

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 58
Committee Substitute Favorable 3/13/13

Short Title: Nonprofit Grants/Increase Accountability.

(Public)

Sponsors:

Referred to:

February 5, 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~~
35 ~~an economic development incentive grant included in the Department of~~
36 ~~Commerce report required by G.S. 143B-437.07. The conditions are:~~



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

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

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

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

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

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

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 publically 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. – No later than October 1 of each
36 year, each State agency shall submit a list to the State Auditor, in the format prescribed by the
37 State Auditor, of every grantee to which the agency disbursed grant funds in the prior fiscal
38 year. The list shall include the amount disbursed to each grantee and other information as
39 required by the State Auditor to comply with the requirements of this section."

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

42 **"§ 143C-6-24. Withholding of Grant Program Funds for Oversight.**

43 (a) Mandatory Withholding. – A State agency that oversees a grant program shall
44 withhold two percent (2%) of the amount awarded for the grant program each fiscal year to
45 cover oversight costs for the grant program pursuant to this subsection if the grant program
46 satisfies the criteria established by the Office of State Budget and Management. The
47 administering State agency shall transfer twenty-five percent (25%) of the amount withheld to
48 the Office of State Budget and Management at the time the grant program funds are disbursed.
49 The Office of State Budget and Management shall use the funds transferred from the
50 administering State agency to cover costs related to statewide oversight of grants to non-State
51 entities.

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

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

18 (2) Without request. – The Office of State Budget and Management may,
19 without a request by an administering State agency, reduce the amount
20 withheld from a grant program for oversight if it makes a determination that
21 the amount required under subsection (a) of this section is in excess of the
22 amount the administering State agency requires for oversight. The Office of
23 State Budget and Management shall notify the administering State agency in
24 writing of its determination.

25 (c) Review. – The Office of State Budget and Management shall review the
26 withholding amounts annually and may make adjustments to the withholding at any time in
27 accordance with subdivision (2) of subsection (b) of this section.

28 (d) Limitations. – Funds shall not be withheld under this section if a grant program
29 meets any of the following conditions:

30 (1) The program is a pass-through of funds granted by an agency of the United
31 States, and the terms of the federal grant prohibit the withholding of funds
32 described by this section.

33 (2) The program is funded by a direct appropriation of the General Assembly.

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

36 "(7a) Require grantees to submit a cash receipts and disbursements report in a
37 format specified by the Office of State Budget and Management within 90
38 days of the end of the State fiscal year."

39 **SECTION 4.** Sections 2 and 3 of this act become effective July 1, 2014, and apply
40 to grants awarded on or after that date. The remainder of this act becomes effective July 1,
41 2013.