WEST virginia legislature

2024 regular session

Committee Substitute

for

House Bill 5399

By Delegates Rohrbach, Statler, Mallow, DeVault, Petitto, Jennings, Heckert, Miller, Summers, Hillenbrand, and Householder

[Originating in the Committee on Finance; Reported on February 21, 2024]

A BILL to repeal §12-4-14a of the Code of West Virginia,1931, as amended, and to amend and reenact §12-4-14 and §12-4-14b of said code; and to amend and reenact §33-3-33 of said code, all relating to duties of the State Auditor; repealing section creating terminated program; directing state audit functions of volunteer and part-volunteer fire departments to the State Auditor; requiring certain periodic audits; prohibiting distributing state funds to volunteer and part-volunteer fire departments that fail to comply with audit requirements; providing for restitution be paid to volunteer and part-volunteer fire departments double the amount of property unlawfully taken; requiring posting a notice of penalty in volunteer and part-volunteer fire departments; establishing a pilot project of volunteer and part-volunteer fire departments to evaluate implementation of the State Auditor’s Checkbook accounting system; clarifying what grants are subject to reporting requirements of the Grant Transparency and Accountability Act; defining terms; and making other technical clarifications.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

[§12-4-14](https://code.wvlegislature.gov/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.

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

(b) For the purposes of this section:

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

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

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

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

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

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

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

(8) "Stop payment order" means a communication from the ~~state grant-making agency~~ grantor to the State Auditor and the State Treasurer, following procedures established by the State Auditor, causing the cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee’s failure to comply with one or more terms of the state grant or subgrant, violations of law, or the initiation of an audit or investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) *Formal Procedures for Recovery* –

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

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

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

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

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

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

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

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

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

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

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

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

(D) Remove the grantee from the grantor ~~agency’s~~ programs and debar the grantee’s participation in future state grant programs for a period not to exceed three years or until removed from the West Virginia debarred list; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§12-4-14a. Workers Compensation Subsidy for Volunteer Fire Departments; creation of program; Auditor to administer.

[Repealed.]

§12-4-14b. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

(a) *Definitions*. — For the purposes of this section:

“Equipment and training grant” means a grant of money to a volunteer fire company or a part-volunteer fire department from the Fire Service Equipment and Training Fund created in §29-3-5f of this code;

“Formula distribution” means a distribution of money to volunteer and part-volunteer fire companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code; and

“State funds accounts” means every bank account and investment account established by a volunteer or part-volunteer fire company or department into which the volunteer or part-volunteer fire company or department has deposited or invested money from formula distributions and equipment and training grants.

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

(c) *Reviews and audits*. — Effective July 1, 2024, the State Auditor shall assume all audit functions established pursuant to this section previously administered by the Legislative Auditor. The ~~Legislative~~ State Auditor is authorized to conduct regular reviews or audits of deposits and expenditures from formula distribution and equipment and training grant funds by volunteer and part-volunteer fire companies or departments. An audit shall be performed at a minimum at least once every 5 years. The ~~Legislative~~ State Auditor may assign an employee or employees to perform audits or reviews at his or her direction. The State Treasurer shall provide the ~~Legislative~~ State Auditor information, in the manner designated by the ~~Legislative~~ State Auditor, concerning formula distributions and equipment and training grants paid to volunteer or part-volunteer fire companies and departments. The volunteer or part-volunteer fire company or department shall cooperate with ~~the Legislative Auditor, the Legislative Auditor’s employees, and~~ the State Auditor in performing their duties under the laws of this state.

(d) *~~State Auditor~~ Scope of Audits-* Whenever the ~~State~~ Auditor performs an audit of a volunteer or part-volunteer fire company or department for any purpose, the Auditor shall also conduct an audit of other state funds received by the company or department pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code. ~~The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit under this section~~.

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

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

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

(3) Misapplication of state funds; or

(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of this code for a state grant other than an equipment and training grant: *Provided,* That any sworn statement required to be submitted by a volunteer or part-volunteer fire department must be signed by the chief and treasurer of that department.

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

(g) *Noncooperation*. — If, in the course of an audit or review by the ~~Legislative~~ State Auditor, a volunteer or part-volunteer fire company or department fails to provide documentation of its accounts and expenditures in response to a request of the ~~Legislative~~ State Auditor, the ~~Legislative~~ State Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company ~~or department under the provisions of §33-3-14d, §33-3-33, and §33-12C-7 of this code,~~ from any other state funding source until the ~~Legislative~~ State Auditor informs the State Treasurer that the company or department has cooperated with the review or audit.

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

(i) *Escrow and forfeiture of moneys withheld*. — The Volunteer Fire Department Audit Account previously created in the Treasury is hereby continued. When the State Treasurer receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the volunteer or part-volunteer fire company or department has come into compliance in less than one year from the date of deposit into this special revenue account, then the Treasurer shall release and distribute the withheld amounts to the company or department, except that any interest that has accrued thereon shall be credited to the general revenue of the state. If, after one year from payment of the amount withheld into the special revenue account, the ~~Legislative~~ State Auditor informs the State Treasurer of continued noncooperation by the company or department, the delinquent company or department forfeits the amounts withheld and the State Treasurer shall pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of this code.

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

(k) *Unlawful misuse of fire department property-* Any person that is convicted of petit or grand larceny pursuant to §61-3-13 of this code or embezzlement pursuant to §61-3-20 of this code, for the unlawful fraudulent conversion or taking of any money or other property of any volunteer or part-volunteer fire department, in addition to any other criminal penalty invoked by a court, shall be required by the court to pay restitution to the fire department double the amount of the value of any money or other property lost or taken. Any person so convicted shall also be barred from assuming any position of trust in any fire department where he or she would be allowed to access or control the disposition or management of any fire department money or other assets.

(l) *Notice of Penalty*- Each part-volunteer or volunteer fire department shall post in a location within the fire department where other notices are normally posted or in a conspicuous place accessible to all fire fighters, the following notice:

“NOTICE- Any person convicted of theft or embezzlement of any money or other asset of the fire department, in addition to other penalties incurred by law, shall be required to reimburse the fire department double the amount of the value of the property taken. This collection can result in the confiscation of a person’s personal or real property, including any vehicle or home to satisfy payment.”

chapter 33. insurance.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS

**§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; Public Employees Insurance Agency and municipal pension plans; special fund created; allocation of proceeds; effective date.**

(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and certain retired teachers and the Teachers Retirement Reserve Fund, there is hereby authorized and imposed on and after July 1, 1992, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. After June 30, 2005, the surcharge shall be imposed as specified in subdivisions (2) and (3) of this subsection.

(2) After June 30, 2005, through December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and to provide additional revenue to the Public Employees Insurance Agency and municipal pension plans, there is hereby authorized and imposed on and after July 1, 2005, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy.

(3) After December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments and part-volunteer fire departments, there is hereby authorized and imposed on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to fifty-five one hundredths of one percent of the taxable premium for each such policy.

(4) For purposes of this section, casualty insurance may not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge may not be subject to premium taxes, agent commissions, or any other assessment against premiums.

(b) The policy surcharge shall be collected and remitted to the commissioner by the insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the commissioner on a quarterly basis on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(c) Any person failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to $100 for each day of delinquency, to be assessed by the commissioner. The commissioner may suspend the insurer, broker, or risk retention group until all surcharge payments and penalties are remitted in full to the commissioner.

(d)(1) All money from the policy surcharge shall be collected by the Commissioner who shall disburse the money received from the surcharge into a special account in the State Treasury, designated the Fire Protection Fund. The net proceeds of this portion of the tax and the interest thereon, after appropriation by the Legislature, shall be distributed quarterly on the first day of the months of January, April, July, and October to each volunteer fire company or department on an equal share basis by the State Treasurer. After June 30, 2005, the money received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of this subsection.

(2)(A) After June 30, 2005, through December 31, 2005, all money from the policy surcharge shall be collected by the commissioner who shall disburse one half of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(B) The remaining portion of moneys collected shall be transferred into the fund in the State Treasury of the Public Employees Insurance Agency into which are deposited the proportionate shares made by agencies of this state of the Public Employees Insurance Agency costs of those agencies, until November 1, 2005. After October 31, 2005, through December 31, 2005, the remain portion shall be transferred to the special account in the state Treasury, known as the Municipal Pensions and Protection Fund.

(3) After December 31, 2005, all money from the policy surcharge shall be collected by the commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(4) Before each distribution date to volunteer fire companies or departments, the State Fire Marshal shall report to the state Treasurer:

(A) The names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in §8-15-8a of this code during the preceding quarter;

(B) The number of volunteer firefighters and the number of full-time paid members providing services to each volunteer and part-volunteer fire company and department during the preceding quarter;

(C) A full accounting of each volunteer and part-volunteer fire company and department eligible to receive a distribution under this section’s revenues and expenditures for the last two calendar years; and

(D) A list of each volunteer and part-volunteer fire company and department has implemented the State Auditor’s West Virginia Checkbook fiscal reporting system on or before January 1, 2026.

(e) The State Auditor shall select up to ten volunteer or part-volunteer fire companies to participate in a pilot project utilizing the State Auditor’s West Virginia Checkbook fiscal reporting system to assess how the transmission to this new account reporting system will work within volunteer or part-volunteer fire companies. The State Auditor shall establish this pilot program effective July 1, 2024, and report to the Joint Committee on Government and Finance by January 1, 2025. The report shall include an assessment on how this accounting system is working within the pilot project’s fire companies and any recommendations on additional training or other actions needed to effectively assist volunteer and part-volunteer fire companies transitions into this new reporting system.

(f) Notwithstanding any other provision of this subsection, each volunteer and part-volunteer fire company and department shall implement the State Auditor’s West Virginia Checkbook fiscal reporting system on or before January 1, 2026, in order to remain eligible to receive any funds pursuant to this section.

~~(e)~~ (g)The allocation, distribution, and use of revenues provided in the Fire Protection Fund are subject to the provisions of §8-15-8a and §8-15-8b of this code.