WEST VIRGINIA CODE CHAPTER 4 ARTICLE 11

WV Legislature

§4-11-1. Legislative findings and purpose.

The Legislature finds and declares that in order to carry out its responsibility for the enactment of all appropriations needed for the operation of state government, the Legislature needs continuous and accurate accounts of the amounts and purposes of all federal funds being requested, received or expended by the various agencies and departments of the state. The Legislature further finds and declares that the increased availability of and reliance on federal financial assistance has a substantial impact upon the programs, priorities and fiscal affairs of the state. It is the purpose of this article to clarify and specify the role of the Legislature in appropriating federal funds received by the state in all events, including public emergencies, and in prescribing, by general law, the required form and detail of the itemization and classification of proposed appropriations to assure that state purposes are served and legislative priorities are adhered to by the acceptance and use of such funds.

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§4-11-2. Definitions.

As used in this article:

“Federal funds” means any financial assistance made to a spending unit by the United States government, whether a loan, grant, block grant, subsidy, augmentation, reimbursement or any other form of such assistance, including “federal-matching funds”;

“Federal-matching funds” means federal funds of a specified amount or proportion for which a specified outlay of state contributions, including funds, property or services, are required as a condition for receipt or expenditure;

“Spending unit” means the State of West Virginia and all agencies, offices, departments, divisions, boards, commissions, councils, committees or other entities of the state government for which an appropriation is requested or to which an appropriation is made by the Legislature. “Spending unit” does not mean any county, city, township, public service district or other political subdivision of the state; and

“State-matching funds” means state contributions, including funds, property or services that are required by the federal government, by law or regulation, as a condition for receipt or expenditure of federal funds.

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§4-11-3. Receipt of federal funds and required deposit in state treasury.

Unless contrary to federal law, all federal funds received by a spending unit shall be deposited in and credited to special fund accounts as provided by §12-2-2 of this code and shall be available for appropriation by the Legislature as part of the state budget in accordance with Article X of the Constitution of this state.

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§4-11-4. Inclusion of federal funds in state budget and the budget bill.

Pursuant to article §5-1A-1 *et seq*., and §11B-2-1 *et seq*. of this code, the Governor shall itemize in the state budget and in the budget bill, on a line-item basis, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated for expenditure, with a reference to the account number, line item and amount of any state funds required for such purpose: *Provided*, That all federal block grant funds shall be so itemized in a separate section of the state budget and the budget bill devoted exclusively to proposed appropriations from the block grant funds.

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§4-11-5. Legislative appropriation authority.

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

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

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

(d) If federal funds become available to the spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in the budget approved by the Legislature for the next fiscal year, the treasurer may accept such funds on behalf of the spending unit and the Governor may authorize, in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized by federal law and pursuant to the provisions of §11B-2-1 *et seq.* of this code and upon the filing of a proper expenditure schedule: *Provided,* That the Governor may not authorize the expenditure of such funds received for the creation of a new program or for a significant alteration of an existing program. For purposes of this article, a mere new source of funding of federal moneys for a program which has been prior approved by legislative appropriation is not a "new program" or a "significant alteration of an existing program" and the Governor may authorize the expenditure of such funds as herein provided, subject to the limitations under subsection (e) of this section. Should a question arise concerning whether such expenditures would constitute a new program or significant alteration of an existing program, while the Legislature is not in session, the Governor shall seek the recommendation of the council of finance and administration, as created and existing pursuant to the provisions of §5A-1-4 of this code. Upon application to the federal government for such funds and upon receipt of such funds, the Governor shall submit to the Legislative Auditor two copies of a statement:

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

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

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

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

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

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

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

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

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

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

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

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§4-11-6. Exclusions.

The following are excluded from the provisions of this article:

(1) Federal funds received by state institutions of higher education or by students or faculty members of such institutions for instructional or research purposes and federal funds received for student scholarships or grants-in-aid;

(2) Federal nondiscretionary pass-through funds which are earmarked in specified amounts or proportions for transmittal to local political subdivisions or to designated classes of organizations and individuals which do not require state-matching funds and do not permit discretion in their distribution by the receiving state spending unit; and

(3) All federal funds received by the West Virginia department of highways or the West Virginia commissioner of highways.

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§4-11-7. Conflict with other statutory provisions.

If there is any conflict between the provisions of this article and any other provision of law, including this code, relating to receiving or expending federal funds, the provisions of this article shall govern and control.

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