

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2573**

BY DELEGATES ROWAN, MAYNARD, HOTT, HARDY, J.

PACK, CRISS, RILEY, ANDERSON, GEARHEART, GRAVES

AND LINVILLE

[Origination in the Committee on the Judiciary;

reported on March 23, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §5B-9-1, §5B-9-2, §5B-9-3, §5B-9-4, §5B-9-5, §5B-9-6, §5B-9-7, §5B-9-8 and  
3 §5B-9-9, and to amend and reenact §12-4-14 of said code; all generally relating to  
4 providing transparency regarding the spending of public monies; enacting the West  
5 Virginia Development Achievements Transparency Act; providing a short title for the West  
6 Virginia Development Achievements Transparency Act; providing legislative purpose and  
7 findings; providing for definitions; outlining reporting requirements for entities providing a  
8 development subsidy; directing the Auditor to create a searchable website to view  
9 development subsidy data; detailing the items required to be provided on the Auditor's  
10 searchable website; protecting confidentiality of certain subsidy data; providing that a  
11 granting body may compile information from a recipient corporation; providing that a  
12 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 9. WEST VIRGINIA DEVELOPMENT ACHIEVEMENTS TRANSPARENCY ACT.**

**§5B-9-1. 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-9-2. 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.

**§5B-9-3. 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-9-6 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-9-4. 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-9-6 of this code for each development subsidy provided to a  
3 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-9-6 of this code.

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

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

**§5B-9-5. 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-9-6 of this  
3 code.

**§5B-9-6. 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.  
32           (13) The name or names of the granting body or bodies providing the development  
33 subsidy.

**§5B-9-7. Confidentiality.**

- 1           (a) Nothing in this article may be construed as requiring the West Virginia Development  
2 Office or the West Virginia Tax Department to release confidential information as defined in this  
3 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-9-6 of this code and determine the appropriate  
9 disclosures on the searchable economic development website created in §5B-9-5 of this code to  
10 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-9-8. 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-9-6 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-9-9. 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           ~~(a)~~ (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           ~~(3)~~ (4) "Report" means an engagement, such as an agreed-upon procedures engagement  
13 or 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           ~~(4)~~ (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 ~~(b)~~ (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 ~~(3)~~ (4) Reports and sworn statements of expenditures required by this subsection shall be  
57 filed within two years of the end of the grantee's fiscal year in which the disbursement of state  
58 grant 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 ~~(e)(d)~~(1) Grantor agencies or the State Auditor shall issue stop payment orders for failure  
75 to file required reports. Any grantee failing to file a required report or sworn statement of  
76 expenditures within the two-year period ~~provided in subdivision (3), subsection (b)~~ as provided  
77 in of this section for state grant funds is barred from subsequently receiving state grants until the  
78 grantee has filed the report or sworn statement of expenditures and is otherwise in compliance  
79 with the provisions of this section.

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

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

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

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

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

94 (B) Confirmation from the ~~Legislative Auditor~~ State Auditor by the grantor that the grantee  
95 has not been identified as one who has failed to file a report or sworn statement of expenditures

96 under this section. Confirmation may be accomplished by accessing the computerized database  
97 provided for in ~~subsection (e)~~ of this section.

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

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

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

110 (A) Procedures concerning issuing and lifting stop payments and other corrective actions.

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

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

114 and

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

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

121 (7) Formal Procedures for Recovery.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

168 (10) All grant funds, whose use is not restricted by law or otherwise appropriated, which  
169 are recovered by the grantor, or State Auditor, and expired or unexpended grant funds remaining  
170 at grant completion or termination, shall be deposited in a special revenue fund, which is hereby  
171 created and established in the State Treasury to be known as the Grant Recovery Fund. The

172 moneys in the fund, with all interest or other earnings thereon, shall be expended only upon  
173 appropriation by the Legislature.

174 ~~(5)~~ (11) ~~The Secretary of the Department of Administration~~ State Auditor has authority to  
175 promulgate procedural and interpretive rules and propose legislative rules for promulgation in  
176 accordance with the provisions of §29A-3-1, *et seq.* of this code to assist in implementing the  
177 provisions of this section. The rules shall set forth uniform administrative requirements and  
178 reporting procedures for state grants and subgrants to ensure compliance. State granting  
179 agencies shall not impose additional or inconsistent requirements unless specifically required by  
180 state or federal law.

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

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

190 (2) The State Treasurer shall provide the Legislative Auditor the information concerning  
191 formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-  
192 14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner  
193 designated by the Legislative Auditor.

194 (3) The ~~Legislative Auditor~~ State Auditor shall maintain a debarred list identifying grantees  
195 who have failed to file reports and sworn statements required by this section. The list ~~may~~ shall be  
196 in the form of a computerized database that ~~may~~ shall be ~~accessed~~ accessible by state

197 agencies and the public over the Internet, unless public disclosure would violate federal law or  
198 regulations.

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

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

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

209 (i) Prohibition on use of grant funds for prohibited political activity.

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

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

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

219 (4) Nothing in this section shall prohibit any organization described in 26 U.S.C. §501(c)(3)  
220 or 26 U.S.C. §501(c)(4) receiving a grant from the state from engaging in any federally permissible  
221 activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the

222 specific funds acquired by a grant from the state or grantor shall not be used for those activities  
223 that are permitted by federal law but prohibited by this section.

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

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

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

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

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

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

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

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