

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 144
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PROPOSED COMMITTEE SUBSTITUTE S144-PCS35330-TJ-25

Short Title: Nonprofit Grants/Increase Accountability.

(Public)

Sponsors:

Referred to:

February 28, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE OVERSIGHT OF STATE GRANTS TO NON-STATE
3 ENTITIES AND TO INCREASE THE ACCOUNTABILITY OF GRANTEES WHO
4 RECEIVE STATE GRANTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
5 PROGRAM EVALUATION OVERSIGHT COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 143C-6-23 reads as rewritten:

8 **"§ 143C-6-23. State grant funds: administration; oversight and reporting requirements.**

9 (a) Definitions. – The following definitions apply in this section:

10 (1) "Grant" and "grant funds" means Grant or grant funds. – State funds
11 disbursed as a grant by a State agency; agency to a grantee to carry out a
12 program for a public purpose; however, the terms do not include any
13 payment made by the Medicaid program, the State Health Plan for Teachers
14 and State Employees, or other similar medical programs.

15 (2) "Grantee" means a Grantee. – A non-State entity that receives State funds as
16 a grant from a State agency but meets any of the conditions listed in this
17 subdivision, but a grantee does not include any non-State entity subject to
18 the audit and other reporting requirements of the Local Government
19 Commission. Commission or a business entity receiving an economic
20 development incentive grant included in the Department of Commerce
21 report required by G.S. 143B-437.07. The conditions are:

22 a. Has its performance measured in relation to whether objectives of a
23 State program are met.

24 b. Has responsibility for programmatic decision making.

25 c. Is responsible for adherence to applicable State program
26 requirements specified in the award.

27 d. In accordance with its agreement, uses the State funds to carry out a
28 program for a public purpose, as opposed to providing goods or
29 services for the benefit of a State entity.

30 (3) "Subgrantee" means a Subgrantee. – A non-State entity that receives State
31 funds as a grant from a grantee or from another subgrantee meets any of the
32 conditions listed in this subdivision, but a subgrantee does not include any
33 non-State entity subject to the audit and other reporting requirements of the
34 Local Government Commission. Commission or a business entity receiving



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1 an economic development incentive grant included in the Department of
2 Commerce report required by G.S. 143B-437.07. The conditions are:

- 3 a. Has its performance measured in relation to whether objectives of a
4 State program are met.
5 b. Has responsibility for programmatic decision making.
6 c. Is responsible for adherence to applicable State program
7 requirements specified in the award.
8 d. In accordance with its agreement, uses the State funds to carry out a
9 program for a public purpose, as opposed to providing goods or
10 services for the benefit of a State entity.

11 (b) Conflict of Interest Policy. – Every grantee shall file with the State agency
12 disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest
13 that may arise involving the grantee's management employees and the members of its board of
14 directors or other governing body. The policy shall address situations in which any of these
15 individuals may directly or indirectly benefit, except as the grantee's employees or members of
16 its board or other governing body, from the grantee's disbursing of State funds, and shall
17 include actions to be taken by the grantee or the individual, or both, to avoid conflicts of
18 interest and the appearance of impropriety. The policy shall be filed before the disbursing State
19 agency may disburse the grant funds.

20 (c) No Overdue Tax Debts. – Every grantee shall file with the State agency or
21 department disbursing funds to the grantee a written statement completed by that grantee's
22 board of directors or other governing body stating that the grantee does not have any overdue
23 tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written
24 statement shall be made under oath and shall be filed before the disbursing State agency or
25 department may disburse the grant funds. A person who makes a false statement in violation of
26 this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

27 (d) Office of State Budget Rules Must Require Uniform Administration of State Grants.
28 – The Office of State Budget and Management shall adopt rules to ensure the uniform
29 administration of State grants by all grantor State agencies and grantees or subgrantees. The
30 Office of State Budget and Management shall consult with the Office of the State Auditor and
31 the Attorney General in establishing the rules required by this subsection. The rules shall
32 establish policies and procedures for disbursements of State grants and for State agency
33 oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures
34 shall:

- 35 (1) Ensure that the purpose and reporting requirements of each grant are
36 specified to the grantee.
37 (2) Ensure that grantees specify the purpose and reporting requirements for
38 grants made to subgrantees.
39 (2a) Require each contract that awards a grant to include all of the following:
40 a. Concrete, measurable benchmarks against which to measure success.
41 The benchmarks shall address the expected quantifiable outputs and
42 outcomes.
43 b. Identification of program performance measures that will be used to
44 compare quantifiable outputs and outcomes against the benchmarks
45 established in contracts pursuant to this subdivision.
46 c. For purposes of this subdivision, the term "output" means quantified
47 activities performed by the grantee, and the term "outcome" means
48 what happens as a result of the grantee's activities.
49 (3) Ensure that State funds are spent in accordance with the purposes for which
50 they were granted.

- 1 (4) Hold the grantees and subgrantees accountable for the legal and appropriate
2 expenditure of grant funds.
- 3 (5) Provide for adequate oversight and monitoring to prevent the misuse of grant
4 funds.
- 5 (5a) Establish the criteria for grant programs from which oversight costs shall be
6 reserved by a State agency pursuant to G.S. 143C-6-24.
- 7 (5b) Provide procedures for making the determination that the amount required to
8 be reserved under G.S. 143C-6-24 may be reduced.
- 9 (5c) Require that an administering State agency and the Office of Budget and
10 Management provide an accounting of the reserved funds that is separate
11 from other funds used for oversight and monitoring and that the accounting
12 be made available to a grantee or subgrantee upon request.
- 13 (6) Establish mandatory periodic reporting requirements for grantees and
14 subgrantees, including methods of reporting, to provide financial ~~and~~
15 ~~program performance~~ information. ~~The mandatory periodic reporting~~
16 ~~requirements shall require grantees and subgrantees to file with the State~~
17 ~~Auditor copies of reports and statements that are filed with State agencies~~
18 ~~pursuant to this subsection. Compliance with the mandatory periodic~~
19 ~~reporting requirements of this subdivision shall not require grantees and~~
20 ~~subgrantees to file with the State Auditor the information described in~~
21 ~~subsections (b) and (c) of this section.~~
- 22 (6a) Establish mandatory periodic reporting requirements for grantees and
23 subgrantees, including reporting on benchmarks set out in the contract
24 awarding the grant pursuant to subdivision (2a) of this subsection, by means
25 of performance measures identified in the contract. The State agency
26 overseeing the grant shall review performance reporting on an ongoing basis
27 and shall submit an annual performance report to the Office of State Budget
28 and Management.
- 29 (7) Require grantees and subgrantees to maintain reports, records, and other
30 information to properly account for the expenditure of all grant funds and to
31 make such reports, records, and other information available to the grantor
32 State agency for oversight, monitoring, and evaluation purposes.
- 33 (8) Require grantees and subgrantees to ensure that work papers in the
34 possession of their auditors are available to the State Auditor for the
35 purposes set out in subsection ~~(f)~~(g) of this section.
- 36 (9) Require grantees to be responsible for managing and monitoring each
37 project, program, or activity supported by grant funds and each subgrantee
38 project, program, or activity supported by grant funds.
- 39 (9a) Require a State agency that oversees a grant program to develop a
40 monitoring plan for that program and to submit the plan and any additional
41 information regarding the plan to the Office of State Budget and
42 Management for review and approval.
- 43 (10) Provide procedures for the suspension of further disbursements or use of
44 grant funds for noncompliance with these rules or other inappropriate use of
45 the funds.
- 46 (11) Provide procedures for use in appropriate circumstances for reinstatement of
47 disbursements that have been suspended for noncompliance with these rules
48 or other inappropriate use of grant funds.
- 49 (12) Provide procedures for the recovery and return to the grantor State agency of
50 unexpended grant funds from a grantee or subgrantee if the grantee or
51 subgrantee is unable to fulfill the purposes of the grant.

1 (e) Rules Are Subject to the Administrative Procedure Act. – Notwithstanding the
2 provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are
3 subject to the provisions of Chapter 150B of the General Statutes.

4 (f) ~~Suspension and Recovery of Funds to Grant Recipients for Noncompliance. – The~~
5 ~~Office of State Budget and Management, after consultation with the administering State~~
6 ~~agency, shall have the power to~~ Management may take the actions listed in this subsection for
7 noncompliance with the rules adopted pursuant to subsection (d) of this section. If the grant
8 funds are a pass-through of funds granted by an agency of the United States, then the Office of
9 State Budget and Management must consult with the granting agency of the United States and
10 the State agency that is the recipient of the pass-through funds prior to taking the actions
11 authorized by this subsection. The authorized actions are as follows:

12 (1) With respect to a grantee or a subgrantee, and after consultation with the
13 administering State agency, suspend disbursement of grant funds to grantees
14 or subgrantees, to funds, prevent further use of grant funds already
15 disbursed, and to recover grant funds already disbursed for noncompliance
16 with rules adopted pursuant to subsection (d) of this section.

17 (2) With respect to an administering State agency and after 90 days' notice to
18 give the administering State agency an opportunity to correct the
19 noncompliance, suspend disbursement of grant funds.

20 (g) Audit Oversight. – The State Auditor has audit oversight, with respect to grant funds
21 received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General
22 Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee
23 or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and
24 other information necessary for the State Auditor to account fully for the use and expenditure
25 of grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish
26 any additional financial or budgetary information requested by the State Auditor, including
27 audit work papers in the possession of any auditor of a grantee or subgrantee directly related to
28 the use and expenditure of grant funds.

29 (h) ~~Report on Grant Recipients That Failed to Comply. – Not later than May 1, 2007,~~
30 ~~and by May 1 of every succeeding year, the Noncompliance Reports. – The Office of State~~
31 ~~Budget and Management shall report to the Joint Legislative Commission on Governmental~~
32 ~~Operations and the Fiscal Research Division on~~ maintain a list that is publicly available of all
33 grantees or subgrantees that failed to comply with this section with respect to grant funds
34 received in the prior fiscal year.

35 (i) ~~State Agencies to Submit Grant List to Auditor.~~ to the Office of State Budget and
36 Management. – No later than October 1 of each year, each State agency shall submit a list to
37 the State Auditor, Office of State Budget and Management, in the format prescribed by the
38 State Auditor, Office of State Budget and Management, of every grantee to which the agency
39 disbursed grant funds in the prior fiscal year. The list shall include the amount disbursed to
40 each grantee and other information as required by the State Auditor Office of State Budget and
41 Management to comply with the requirements of this section."

42 **SECTION 2.** Article 6 of Chapter 143C of the General Statutes is amended by
43 adding a new statutory section to read:

44 **§ 143C-6-24. Reserving of grant program funds for oversight.**

45 (a) Mandatory Reserve. – A State agency that oversees a grant program shall reserve
46 two percent (2%) of the amount awarded for the grant program each fiscal year to cover
47 oversight costs for the grant program pursuant to this subsection if the grant program satisfies
48 the criteria established by the Office of State Budget and Management. The administering State
49 agency shall transfer twenty-five percent (25%) of the amount reserved to the Office of State
50 Budget and Management at the time the grant program funds are disbursed. The Office of State

1 Budget and Management shall use the funds transferred from the administering State agency to
2 cover costs related to statewide oversight of grants to non-State entities.

3 (b) Adjustment. – If an administering State agency or the Office of State Budget and
4 Management believes that the amount reserved under subsection (a) of this section is in excess
5 of the amount the administering State agency requires for oversight, the amount of the reserve
6 may be reduced in accordance with this subsection. If the amount reserved is reduced, the
7 amount transferred to the Office of State Budget and Management shall be reduced
8 proportionately.

9 (1) By request. – An administering State agency may submit a written request to
10 the Office of State Budget and Management for a reduction of the amount
11 reserved. The request must set out the oversight responsibilities of the
12 agency with regard to the grant program and the amount by which the
13 agency is requesting the reserve be reduced from the grant program for the
14 fiscal year. The Office of State Budget and Management shall determine
15 whether it is appropriate to allow a reduction of the reserve under this
16 section and, if so, the amount by which the reserve shall be reduced. The
17 Office of State Budget and Management shall notify the State agency in
18 writing of the approval or disapproval of the request and, if approved, the
19 amount by which the reserve shall be reduced.

20 (2) Without request. – The Office of State Budget and Management may,
21 without a request by an administering State agency, reduce the amount
22 reserved from a grant program for oversight if it makes a determination that
23 the amount required under subsection (a) of this section is in excess of the
24 amount the administering State agency requires for oversight. The Office of
25 State Budget and Management shall notify the administering State agency in
26 writing of its determination. A grantee may recommend a reduction of the
27 amount reserved from a grant program for oversight to the administering
28 State agency and to the Office of State Budget and Management; however,
29 an adverse determination by the Office of State Budget and Management
30 shall not constitute grounds for appeal by the grantee under Chapter 150B of
31 the General Statutes.

32 (c) Review. – The Office of State Budget and Management shall review the reserved
33 amounts annually and may make adjustments to the reserve at any time in accordance with
34 subdivision (2) of subsection (b) of this section. Any adjustment that reduces the two percent
35 (2%) reserve shall be restored to the grant program.

36 (d) Limitations. – Funds shall not be reserved under this section if a grant program is a
37 pass-through of funds granted by an agency of the United States and the terms of the federal
38 grant prohibit the reserving of funds described by this section."

39 **SECTION 3.** G.S. 143C-6-23(d), as amended by Section 1 of this act, is amended
40 by adding a new subdivision to read:

41 "(7a) Require grantees to submit a financial position report in a format specified
42 by the Office of State Budget and Management within 90 days of the end of
43 the State fiscal year."

44 **SECTION 4.** Sections 2 and 3 of this act become effective July 1, 2014, and apply
45 to grants awarded on or after that date. The remainder of this act becomes effective July 1,
46 2013.