

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2849**

5 (By Delegates Boggs, Swartzmiller, Ferro,
6 Caputo and D. Poling)

7
8 (Originating in the House Committee on the Judiciary)

9 [March 29, 2013]

10
11 A BILL to amend and reenact §6-9-7 and §6-9-9a of the Code of West
12 Virginia, 1931, as amended, all relating to the Chief
13 Inspector of Public Offices; authorizing the Chief Inspector
14 to investigate the financial affairs of local governmental
15 offices, political subdivisions, boards, commissions,
16 authorities, agencies and other public entities; clarifying
17 that the Chief Inspector may report to proper legal authority
18 or initiate civil and criminal actions if an investigation
19 discloses misfeasance, malfeasance or nonfeasance; and
20 providing for confidentiality of reports until the completion
21 of investigation or adjudication.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §6-9-7 and §6-9-9a of the Code of West Virginia, 1931, as
24 amended, be amended and reenacted, all to read as follows:

1 **ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.**

2 **§6-9-7. Examinations and investigations into affairs of local**
3 **public offices; penalties.**

4 (a) (1) ~~The Chief Inspector has the power by himself or~~
5 ~~herself, or by any person appointed, designated or approved by the~~
6 ~~chief inspector to perform the service, to examine into all~~
7 ~~financial affairs of~~ or his or her designee may perform an
8 examination of every local governmental office or political
9 subdivision and all boards, commissions, authorities, agencies or
10 other offices created under authority thereof.

11 (2) An examination shall be made annually, if required, to
12 comply with the Single Audit Act and when otherwise required by law
13 or contract.

14 (3) When that act does not apply, unless otherwise required by
15 law or by contract, the examination shall be made at least once a
16 year, if practicable.

17 (4) ~~Furthermore,~~ The Chief Inspector shall furnish annually to
18 the Legislature a list of each local government office or political
19 subdivision and all boards, commissions, authorities, agencies or
20 other offices created under their authority ~~thereof~~ and the year of
21 its most recent completed audit.

22 (5) The Chief Inspector may investigate the financial affairs
23 of every local government office or political subdivision and all
24 boards, commissions, authorities, agencies or other offices created

1 under authority thereof.

2 (b) When required for compliance with regulations for federal
3 funds received or expended by County Boards of Education, the Chief
4 Inspector or his or her designee ~~including any certified public~~
5 ~~accountant approved by the chief inspector~~ shall conduct and issue
6 an audit report within the time specified in controlling federal
7 regulations. ~~Examinations of other local governments shall be~~
8 ~~conducted and audit or review reports in accordance with uniform~~
9 ~~procedures of the chief inspector.~~

10 (c) (1) A County Board of Education may elect, by May 1 of the
11 fiscal year to be audited, to have its annual examination performed
12 by a Certified Public Accountant approved by the Chief Inspector to
13 perform the examinations.

14 (2) When this election is made, a copy of the order of the
15 county board making the election shall be filed with the Chief
16 Inspector and the State Board of School Finance.

17 (3) The County Board of Education ~~is allowed to~~ may contract
18 with any Certified Public Accountant on the Chief Inspector's then
19 current list of approved Certified Public Accountants, unless:

20 (A) The State Board of School Finance or the Prosecuting
21 Attorney of the county in which the board is located timely submits
22 to the Chief Inspector a written request for the examination to be
23 performed by the Chief Inspector or ~~a person appointed by the chief~~
24 ~~inspector,~~ his or her designee; or

1 (B) The Chief Inspector determines that a special or unusual
2 situation exists.

3 (4) The county board shall follow the audit bid procurement
4 procedures established by the chief inspector in obtaining the
5 audit.

6 (d) The Chief Inspector shall, at least annually, ~~prepare~~
7 approve and publish a list of Certified Public Accountants ~~approved~~
8 ~~by the chief inspector to who may~~ perform examinations of local
9 governments, ~~Names shall be added to or deleted from that list and~~
10 add or delete names in accordance with his or her uniform
11 procedures. ~~of the chief inspector.~~ When each list or updated list
12 is issued, the Chief Inspector shall promptly ~~file~~ post a copy of
13 the list ~~in the State Register and send a copy to the State Board~~
14 ~~of Education, the State Board of School Finance and to local~~
15 ~~governments who request a copy~~ on the State Auditor's website.

16 (e) A County Board of Education, when procuring the services
17 of a Certified Public Accountant on the Chief Inspector's list,
18 shall follow the procurement standards prescribed by the grants
19 management common rule, OMB Circular A-102 "Grants and Cooperative
20 Agreements with State and Local Governments" in effect for the
21 fiscal year being examined, or in any replacement circular or
22 regulation of the Office of Management and Budget, and ~~in addition~~
23 ~~shall follow those~~ any other standards ~~as determined~~ established by
24 the office of Chief Inspector.

1 (f) The approved ~~independent~~ Certified Public Accountant
2 making examinations under this section shall comply with
3 requirements of this section applicable to examinations performed
4 by the Chief Inspector, including applicable requirements of the
5 federal government and uniform procedures of the Chief Inspector
6 applicable to examinations of county Boards of Education.

7 (1) Upon completion of the ~~certified public accountant's~~
8 examination and audit or review report, the Certified Public
9 Accountant shall promptly send one copy ~~two copies of the certified~~
10 ~~report~~ to the County Board of Education, ~~who shall file one copy~~
11 ~~with~~ the Federal Audit Clearing House, ~~The certified public~~
12 ~~accountant shall send one copy of the certified report to the State~~
13 Board of School Finance, and ~~one copy to~~ the Chief Inspector.

14 (2) (A) If any examination discloses misfeasance, malfeasance
15 or nonfeasance in office on the part of any public officer or
16 employee, the Certified Public Accountant shall submit his or her
17 recommendation to the Chief Inspector regarding the legal action
18 ~~the approved certified public accountant~~ he or she considers
19 appropriate, including, but not limited to, whether criminal
20 prosecution or civil action to effect restitution is appropriate.
21 ~~and three additional copies of the certified audit report.~~

22 (B) After review of the recommendations and the audit report,
23 the Chief Inspector shall proceed as provided in subsection ~~(n)~~ (m)
24 of this section.

1 (C) For purposes of this section and section thirteen, article
2 nine-b, chapter eighteen of this code, a certified audit report of
3 an approved Certified Public Accountant shall be treated in the
4 same manner as a report of the Chief Inspector.

5 (g) On every examination, ~~inquiry shall be made as to the~~
6 ~~financial conditions and resources of the agency having~~
7 ~~jurisdiction over the appropriations and levies disbursed by the~~
8 ~~office and whether the requirements of the Constitution and~~
9 ~~statutory laws of the state and the ordinances and orders of the~~
10 ~~agency have been properly complied with and also inquire into the~~
11 ~~methods and accuracy of the accounts and such other matters of~~
12 ~~audit and accounting as the Chief Inspector may prescribe.~~ the
13 Chief Inspector, or his or her designee, shall adhere to generally
14 accepted auditing standards issued by the American Institute of
15 Certified Public Accountants; Government Auditing Standards issued
16 by the Comptroller General of the United States and, if applicable,
17 federal guidelines and circulars governing federal financial
18 assistance.

19 (h) If a local government office is not subject to a single
20 audit requirement under federal regulations, or if it is not
21 otherwise required by law or contract to undergo an annual audit,
22 and its expenditures from all sources are less than \$300,000 during
23 the fiscal year, the Chief Inspector may choose to perform either
24 a review or audit on the local government office and may in his or

1 her discretion determine the frequency of ~~such~~ the review or audit.

2 (I) The Chief Inspector or any authorized assistant may issue
3 subpoenas and compulsory process, direct the service ~~thereof~~ by any
4 sheriff, compel the attendance of witnesses and the production of
5 books and papers at any designated time and place, ~~selected~~ in
6 their respective ~~county~~ counties, and administer oaths.

7 (j) If any person refuses to appear before the Chief Inspector
8 or his or her authorized assistant when required to do so, refuses
9 to testify on any matter or refuses to produce any books or papers
10 in his or her possession or under his or her control, he or she is
11 guilty of a misdemeanor and, upon conviction, ~~thereof~~ shall be
12 fined not more than \$100 and ~~imprisoned~~ confined in jail not more
13 than six months.

14 (k) A person convicted of willful false swearing in an
15 examination is guilty of a misdemeanor and, upon conviction,
16 ~~thereof~~ shall be fined not more than \$100 and ~~imprisoned~~ confined
17 in jail not more than six months.

18 (l) Except as otherwise provided in this section, a copy of
19 the certified report of each examination shall be filed in the
20 office of ~~the commissioner, chief inspector~~ with the governing body
21 of the local government and with other offices as prescribed in
22 uniform procedures of the Chief Inspector.

23 (m) (1) If any examination or investigation discloses
24 misfeasance, malfeasance or nonfeasance in office on the part of

1 any public officer or employee, a certified copy of the report
2 shall be published electronically by the Chief Inspector with
3 notice of the publishing sent in writing to the proper legal
4 authority of the agency, the Prosecuting Attorney of the county
5 wherein the agency is located and with the Attorney General for
6 such legal action as is proper.

7 (2) At the time the certified audit report is published, the
8 Chief Inspector shall notify the proper legal authority of the
9 agency, the Prosecuting Attorney and the Attorney General in
10 writing of his or her recommendation as to the legal action that
11 the chief inspector considers proper, whether criminal prosecution
12 or civil action to effect restitution, or both.

13 (n) If the proper legal authority or Prosecuting Attorney,
14 within nine months of receipt of the certified audit or
15 investigative report and recommendations, refuses, neglects or
16 fails to take efficient legal action by a civil suit to effect
17 restitution or by prosecuting criminal proceedings to a final
18 conclusion, in accordance with the recommendations, the Chief
19 Inspector may institute or participate in the necessary proceedings
20 ~~or participate therein~~ and prosecute the proceedings in any court
21 of the state to a final conclusion.

22 (o) (1) A local government that is not a County Board of
23 Education may elect, by May 1 of the fiscal year to be audited, to
24 have its annual examination performed by a Certified Public

1 Accountant approved by the chief inspector to perform the
2 examinations.

3 (2) When this election is made, a copy of the order of the
4 governing body making the election shall be filed with the chief
5 inspector.

6 (3) An electing local government ~~is allowed to~~ may contract
7 with any Certified Public Accountant on the chief inspector's then
8 current list of approved Certified Public Accountants, unless:

9 (A) The Prosecuting Attorney of the county in which the local
10 government is located timely submits to the chief inspector a
11 written request for the examination to be performed by the Chief
12 Inspector or ~~a person appointed by the chief inspector~~ his or her
13 designee; or

14 (B) The Chief Inspector determines that a special or unusual
15 situation exists: *Provided*, That the audit of a local government
16 may be performed by the Chief Inspector at his or her discretion.

17 (4) The local government shall follow the audit bid
18 procurement procedures established by the Chief Inspector in
19 obtaining the audit: *Provided, however*, That the Chief Inspector
20 may elect to conduct the audit of a local unit of government with
21 one or more members of his or her audit staff where, in the opinion
22 of the Chief Inspector, a special or unusual situation exists.

23 **§6-9-9a. Public inspection of reports of examinations.**

24 All reports of examinations and audits of public offices made

1 in accordance with ~~the provisions of~~ section seven of this article,
2 ~~and the copies thereof,~~ when filed in the office of the chief
3 inspector of public offices or in the office of the State Tax
4 Commissioner, shall be public documents and shall be available for
5 public inspection: Provided, That if an examination or
6 investigative report discloses misfeasance, nonfeasance or
7 malfeasance, the report shall remain confidential until such time
8 that the proper legal authority, as described in subsection (m) of
9 section seven of this article, has completed its investigation
10 and/or adjudication of the matter.