

1 **H. B. 2849**

2
3 (By Delegates Boggs, Swartzmiller, Ferro,
4 Caputo and D. Poling)

5 (By Request of the State Auditor)

6 [Introduced March 6, 2013; referred to the
7 Committee on Government Organization then the Judiciary.]

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10 A BILL to amend and reenact §6-9-7 and §6-9-9a of the Code of West
11 Virginia, 1931, as amended; and to amend said code by adding
12 thereto a new section, designated §6-9-9b, all relating to
13 audits and investigations by the chief inspector of public
14 offices; clarifying that the chief inspector may also
15 investigate, in addition to examine, the financial affairs of
16 local governmental offices or political subdivisions and
17 boards, commissions, authorities, agencies and other entities;
18 clarifying that the chief inspector may also initiate civil
19 and criminal actions if an investigation discloses
20 misfeasance, malfeasance or nonfeasance; providing for
21 confidentiality of reports and working papers of the chief
22 inspector division; and defining a term.

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

24 That §6-9-7 and §6-9-9a of the Code of West Virginia, 1931, as

1 amended, be amended and reenacted; and that said code be amended by
2 adding thereto a new section, designated §6-9-9b, all to read as
3 follows:

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

5 **§6-9-7. Examinations and investigations into affairs of local
6 public offices; penalties.**

7 (a) The chief inspector has the power by himself or herself,
8 or by any person appointed, designated or approved by the chief
9 inspector to perform the service, to examine or investigate, or
10 both, into all financial affairs of every local governmental office
11 or political subdivision and all boards, commissions, authorities,
12 agencies or other offices created under authority thereof. An
13 examination shall be made annually, if required, to comply with the
14 Single Audit Act and when otherwise required by law or contract.
15 When that act does not apply, unless otherwise required by law or
16 by contract, the examination shall be made at least once a year, if
17 practicable. Furthermore, the chief inspector shall furnish
18 annually to the Legislature a list of each local government office
19 or political subdivision and all boards, commissions, authorities,
20 agencies or other offices created under authority thereof and the
21 year of its most recent completed audit.

22 (b) When required for compliance with regulations for federal
23 funds received or expended by county boards of education the chief
24 inspector or his or her designee, including any certified public

1 accountant approved by the chief inspector shall conduct and issue
2 an audit report within the time specified in controlling federal
3 regulations. Examinations of other local governments shall be
4 conducted and audit or review reports issued in accordance with
5 uniform procedures of the chief inspector.

6 (c) A county board of education may elect, by May 1 of the
7 fiscal year to be audited, to have its annual examination performed
8 by a certified public accountant approved by the chief inspector to
9 perform the examinations. When this election is made, a copy of
10 the order of the county board making the election shall be filed
11 with the chief inspector and the State Board of School Finance.
12 The county board of education is allowed to contract with any
13 certified public accountant on the chief inspector's then current
14 list of approved certified public accountants, unless the State
15 Board of School Finance or the prosecuting attorney of the county
16 in which the board is located timely submits to the chief inspector
17 a written request for the examination to be performed by the chief
18 inspector or a person appointed by the chief inspector, or the
19 chief inspector determines that a special or unusual situation
20 exists. The county board shall follow the audit bid procurement
21 procedures established by the chief inspector in obtaining the
22 audit.

23 (d) The chief inspector shall, at least annually, prepare a
24 list of certified public accountants approved by the chief

1 inspector to perform examinations of local governments. Names
2 shall be added to or deleted from that list in accordance with
3 uniform procedures of the chief inspector. When each list or
4 updated list is issued, the chief inspector shall promptly file a
5 copy of the list in the State Register and send a copy to the State
6 Board of Education, the State Board of School Finance and to local
7 governments who request a copy.

8 (e) A county board of education, when procuring the services
9 of a certified public accountant on the chief inspector's list,
10 shall follow the procurement standards prescribed by the grants
11 management common rule, OMB Circular A-102 "Grants and Cooperative
12 Agreements with State and Local Governments" in effect for the
13 fiscal year being examined, or in any replacement circular or
14 regulation of the office of management and budget and in addition
15 shall follow those standards as determined by the office of chief
16 inspector.

17 (f) The approved independent certified public accountant
18 making examinations under this section shall comply with
19 requirements of this section applicable to examinations performed
20 by the chief inspector, including applicable requirements of the
21 federal government and uniform procedures of the chief inspector
22 applicable to examinations of county boards of education.

23 (1) Upon completion of the certified public accountant's
24 examination and audit or review report, the certified public

1 accountant shall promptly send two copies of the certified report
2 to the county board of education who shall file one copy with the
3 Federal Audit Clearing House. The certified public accountant
4 shall send one copy of the certified report to the State Board of
5 School Finance, and one copy to the chief inspector.

6 (2) If any examination discloses misfeasance, malfeasance or
7 nonfeasance in office on the part of any public officer or
8 employee, the certified public accountant shall submit his or her
9 recommendation to the chief inspector regarding the legal action
10 the approved certified public accountant considers appropriate,
11 including, but not limited to, whether criminal prosecution or
12 civil action to effect restitution is appropriate, and three
13 additional copies of the certified audit report. After review of
14 the recommendations and the audit report, the chief inspector shall
15 proceed as provided in subsection (n) of this section. For
16 purposes of this section and section thirteen, article nine-b,
17 chapter eighteen of this code, a certified audit report of an
18 approved certified public accountant shall be treated in the same
19 manner as a report of the chief inspector.

20 (g) On every examination, inquiry shall be made as to the
21 financial conditions and resources of the agency having
22 jurisdiction over the appropriations and levies disbursed by the
23 office and whether the requirements of the Constitution and

1 statutory laws of the state and the ordinances and orders of the
2 agency have been properly complied with and also inquire into the
3 methods and accuracy of the accounts and such other matters of
4 audit and accounting as the chief inspector may prescribe.

5 (h) If a local government office is not subject to a single
6 audit requirement under federal regulations or if it is not
7 otherwise required by law or contract to undergo an annual audit
8 and its expenditures from all sources are less than \$300,000 during
9 the fiscal year the chief inspector may choose to perform either a
10 review or audit on the local government office and may in his or
11 her discretion determine the frequency of such review or audit.

12 (I) The chief inspector or any authorized assistant may issue
13 subpoenas and compulsory process, direct the service thereof by any
14 sheriff, compel the attendance of witnesses and the production of
15 books and papers at any designated time and place, selected in
16 their respective county, and administer oaths.

17 (j) If any person refuses to appear before the chief inspector
18 or his or her authorized assistant when required to do so, refuses
19 to testify on any matter or refuses to produce any books or papers
20 in his or her possession or under his or her control, he or she is
21 guilty of a misdemeanor and, upon conviction thereof, shall be
22 fined not more than \$100 and ~~imprisoned~~ confined in jail not more
23 than six months.

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

5 (l) Except as otherwise provided in this section, a copy of
6 the certified report of each examination shall be filed in the
7 office of the commissioner, chief inspector with the governing body
8 of the local government and with other offices as prescribed in
9 uniform procedures of the chief inspector.

10 (m) If any examination or investigation discloses misfeasance,
11 malfeasance or nonfeasance in office on the part of any public
12 officer or employee, a certified copy of the report shall be
13 published electronically by the chief inspector with notice of the
14 publishing sent in writing to the proper legal authority of the
15 agency, the prosecuting attorney of the county wherein the agency
16 is located and with the Attorney General for such legal action as
17 is proper. At the time the certified audit report is published,
18 the chief inspector shall notify the proper legal authority of the
19 agency, the prosecuting attorney and the Attorney General in
20 writing of his or her recommendation as to the legal action that
21 the chief inspector considers proper, whether criminal prosecution
22 or civil action to effect restitution, or both.

23 (n) If the proper legal authority or prosecuting attorney,

1 within nine months of receipt of the certified audit or
2 investigative report and recommendations, refuses, neglects or
3 fails to take efficient legal action by a civil suit to effect
4 restitution or by prosecuting criminal proceedings to a final
5 conclusion, in accordance with the recommendations, the chief
6 inspector may institute the necessary proceedings or participate
7 therein and prosecute the proceedings in any court of the state to
8 a final conclusion.

9 (o) A local government that is not a county board of education
10 may elect, by May 1 of the fiscal year to be audited, to have its
11 annual examination performed by a certified public accountant
12 approved by the chief inspector to perform the examinations. When
13 this election is made, a copy of the order of the governing body
14 making the election shall be filed with the chief inspector. An
15 electing local government is allowed to contract with any certified
16 public accountant on the chief inspector's then current list of
17 approved certified public accountants, unless the prosecuting
18 attorney of the county in which the local government is located
19 timely submits to the chief inspector a written request for the
20 examination to be performed by the chief inspector or a person
21 appointed by the chief inspector, or the chief inspector determines
22 that a special or unusual situation exists: *Provided*, That the
23 audit of a local government may be performed by the chief inspector

1 at his or her discretion. The local government shall follow the
2 audit bid procurement procedures established by the chief inspector
3 in obtaining the audit: *Provided, however,* That the chief
4 inspector may elect to conduct the audit of a local unit of
5 government with one or more members of his or her audit staff
6 where, in the opinion of the chief inspector, a special or unusual
7 situation exists.

8 **§6-9-9a. Public inspection of reports of examinations.**

9 All reports of examinations and audits of public offices made
10 in accordance with ~~the provisions of~~ section seven of this article,
11 and the copies thereof, when filed in the office of the chief
12 inspector of public offices or in the office of the State Tax
13 Commissioner, shall be public documents and shall be available for
14 public inspection. However, if an examination or investigative
15 report discloses misfeasance, nonfeasance or malfeasance, the
16 report shall remain confidential until such time that the proper
17 legal authority, as described in subsection (m) of section seven of
18 this article, has completed its investigation and/or adjudication
19 of the matter.

20 **§6-9-9b. Confidentiality of audit working papers of chief**
21 **inspector.**

22 The audit working papers created by the chief inspector
23 division of the State Auditor's office during examinations or

1 investigations are confidential and, therefore, are not public
2 records as that term is defined in section two, article one,
3 chapter twenty-nine-b of this code. "Audit working papers"
4 include, but are not limited to, the books and records of the
5 entity being audited, intra-agency and inter-agency communications,
6 draft reports and/or summaries, schedules, notes, memoranda, and
7 all other records relating to an examination or investigation.

NOTE: The purpose of this bill is to clarify that the chief inspector may also investigate, in addition to examine, the financial affairs of local governmental offices or political subdivisions and boards, commissions, authorities, agencies and other entities. The bill clarifies that the chief inspector may also initiate civil and criminal actions if an investigation discloses misfeasance, malfeasance or nonfeasance. The bill provides for confidentiality of reports and working papers of the chief inspector division. The bill also defines a term.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§6-9-9b is new; therefore, it has been completely underscored.