63 provisions for state grants are delinquent or not in compliance with this code, the State Auditor
64 shall notify the State Treasurer and no further grant funds appropriated to the grantor agency
65 under the specific grant shall be encumbered or expended until such time as the State Auditor
66 determines that all applicable reporting or record keeping provisions are brought into
67 compliance: *Provided*, That such suspension of funding does not violate federal law or regulations
68 or unreasonably prevent or detrimentally impact the ability of the agency to receive federal support
69 or funding.

70 (6) Each State grant-making agency shall designate a Chief Accountability Officer, to the
71 extent possible from within its existing staff, who shall serve as a liaison to the State Auditor and
72 shall be responsible for the state agency's implementation of and compliance with the law, rules,
73 and terms of grants. Such position may be held concurrently with any other designated position.

74 (d)(1) Grantor agencies or the State Auditor shall issue stop payment orders for failure to
75 file required reports. Any grantee failing to file a required report or sworn statement of
76 expenditures within the two-year period as provided in this section for state grant funds is barred
77 from subsequently receiving state grants until the grantee has filed the report or sworn statement
78 of expenditures and is otherwise in compliance with the provisions of this section.

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

82 (3) The State Auditor shall maintain a searchable and publicly accessible database listing
83 all awarded state grants. All grantors shall provide a list of grantees and subgrantees to the State
84 Auditor and all other information regarding grant funds and grantees as required by law or rule.

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

87 (2) All grantors awarding state grants shall, prior to awarding a state grant verify that the
88 grantee is not barred from receiving state grants pursuant to this section. The verification process
89 shall, at a minimum, include:

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

93 (B) Confirmation from the State Auditor by the grantor that the grantee has not been
94 identified as one who has failed to file a report or sworn statement of expenditures under this
95 section. Confirmation may be accomplished by accessing the computerized database
96 provided for in this section.

97 (3) If any report or sworn statement of expenditures submitted pursuant to the
98 requirements of this section provides evidence of a reportable condition or violation, the grantor
99 shall provide a copy of the report or sworn statement of expenditures to the State Auditor within
100 30 days of receipt by the grantor.

101 (4) The grantor and State Auditor shall maintain copies of reports and sworn statements
102 of expenditures required by this section and make the reports or sworn statements of
103 expenditures available for public inspection, as well as for use in audits and performance reviews
104 of the grantor.

105 (5) Stop payment procedures – The State Auditor, in cooperation with state grant-making
106 agencies, shall promulgate legislative, procedural, and interpretive rules in accordance with the
107 provisions of §29A-3-1 *et seq.* of this code in implementing the provisions of this section which
108 shall include, but not be limited to:

109 (A) Procedures concerning issuing and lifting stop payments and other corrective actions;

110 (B) Factors to be considered in determining whether to issue a stop payment order
111 including whether or not a stop payment order is in the best interest of the state;

112 (C) Factors to be considered in determining whether a stop payment order should be lifted;
113 and

114 (D) Procedures for notification to the grantee or subgrantee of the issuance of a stop
115 payment order, the lifting of a stop payment order, and any other related information.

116 (6) Informal Conference – Whenever a grantor agency reasonably believes that grant
117 funds are subject to recovery, the grantor agency shall provide the grantee the opportunity for at
118 least one informal conference to determine the facts and issues and to resolve any conflicts before
119 taking any formal recovery actions.

120 (7) Formal Procedures for Recovery –

121 (A) If a grantor agency determines that certain grant funds are to be recovered, then, prior
122 to taking any action to recover the grant funds, the grantor agency shall provide the grantee of
123 the funds a written notice of the intended recovery. This notice shall identify the funds and the
124 amount to be recovered and the specific facts which permit recovery.

125 (B) A grantee shall have 35 days from the receipt of the notice required in paragraph (A)
126 of this subdivision to return the grant funds or request a hearing in writing to show why recovery
127 is not justified or proper.

128 (C) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then:

129 (i) The hearing shall be conducted under §29A-5-1 *et seq.* of this code, and be presided
130 over by the grantor agency head or their designee;

131 (ii) The grantor agency shall hold the hearing at which the grantee or designated
132 representative may present evidence and witnesses to show why recovery should not be
133 permitted; and

134 (iii) After the conclusion of the hearing, the grantor agency shall make a final decision and
135 issue a written final recovery order in compliance with §29A-5-3 of this code and send a copy of
136 the order to the grantee and the State Auditor.

137 (D)(i) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision then
138 the grantor agency may not take any action of recovery until at least 35 days after the grantor
139 agency has issued a final recovery order pursuant to the requirements of paragraph (C) of this
140 subdivision.

141 (ii) If a grantee does not return the grant funds or request a hearing as permitted in
142 paragraph (B) of this subdivision, then the grantor agency may proceed with recovery of the grant
143 funds identified in the notice issued pursuant to the requirements of paragraph (A) of this
144 subdivision, at any time after the expiration of the 35 day request period established in paragraph
145 (B) of this subdivision.

146 (8) Recovery of Grant Funds by Grantor Agency – Any grant funds which have been
147 misspent or are being improperly held are subject to recovery by the grantor agency which made
148 the grant. The grantor agency making the grant shall take affirmative and timely action to recover
149 all misspent or improperly held grant funds. In order to effectuate the recovery of such grant funds,
150 the grantor agency making the grant may use any one or a combination of the following:

151 (A) Offset the amounts against existing grants or future grants to be made by the grantor
152 agency making the recovery;

153 (B) Request offsets of the amounts from existing grants or future grants to be made by
154 other grantor agencies;

155 (C) Initiate any debt collection method authorized by law against any private person,
156 business, or entity;

157 (D) Remove the grantee from the grantor agency's programs and debar the grantee's
158 participation in future grant programs for a period not to exceed three years or until removed from
159 the debarred list; or

160 (E) Request further action under subdivision (9) of this subsection to recover grant funds
161 and otherwise enforce all applicable laws.

162 (9) Recovery of State Grant Funds – The Attorney General, independently or on behalf of
163 the State Auditor, may take any action within his or her authority to recover any grant funds which
164 have been misapplied or are being improperly held and have all the powers of collection
165 established in this act in addition to any other powers authorized by law, including, without
166 limitation, to file lawsuits to recover grant funds.

167 (10) All grant funds, whose use is not restricted by law or otherwise appropriated, which
168 are recovered by the grantor, or State Auditor, and expired or unexpended grant funds remaining
169 at grant completion or termination, shall be deposited in a special revenue fund, which is hereby
170 created and established in the State Treasury to be known as the Grant Recovery Fund. The
171 moneys in the fund, with all interest or other earnings thereon, shall be expended only upon
172 appropriation by the Legislature.

173 (11) The State Auditor has authority to promulgate procedural and interpretive rules and
174 propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.*
175 of this code to assist in implementing the provisions of this section. The rules shall set forth
176 uniform administrative requirements and reporting procedures for state grants and subgrants to
177 ensure compliance. State granting agencies shall not impose additional or inconsistent
178 requirements unless specifically required by state or federal law.

179 (12) Conflicts of interest – The State Auditor shall adopt rules regarding conflict of interest
180 policies for state grants. Grantors, grantees, and subgrantees must disclose in writing any
181 potential conflicts of interest to the grant applicant prior to awarding the grant.

182 (f)(1) Any state agency administering a state grant shall, in the manner designated by
183 the State Auditor, notify the State Auditor of the maximum amount of funds to be disbursed, the
184 identity of the grantee authorized to receive the funds, the grantee’s fiscal year and federal
185 employer identification number, and the purpose and nature of the state grant within 30 days of
186 making the state grant or authorizing the disbursement of the funds, whichever is later.

187 (2) The State Treasurer shall provide the Legislative Auditor the information concerning
188 formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-
189 14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner
190 designated by the Legislative Auditor.

191 (3) The State Auditor shall maintain a debarred list identifying grantees who have failed to
192 file reports and sworn statements required by this section. The list shall be in the form of a
193 computerized database that shall be accessible by state agencies and the public over the
194 Internet, unless public disclosure would violate federal law or regulations.

195 (g) An audit of state grant funds may be authorized at any time by the Joint Committee
196 on Government and Finance to be conducted by the State Auditor in cooperation with
197 the Legislative Auditor at no cost to the grantee.

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

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

205 (j) Prohibition on use of grant funds for prohibited political activity –

206 (1) For the purpose of this section, "prohibited political activity" means activity directed
207 toward the success or failure of a political party, candidate for political office, or ballot issue, and
208 includes, without limitation, express advocacy for the election or defeat of a political party,
209 candidate, or ballot issue.

210 (2) Grantors, grantees, subgrantees, and personnel thereof shall not knowingly use grant
211 funds, or goods or services purchased with grant funds, to engage, either directly or indirectly, in
212 a prohibited political activity.

213 (3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly
214 compensated from grant funds for time spent engaging in a prohibited political activity.

215 (4) Nothing in this section shall prohibit any organization described in 26 U.S.C. §501(c)(3)
216 or 26 U.S.C. §501(c)(4) receiving a grant from the state from engaging in any federally permissible
217 activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the
218 specific funds acquired by a grant from the state or grantor shall not be used for those activities
219 that are permitted by federal law but prohibited by this section.

220 (5) A grantor, grantee, subgrantee, or personnel thereof who knowingly uses grant funds
221 for prohibited political activity in violation of this section is guilty of a felony and, upon conviction
222 thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state
223 correctional facility for not less than one year nor more than five years, or both fined and
224 imprisoned.

225 (k) Reporting – Effective on or before December 31, 2022 and every three years
226 thereafter, the State Auditor shall submit to the Joint Legislative Committee on Government and
227 Finance a report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste
228 and abuse. The report shall include, but not be limited to, facts describing:

229 (1) The number and names of entities placed on the West Virginia Debarred List;

230 (2) The number of stop payment orders issued to grantees;

231 (3) Any savings realized as a result of the implementation of this act;

232 (4) A statement of funds recovered and funds in the recovery process;

233 (5) Any reductions in the number of duplicative audit report reviews; and

234 (6) The overall number of state grants awarded that given year and the total amount of
235 dollars awarded by each state agency.

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

.....
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, 2021.

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Governor