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WEST VIRGINIA CODE

§12-4-14. Accountability of persons receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

(a) For the purposes of this section:

- (1) "Grantor" means a state spending unit awarding a state grant.
- (2) "Person" includes any corporation, partnership, association, individual or other legal entity. The term "person" does not include a state spending unit or a local government as defined in section one-a, article nine, chapter six of this code.
- (3) "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 receiving state funds.
- (4) "State grant" means funding provided by a state spending unit, regardless of the original source of the funds, to a person 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: *Provided*, That notwithstanding the provisions of this subdivision, funding provided pursuant to section twelve, article two, chapter five-b is included within the term "state grant"; (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.* The term "state grant" does not include formula distributions to volunteer and part-volunteer fire departments made pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter.

(b) (1) Any person who receives one or more state grants in the amount of fifty thousand dollars or more in the aggregate in a state's fiscal year shall file with the grantor 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 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, as published on the twenty-seventh day of June, two thousand three, and submitted within the period provided in this section may be substituted for the report.

(2) Any person who receives a state grant in an amount less than fifty thousand dollars 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 a sworn statement of expenditures made under the grant.

(3) Reports and sworn statements of expenditures required by subdivisions (1) and (2) of this subsection shall be filed within two years of the end of the person'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 person receiving the state grant. 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 grant was made.

(c) (1) Any person failing to file a required report or sworn statement of expenditures within the two-year period provided in subdivision (3), subsection (b) of this section for state grant funds disbursed after the first day of July, two thousand three, is barred from subsequently receiving state grants until the person 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 persons failing to file a required report or sworn statement of expenditures within the required period provided in subdivision (3), subsection (b) of this section for a state grant disbursed after the first day of July, two thousand three, to the Legislative Auditor for purposes of debarment from receiving state grants.

(d) (1) The state agency 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, take reasonable actions to verify that the person is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

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

(B) Confirmation from the Legislative Auditor by the grantor that the person 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 in subsection (e) of 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 Legislative Auditor within thirty days of receipt by the grantor.

(4) The grantor 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) The Secretary of the Department of Administration has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to assist in implementing the provisions of subsections (a), (b), (c) and (d) of this section.

(e) (1) Any state agency administering a state grant shall, in the manner designated by the Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be disbursed, the identity of the person authorized to receive the funds, the person's fiscal year and federal employer identification number and the purpose and nature of the state grant within thirty days of making the state grant or authorizing the disbursement of the funds, whichever is later. If the state grant was awarded prior to the first day of October, two thousand five, the grantor shall provide the information required by this section by the first day of December, two thousand five.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter, the Legislative Auditor requests and in the manner designated by the Legislative Auditor.

(3) The Legislative Auditor shall maintain a list identifying persons who have failed to file reports and sworn statements required by this section. The list may be in the form of a computerized database that may be accessed by state agencies over the Internet.

(f) 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 Legislative Auditor at no cost to the grantee.

(g) (1) Volunteer and part-volunteer fire departments receiving formula distributions pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter shall either:

(A) File a report, as defined in subdivision (3), subsection (a) of this section with the Legislative Auditor within the same time frames as are required for sworn statements of annual expenditures to be filed under this section. The report shall be made by an independent certified public accountant at the cost of the volunteer or part-volunteer fire department. The scope of the report is limited to showing that the funds distributed were spent for authorized purposes; or

(B) File a sworn statement of annual expenditures with the Legislative Auditor on or before the fourteenth day of February of each year. The sworn statement of expenditures shall be signed by the chief or director of the volunteer fire department and shall be made under oath and acknowledged before a notary public.

(2) If the sworn statement or report required by this subsection is not filed on or before the fifteenth day of May, unless the time period is extended by the Legislative Auditor, the Legislative Auditor may conduct an audit of the volunteer or part-volunteer fire department.

(3) If the sworn statement of annual expenditures or report required by this subsection is not filed with the Legislative Auditor by the first day of July, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter until the report is complete. Moneys withheld pursuant to this subdivision are to be deposited in the special revenue account created in the State Treasury in subdivision (4) of this subsection.

(4) The Legislative Auditor may assign an employee or employees to perform audits or reviews at the direction of the Legislative Auditor of the disbursement of state grant funds to volunteer fire departments. The volunteer fire department shall cooperate with the Legislative Auditor, the Legislative Auditor's employees and the State Auditor in performing their duties under this section. If the Legislative Auditor determines a volunteer fire department is not cooperating, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter until the Legislative Auditor informs the Treasurer that the fire department has cooperated as required by this section. The State Treasurer shall pay the amount withheld into a special revenue account hereby created in the State Treasury and designated the "Volunteer Fire Department Audit Account". If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the fire department, the State Treasurer shall pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of those sections.

(5) Whenever the State Auditor performs an audit of a volunteer fire department for any purpose the Auditor shall also conduct an audit of other state funds received by the fire department pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter. 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.

(6) If the Legislative Auditor is notified by a grantor that a fire department has failed to file a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor shall notify the Treasurer who shall withhold further distributions to the fire department in the same manner provided in subdivision (3) of this subsection.

(h) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of article one, chapter thirty-nine-a of this code.

(i) Any person who files a fraudulent sworn statement of expenditures under subsection (b) or (g) of this 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 one thousand dollars nor more than five thousand dollars or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

Note: Code updated with legislation passed through the 2008 2nd Extraordinary Session

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