

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 338

BY SENATORS MAYNARD, STOLLINGS, JEFFRIES, CAPUTO,
AND PHILLIPS

[Introduced February 18, 2021; referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend and reenact §15A-11-11 of the Code of West Virginia, 1931, as amended,
2 relating to creating the Fire Service Equipment and Training Fund; restricting the use of
3 grant funds to specified purposes; specifying disposition of grant funds remaining in the
4 fund at the end of the fiscal year; requiring the Fire Commission to establish an equipment
5 and training grant program for volunteer and part-volunteer companies based upon certain
6 circumstances; specifying the criteria the State Fire Marshal shall consider when making
7 grants; authorizing the Fire Commission to propose emergency legislative rules and
8 legislative rules; requiring the Legislative Auditor notify the Fire Commission of any
9 volunteer or part-volunteer department that is ineligible to receive grant funds; and
10 requiring that volunteer or part-volunteer department or companies are ineligible until the
11 Legislative Auditor informs the Fire Commission that the company or department has
12 come into compliance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FIRE COMMISSION.

**§15A-11-11. Fire Service Equipment and Training Fund; creation of fire service equipment
and training grant; reports of ineligibility to State Fire Marshal.**

1 ~~(a) Definitions.~~— For the purposes of this section:
2 “~~Equipment and training grant~~” means a grant of money to a volunteer fire company or a
3 part-volunteer fire department from the Fire Service Equipment and Training Fund created in
4 ~~§15A-11-11 of this code;~~
5 “~~Formula distribution~~” means a distribution of money to volunteer and part-volunteer fire
6 companies or departments made pursuant to ~~§33-3-14d, §33-3-33, and §33-12C-7 of this code;~~
7 and
8 “~~State funds account~~” means a bank account established by a volunteer or part-volunteer
9 fire company or department and maintained for the exclusive use and accounting of money from
10 ~~formula distributions and equipment and training grants.~~

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

16 ~~(c) Reviews and audits.~~—The Legislative Auditor is authorized to conduct regular reviews
17 or audits of deposits and expenditures from formula distribution and equipment and training grant
18 funds by volunteer and part-volunteer fire companies or departments. The Legislative Auditor may
19 assign an employee or employees to perform audits or reviews at his or her direction. The State
20 Treasurer shall provide the Legislative Auditor information, in the manner designated by the
21 Legislative Auditor, concerning formula distributions and equipment and training grants paid to
22 volunteer or part-volunteer fire companies and departments. The volunteer or part-volunteer fire
23 company or department shall cooperate with the Legislative Auditor, the Legislative Auditor's
24 employees, and the State Auditor in performing their duties under the laws of this state.

25 ~~(d) State Auditor.~~—Whenever the State Auditor performs an audit of a volunteer or part-
26 volunteer fire company or department for any purpose, the Auditor shall also conduct an audit of
27 other state funds received by the company or department pursuant to §33-3-14d, §33-3-33, and
28 §33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The
29 Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit
30 under this section.

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

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

- 37 ~~(2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;~~
38 ~~(3) Misapplication of state funds; or~~
39 ~~(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14~~
40 ~~of this code for a state grant other than an equipment and training grant.~~

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

53 ~~(g) *Noncooperation.*— If, in the course of an audit or review by the Legislative Auditor, a~~
54 ~~volunteer or part-volunteer fire company or department fails to provide documentation of its~~
55 ~~accounts and expenditures in response to a request of the Legislative Auditor, the Legislative~~
56 ~~Auditor shall notify the State Treasurer who shall withhold payment of any amount that would~~
57 ~~otherwise be distributed to the company or department under the provisions of §33-3-14d, §33-~~
58 ~~3-33, and §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the~~
59 ~~company or department has cooperated with the review or audit.~~

60 ~~(h) *Reporting of other grants.*— Nothing in this section alters the duties and~~
61 ~~responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-~~
62 ~~4-14 of this code if that company or department has received funds from any state grant program~~

63 other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified
64 by a grantor that a volunteer or part volunteer fire company or department has failed to file a
65 report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor
66 shall notify the State Treasurer who shall withhold further distributions to the company or
67 department in the manner provided in this section.

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

82 (j) *Misuse of state money.* — If the Legislative Auditor determines that a volunteer or part-
83 volunteer fire company or department has used formula distribution money for purposes not
84 authorized by §8-15-8b of this code or has used equipment and training grant money for purposes
85 not authorized by the grant program, the Legislative Auditor shall give a written notice of
86 noncompliance to the company or department. If a volunteer or part volunteer fire company or
87 department disagrees or disputes the finding, the company or department may contest the finding
88 by submitting a written objection to the Legislative Auditor within five working days of receipt of

89 ~~the Legislative Auditor's finding. The department or company shall then have 60 days from the~~
90 ~~date of the Legislative Auditor's finding to provide documentation to substantiate that the~~
91 ~~expenditures were made for authorized purposes. If the volunteer or part-volunteer fire company~~
92 ~~or department does not dispute the findings of the Legislative Auditor or if the company or~~
93 ~~department is not able to substantiate an authorized purpose for the expenditure, the Legislative~~
94 ~~Auditor shall notify the Treasurer of the amount of misapplied money and the Treasurer shall~~
95 ~~deduct that amount from future distributions to that company or department until the full amount~~
96 ~~of unauthorized expenditure is offset.~~

97 (a) There is hereby continued in the Treasury a special revenue fund to be known as the
98 Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire
99 Commission are authorized from collections. The fund may only be used for the purpose of
100 providing grants to equip volunteer and part-volunteer fire companies and departments and their
101 members, and to train volunteer and part-volunteer firefighters. Any balance remaining in the fund
102 at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the
103 Special Revenue Fund.

104 (b) The State Fire Commission shall establish a grant program for equipment and training
105 for volunteer and part-volunteer fire companies and departments. Such grant program shall be
106 open to all volunteer and part-volunteer fire companies and departments. In making grants
107 pursuant to this section, the State Fire Marshal shall consider:

108 (1) The number of emergency and nonemergency calls responded to by the company or
109 department;

110 (2) The activities and responses of the company or department;

111 (3) The revenues received by the company or department from federal, state, county,
112 municipal, local, and other sources; and

113 (4) The company's or department's assets, expenditures, and other liabilities, including
114 whether the fire company or department has availed itself of available statewide contracts.

115 (c) The State Fire Commission may promulgate emergency rules and shall propose
116 legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code as may be
117 necessary to implement and comply with the provisions of this section.

118 (d) The Legislative Auditor shall notify the State Fire Marshal of any volunteer or part-
119 volunteer fire company or department that is ineligible to receive grant funds due to the company's
120 or department's failure to file required bank statements or financial reports or failure to comply
121 with an audit or review by the Legislative Auditor. A volunteer or part-volunteer fire company or
122 department reported by the Legislative Auditor shall be ineligible to receive funds under this
123 section until the Legislative Auditor notifies the State Fire Marshal that the company or department
124 has come into compliance.

NOTE: The purpose of this bill is to fix a drafting error that occurred in the 2020 regular session. This returns the language of the repealed §29-3-5f to code, which was mistakenly overwritten by another, still existing code section.

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