

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 129

By Senators Tarr, Smith, Taylor, and Woodrum

[Introduced January 11, 2023]

1 A BILL to amend and reenact §4-11-5 of the Code of West Virginia, 1931, as amended, relating to
2 limiting gubernatorial authority to spend certain amounts of federal funds without
3 appropriation from the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.

§4-11-5. Legislative appropriation authority.

1 (a) No spending unit may make expenditures of any federal funds, whether such funds are
2 advanced prior to expenditure or as reimbursement, unless such expenditures are made pursuant
3 to specific appropriations by the Legislature, except as may be hereinafter provided.

4 (b) To the extent not precluded by the terms and conditions under which federal funds are
5 made available to the spending unit by the United States government, the spending unit shall use
6 federal funds in accordance with any purposes, policies or priorities the Legislature may have
7 established for the activity being assisted or for the use of state, federal and other fiscal resources
8 in a particular fiscal year.

9 (c) If the federal funds received by a spending unit for a specific purpose are greater than
10 the amount of such funds contained in the appropriation by the Legislature for such purpose, the
11 total appropriation of federal funds and any state matching funds for such purpose shall remain at
12 the level appropriated, except as hereinafter provided.

13 (d) If federal funds become available to the spending unit for expenditure while the
14 Legislature is not in session and the availability of such funds could not reasonably have been
15 anticipated and included in the budget approved by the Legislature for the next fiscal year, the
16 treasurer may accept such funds on behalf of the spending unit and the Governor may authorize,
17 in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized
18 by federal law and pursuant to the provisions of §11B-2-1 *et seq.* of this code and upon the filing of
19 a proper expenditure schedule: *Provided*, That the Governor may not authorize the expenditure of
20 such funds received for the creation of a new program or for a significant alteration of an existing

21 program. For purposes of this article, a mere new source of funding of federal moneys for a
22 program which has been prior approved by legislative appropriation is not a "new program" or a
23 "significant alteration of an existing program" and the Governor may authorize the expenditure of
24 such funds as herein provided, subject to the limitations under subsection (e) of this section.
25 Should a question arise concerning whether such expenditures would constitute a new program or
26 significant alteration of an existing program, while the Legislature is not in session, the Governor
27 shall seek the recommendation of the council of finance and administration, as created and
28 existing pursuant to the provisions of §5A-1-4 of this code. Upon application to the federal
29 government for such funds and upon receipt of such funds, the Governor shall submit to the
30 Legislative Auditor two copies of a statement:

31 (1) Describing the proposed expenditure of such funds in the same manner as it would be
32 described in the state budget; and

33 (2) Explaining why the availability of such federal funds and why the necessity of their
34 expenditure could not have been anticipated in time for such expenditures to have been approved
35 as part of the adopted budget for that particular fiscal year.

36 (e) Notwithstanding the provisions of subsection (d) of this section, no amount of such
37 unanticipated federal funds for an existing program, for a significant alteration of an existing
38 program, or for the creation of a new program made available to the state for costs and damages
39 resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes,
40 storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease
41 outbreaks, or similar public health or safety emergencies that occur and are received while the
42 Legislature is not in session and that are declared by the Governor as a state of emergency in
43 excess of ~~\$150 million~~ \$10 million in any fiscal year for any part or the whole of the declared
44 emergency may be expended without appropriation by the Legislature enacted following receipt of
45 the funds. No provision of this code or any appropriations act in effect upon the receipt of
46 unanticipated federal funds made available to the state for costs and damages resulting from an

47 emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar
48 natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or
49 similar public health or safety emergencies that occur and are received while the Legislature is not
50 in session and that are declared by the Governor as a state of emergency may be construed to
51 authorize the appropriation of those funds, except as provided in this subsection.

52 (f)(1) If federal funds become available to a spending unit and the funds were not included
53 in the budget approved by the Legislature for the next fiscal year but are authorized to be
54 expended while the Legislature is not in session under subsection (d) of this section, the Governor
55 shall submit reports in writing to the President of the Senate, the Speaker of the House of
56 Delegates, the chairs of the respective committees on finance of the two houses of the Legislature,
57 and the Legislative Auditor as follows:

58 (A) On or before the first day of each month following the receipt of the funds until the funds
59 are expended in their entirety, the reports shall include the following:

60 (i) The purposes for which funds were made available, the identification of any federal and
61 state laws governing the expenditure of the funds and a general itemization of the Governor's plan
62 of expenditure for the whole of the funds;

63 (ii) A detailed schedule setting forth the Governor's proposed expenditures of the funds for
64 the month, including, but not limited to, as to each proposed expenditure, the amount and purpose
65 of the expenditure; the spending unit responsible for making the expenditure; and the anticipated
66 recipient or recipients of the expenditure; and

67 (iii) An explanation of any changes made from the prior month's general itemization of the
68 Governor's plan of expenditure for the whole of the funds and of any changes the prior month's
69 schedule of proposed expenditures made by the actual expenditures made during that month;

70 (B) On or before the 15th day of the month following month in which the funds were
71 expended in their entirety, the report shall set forth a complete itemized report of each expenditure
72 of the funds; and

73 (C) The Governor shall also include in each report such additional information as may be
74 requested the Legislative Auditor;

75 (2) The Legislative Auditor shall provide a copy of each report to the Joint Committee on
76 Government and Finance.