

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2573**

BY DELEGATES ROWAN, MAYNARD, HOTT, HARDY, J.  
PACK, CRISS, RILEY, ANDERSON, GEARHEART, GRAVES  
AND LINVILLE

[Introduced February 17, 2021; Referred to the  
Committee on Finance then the Judiciary]

1 A BILL to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, relating  
 2 generally to the transparency and accountability of state grants to reduce waste, fraud,  
 3 and abuse; providing a short title; providing legislative intent; defining terms; establishing  
 4 a West Virginia debarred list, establishing uniform reporting requirements; establishing a  
 5 public data base for state grant reporting; establishing stop payment procedures and  
 6 orders; authorizing grantors, the State Auditor, and the Attorney General to recover  
 7 misspent grant funds; establishing procedures for the recovery of state grant funds by the  
 8 grantors, State Auditor, and Attorney General; suspending expenditures of grant funds by  
 9 grantor agencies under a specific grant until reporting requirements are met; providing for  
 10 informal conferences and formal hearings to recover state grant funds; requiring written  
 11 disclosure of conflicts of interest by grantees and grantors; providing for audits and  
 12 reporting for grant funds; prohibiting grant funds from being used towards prohibited  
 13 political activity, as defined, and establishing criminal penalties therefore; authorizing the  
 14 State Auditor to promulgate rules governing state grants; and requiring reporting to the  
 15 Joint Committee on the Government and Finance.

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

#### **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) The West Virginia Grant Transparency and Accountability Act is intended to develop a  
 2 coordinated, nonredundant process for the effective oversight and monitoring of grant recipients,  
 3 thereby ensuring quality programs and limiting fraud, waste, and abuse.

4 ~~(a)~~ (b) For the purposes of this section:

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

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

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

11 ~~(3)~~ (4) "Report" means an engagement, such as an agreed-upon procedures engagement  
12 or other attestation engagement, performed and prepared by a certified public accountant to test  
13 whether state grants were spent as intended. The term "report" does not mean a full-scope audit  
14 or review of the person receiving state funds.

15 ~~(4)~~ (5) "State grant" means funding provided by a state spending unit, regardless of the  
16 original source of the funds, to a grantee upon application for a specific purpose. The term "state  
17 grant" does not include: (A) Payments for goods and services purchased by a state spending unit;  
18 (B) compensation to state employees and public officials; (C) reimbursements to state employees  
19 and public officials for travel or incidental expenses; (D) grants of student aid; (E) government  
20 transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G)  
21 funds reimbursed to a person for expenditures made for qualified purposes when receipts for the  
22 expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-  
23 through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. §  
24 7501, *et seq.* The term "state grant" does not include formula distributions to volunteer and part-  
25 volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-  
26 7 of this code and does not include money received from the Fire Service Equipment and Training  
27 Fund as provided in §29-3-5f of this code.

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

31 (7) "State Auditor" means the West Virginia State Auditor's Office.

32 (8) "Attorney General" means the Office of the West Virginia Attorney General.

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

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

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

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

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

55 ~~(3)~~ (4) Reports and sworn statements of expenditures required by this subsection shall be  
56 filed within two years of the end of the grantee's fiscal year in which the disbursement of state  
57 grant funds by the grantor was made. The report shall be made by an independent certified public

58 accountant at the cost of the grantee. State grant funds may be used to pay for the report if the  
59 applicable grant provisions allow. The scope of the report is limited to showing that the state grant  
60 funds were spent for the purposes intended when the grant was made.

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

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

73 ~~(e)~~(d)(1) Grantor agencies or the State Auditor shall issue stop payment orders for failure  
74 to file required reports. Any grantee failing to file a required report or sworn statement of  
75 expenditures within the two-year period ~~provided in subdivision (3), subsection (b)~~ as provided in  
76 ~~of~~ this section for state grant funds is barred from subsequently receiving state grants until the  
77 grantee has filed the report or sworn statement of expenditures and is otherwise in compliance  
78 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 the  
81 ~~Legislative~~ 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 ~~(d)~~(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, ~~take reasonable~~  
88 ~~actions to~~ verify that the grantee is not barred from receiving state grants pursuant to this section.  
89 The verification process 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 ~~Legislative Auditor~~ State Auditor by the grantor that the grantee  
94 has not been identified as one who has failed to file a report or sworn statement of expenditures  
95 under this section. Confirmation may be accomplished by accessing the computerized database  
96 provided for in ~~subsection (e) of~~ 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 ~~Legislative Auditor~~  
100 State Auditor within 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 pursuant to the Administrative Procedures Act,  
130 Contested Cases, §29A-5-1 et seq, and be presided over by the grantor agency head or their  
131 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 by State Auditor and Attorney General. -- The State  
164 Auditor and Attorney General, may act separately or in coordination to recover any grant funds  
165 which 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, State Auditor, or Attorney General and expired or unexpended grant  
170 funds remaining at grant completion or termination, shall be deposited in a special revenue fund,  
171 which is hereby created and established in the State Treasury to be known as the Grant Recovery  
172 Fund. The moneys in the fund, with all interest or other earnings thereon, shall be expended only  
173 upon 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 be in  
196 the form of a computerized database that may be accessed by state agencies and the public over  
197 the Internet.

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

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

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

208 *(j) Prohibition on use of grant funds for prohibited political activity.*

209 (1) For the purpose of this section, "prohibited political activity" means activity directed  
210 toward the success or failure of a political party, candidate for political office, or ballot issue, and  
211 includes, without limitation, express advocacy for the election or defeat of a political party,  
212 candidate, or ballot issue. "Prohibited political activity" is activity a reasonable person would  
213 interpret as advocating for or against or advancing or harming the cause of the election or defeat

214 of a political party, candidate, or ballot issue when taken as a whole with reference to external  
215 events such as the proximity to an election.

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to provide transparency and accountability of state grants to reduce waste, fraud, and abuse; provide a short title; provide legislative intent; define terms; establish a West Virginia debarred list, establish uniform reporting requirements; establish a public data base for state grant report; establish stop payment procedures and orders; authorize grantors, the State Auditor, and the Attorney General to recover misspent grant funds; establish procedures for the recovery of state grant funds by the grantors, State Auditor, and Attorney General; suspend payments of appropriated funds under a specific grant for inadequate reporting; provide for informal conferences and formal hearings to recover state grant funds; require written disclosure of conflicts of interest by grantees and grantors; provide for audits and reporting of grant funds; prohibit grant funds from being used towards prohibited political activity, as defined, and establish criminal penalties therefore; and authorize the state auditor to promulgate rules governing state grants.

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