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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

Committee Substitute for

SENATE BILL NO. 348

(By Senator Tomblin, Mr. President)

PASSED April 9, 2005

In Effect July 4, 2005 Passage

FILED

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 348

(MR. TOMBLIN, MR. PRESIDENT, *original sponsor*)

[Passed April 9, 2005; to take effect July 1, 2005.]

AN ACT to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, relating to persons who receive state grants; providing definitions; clarifying when reports of state grants are required; providing consequences for not complying with reporting requirements; providing the withholding of state grants or funds; providing for the debarment from future state grants under certain circumstances; requiring state agencies who administer state grants to have additional duties under certain circumstances; removing filing fees for volunteer fire departments; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §12-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

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

1 (a) For the purposes of this section:

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

4 (2) "Person" includes any corporation, partnership,
5 association, individual or other legal entity. The term
6 "person" does not include a state spending unit or a local
7 government as defined in section one-a, article nine,
8 chapter six of this code.

9 (3) "Report" means a compliance attestation engage-
10 ment, performed and prepared by a certified public
11 accountant to test whether state grants were spent as
12 intended. The term "report" does not mean a full-scope
13 audit or review of the person receiving state funds.

14 (4) "State grant" means funding provided by a state
15 spending unit to a person upon application for a specific
16 purpose. The term "state grant" does not include: (A)
17 Payments for goods and services purchased by a state
18 spending unit; (B) compensation to state employees and
19 public officials; (C) reimbursements to state employees and
20 public officials for travel or incidental expenses; (D) grants
21 of student aid; (E) government transfer payments; (F)
22 direct benefits provided under state insurance and welfare
23 programs; and (G) retirement benefits. The term "state
24 grant" does include formula distributions to volunteer and
25 part-volunteer fire departments made pursuant to sections
26 fourteen-d and thirty-three, article three, chapter thirty-
27 three of this code and section sixteen-a, article twelve of
28 said chapter.

29 (b)(1) Any person who receives one or more state grants
30 in the amount of twenty-five thousand dollars or more in
31 the aggregate in a calendar year shall file with the grantor
32 a report of the disbursement of state grant funds.

33 (2) The report required by subdivision (1) of this subsec-
34 tion shall be filed within two years of the end of the
35 calendar year in which the disbursement of state grant
36 funds by the grantor was made. The report shall be made
37 by an independent certified public accountant at the cost
38 of the person receiving the state grant. The scope of the
39 report is limited to showing that the state grant funds were
40 spent for the purposes intended when the grant was made.

41 (c)(1) Any person failing to file a required report within
42 the two-year period provided in subdivision (2), subsection
43 (b) of this section for any state grant funds disbursed after
44 the first day of July, two thousand three, is barred from
45 subsequently receiving state grants until the person has
46 filed the report and is otherwise in compliance with the
47 provisions of this section.

48 (2) Any grantor of a state grant shall report any persons
49 failing to file a required report within the required time
50 period provided in subdivision (2), subsection (b) of this
51 section for any state grant disbursed after the first day of
52 July, two thousand three, to the Legislative Auditor for
53 purposes of debarment from receiving state grants.

54 (d)(1) The state agency administering the state grant
55 shall notify the grantee of the reporting requirements set
56 forth in this section.

57 (2) Any state agency administering a state grant shall, in
58 the manner designated by the Legislative Auditor, notify
59 the Legislative Auditor of the amount of funds to be
60 disbursed, the identity of the person authorized to receive
61 the funds and the purpose and nature of the state grant
62 within thirty days of making the state grant or authorizing
63 the disbursement of the funds: *Provided*, That if the state
64 grant was awarded prior to the effective date of the
65 amendment and reenactment of this section in the year
66 two thousand five, the grantor shall provide the informa-
67 tion required by this section within ninety days of the
68 effective date.

69 (3) All grantors making state grants that would be
70 subject to the report requirements of this section shall,
71 prior to awarding a state grant, take reasonable actions to
72 verify that the person is not barred from receiving state
73 grants pursuant to this section. The verification process
74 shall, at a minimum, include:

75 (A) A requirement that the person seeking the state grant
76 provide a sworn statement from an authorized representa-
77 tive that the person has filed all reports for state grants
78 received as required under this section; and

79 (B) Confirmation from the Legislative Auditor by the
80 grantor that the person has not been identified as one who
81 has failed to file a report under this section. Confirmation
82 may be accomplished by accessing the computerized
83 database provided in subdivision (4) of this subsection.

84 (4) The Legislative Auditor shall maintain a list identify-
85 ing persons who have failed to file reports required by this
86 section. The list may be in the form of a computerized
87 database that may be accessed by state agencies over the
88 Internet.

89 (e) If any report performed pursuant to the requirements
90 of this section provides evidence of a reportable condition
91 or violation, the grantor shall provide a copy of the report
92 to the Legislative Auditor within thirty days of receipt by
93 the grantor.

94 (f) The grantor shall maintain copies of reports required
95 by this section and make the reports available for public
96 inspection, as well as for use in audits and performance
97 reviews of the grantor.

98 (g) Reports of state grants not required under the
99 provisions of this section may be authorized by the Joint
100 Committee on Government and Finance to be conducted
101 by the Legislative Auditor at no cost to the grantee.

102 (h)(1) Volunteer and part-volunteer fire departments
103 may satisfy the report requirements of this section by
104 submitting a sworn statement of annual expenditures to
105 the Legislative Auditor on or before the fourteenth day of
106 February of each year. The sworn statement of expendi-
107 tures shall be signed by the chief or director of the volun-
108 teer fire department and shall be made under oath and
109 acknowledged before a notary public.

110 (2) If the sworn statement is not submitted on or before
111 the fifteenth day of May, unless the time period is ex-
112 tended by the Legislative Auditor, the Legislative Auditor
113 may conduct a report of the volunteer or part-volunteer
114 fire department.

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

128 (4) The Legislative Auditor may assign an employee or
129 employees to perform audits or reviews at the direction of
130 the Legislative Auditor of the disbursement of state grant
131 funds to volunteer fire departments. The volunteer fire
132 department shall cooperate with the Legislative Auditor,
133 the Legislative Auditor's employees and the State Auditor
134 in performing their duties under this section. If the
135 Legislative Auditor determines a volunteer fire depart-
136 ment is not cooperating, the Legislative Auditor shall
137 notify the State Treasurer who shall withhold payment of
138 any amount that would otherwise be distributed to the fire

139 department under the provisions of sections fourteen-d
140 and thirty-three, article three, chapter thirty-three of this
141 code and section sixteen-a, article twelve of said chapter
142 until the Legislative Auditor informs the Treasurer that
143 the fire department has cooperated as required by this
144 section. The State Treasurer shall pay the amount with-
145 held into a special revenue account hereby created in the
146 State Treasury and designated the "Volunteer Fire Depart-
147 ment Audit Account". If, after one year from payment of
148 the amount withheld into the special revenue account, the
149 Legislative Auditor informs the State Treasurer of contin-
150 ued noncooperation by the fire department, the State
151 Treasurer shall pay the amount withheld to the fund from
152 which it was distributed to be redistributed the following
153 year pursuant to the applicable provisions of those sec-
154 tions.

155 (5) Whenever the State Auditor performs an audit of a
156 volunteer fire department for any purpose the Auditor
157 shall also conduct an audit of other state funds received by
158 the fire department pursuant to sections fourteen-d and
159 thirty-three, article three, chapter thirty-three of this code
160 and section sixteen-a, article twelve of said chapter. The
161 Auditor shall send a copy of the audit to the Legislative
162 Auditor. The Legislative Auditor may accept an audit
163 performed by the Auditor in lieu of performing an report
164 under this section.

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

169 (j) Any person who files a fraudulent sworn statement of
170 expenditures under subsection (g) of this section, a fraudu-
171 lent sworn statement under subsection (d) of this section,
172 or a fraudulent report under this section is guilty of a
173 felony and, upon conviction thereof, shall be fined not less
174 than one thousand dollars nor more than five thousand
175 dollars or imprisoned in a state correctional facility for not

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176 less than one year nor more than five years, or both fined
177 and imprisoned.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
.....
Chairman Senate Committee

H. Keith Brown
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

Russell Atkins
.....
Clerk of the Senate

Bruce M. Bay
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert D. ...
.....
Speaker House of Delegates

The within *was approved* this the *3rd*
Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 2:10 pm