

COMMITTEE SUBSTITUTE

FOR

H. B. 2849

(BY DELEGATE(S) BOGGS, SWARTZMILLER, FERRO,
CAPUTO AND D. POLING)

(Originating in the House Committee on the Judiciary)
[March 29, 2013]

A BILL to amend and reenact §6-9-7 and §6-9-9a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §6-9-9b, all relating to the Chief Inspector of Public Offices; authorizing the Chief Inspector to investigate the financial affairs of local governmental offices, political subdivisions, boards, commissions, authorities, agencies and other public entities; clarifying that the Chief Inspector may report to proper legal authority or initiate civil and criminal actions if an investigation discloses misfeasance, malfeasance or

nonfeasance; providing for confidentiality of reports until the completion of investigation or adjudication; and providing that working papers of the Chief Inspector Division are confidential.

Be it enacted by the Legislature of West Virginia:

That §6-9-7 and §6-9-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §6-9-9b, all to read as follows:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

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

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

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

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

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

19 (5) The Chief Inspector may investigate the financial affairs
20 of every local government office or political subdivision and all
21 boards, commissions, authorities, agencies or other offices
22 created under authority thereof.

23 (b) When required for compliance with regulations for
24 federal funds received or expended by County Boards of
25 Education, the Chief Inspector or his or her designee ~~including~~
26 ~~any certified public accountant approved by the chief inspector~~
27 shall conduct and issue an audit report within the time specified
28 in controlling federal regulations. ~~Examinations of other local~~
29 ~~governments shall be conducted and audit or review reports in~~
30 ~~accordance with uniform procedures of the chief inspector.~~

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

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

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

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

47 (B) The Chief Inspector determines that a special or unusual
48 situation exists.

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

52 (d) The Chief Inspector shall, at least annually, ~~prepare~~
53 approve and publish a list of Certified Public Accountants
54 ~~approved by the chief inspector to~~ who may perform
55 examinations of local governments, ~~Names shall be added to or~~
56 ~~deleted from that list~~ and add or delete names in accordance with
57 his or her uniform procedures. ~~of the chief inspector.~~ When each
58 list or updated list is issued, the Chief Inspector shall promptly
59 ~~file~~ post a copy of the list ~~in the State Register and send a copy~~
60 ~~to the State Board of Education, the State Board of School~~
61 ~~Finance and to local governments who request a copy~~ on the
62 State Auditor's website.

63 (e) A County Board of Education, when procuring the
64 services of a Certified Public Accountant on the Chief
65 Inspector's list, shall follow the procurement standards
66 prescribed by the grants management common rule, OMB
67 Circular A-102 "Grants and Cooperative Agreements with State
68 and Local Governments" in effect for the fiscal year being
69 examined, or in any replacement circular or regulation of the
70 Office of Management and Budget, and ~~in addition shall follow~~
71 ~~those~~ any other standards ~~as determined~~ established by the office
72 of Chief Inspector.

73 (f) The approved ~~independent~~ Certified Public Accountant
74 making examinations under this section shall comply with
75 requirements of this section applicable to examinations
76 performed by the Chief Inspector, including applicable
77 requirements of the federal government and uniform procedures
78 of the Chief Inspector applicable to examinations of county
79 Boards of Education.

80 (1) Upon completion of the ~~certified public accountant's~~
81 examination and audit or review report, the Certified Public
82 Accountant shall promptly send one copy ~~two copies of the~~
83 ~~certified report~~ to the County Board of Education, ~~who shall file~~
84 ~~one copy with~~ the Federal Audit Clearing House, ~~The certified~~
85 ~~public accountant shall send one copy of the certified report to~~
86 the State Board of School Finance, and ~~one copy to~~ the Chief
87 Inspector.

88 (2) (A) If any examination discloses misfeasance,
89 malfeasance or nonfeasance in office on the part of any public
90 officer or employee, the Certified Public Accountant shall
91 submit his or her recommendation to the Chief Inspector
92 regarding the legal action ~~the approved certified public~~

93 ~~accountant~~ he or she considers appropriate, including, but not
94 limited to, whether criminal prosecution or civil action to effect
95 restitution is appropriate. ~~and three additional copies of the~~
96 ~~certified audit report.~~

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

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

104 (g) On every examination, ~~inquiry shall be made as to the~~
105 ~~financial conditions and resources of the agency having~~
106 ~~jurisdiction over the appropriations and levies disbursed by the~~
107 ~~office and whether the requirements of the Constitution and~~
108 ~~statutory laws of the state and the ordinances and orders of the~~
109 ~~agency have been properly complied with and also inquire into~~
110 ~~the methods and accuracy of the accounts and such other matters~~
111 ~~of audit and accounting as the Chief Inspector may prescribe.~~ the
112 Chief Inspector, or his or her designee, shall adhere to generally

113 accepted auditing standards issued by the American Institute of
114 Certified Public Accountants; Government Auditing Standards
115 issued by the Comptroller General of the United States and, if
116 applicable, federal guidelines and circulars governing federal
117 financial assistance.

118 (h) If a local government office is not subject to a single
119 audit requirement under federal regulations, or if it is not
120 otherwise required by law or contract to undergo an annual audit,
121 and its expenditures from all sources are less than \$300,000
122 during the fiscal year, the Chief Inspector may choose to perform
123 either a review or audit on the local government office and may
124 in his or her discretion determine the frequency of ~~such~~ the
125 review or audit.

126 (i) The Chief Inspector or any authorized assistant may issue
127 subpoenas and compulsory process, direct the service ~~thereof~~ by
128 any sheriff, compel the attendance of witnesses and the
129 production of books and papers at any designated time and place,
130 ~~selected~~ in their respective ~~county~~ counties, and administer
131 oaths.

132 (j) If any person refuses to appear before the Chief Inspector
133 or his or her authorized assistant when required to do so, refuses

134 to testify on any matter or refuses to produce any books or
135 papers in his or her possession or under his or her control, he or
136 she is guilty of a misdemeanor and, upon conviction, ~~thereof~~
137 shall be fined not more than \$100 and ~~imprisoned~~ confined in
138 jail not more than six months.

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

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

148 (m) (1) If any examination or investigation discloses
149 misfeasance, malfeasance or nonfeasance in office on the part of
150 any public officer or employee, a certified copy of the report
151 shall be published electronically by the Chief Inspector with
152 notice of the publishing sent in writing to the proper legal
153 authority of the agency, the Prosecuting Attorney of the county

154 wherein the agency is located and with the Attorney General for
155 such legal action as is proper.

156 (2) At the time the certified audit report is published, the
157 Chief Inspector shall notify the proper legal authority of the
158 agency, the Prosecuting Attorney and the Attorney General in
159 writing of his or her recommendation as to the legal action that
160 the chief inspector considers proper, whether criminal
161 prosecution or civil action to effect restitution, or both.

162 (n) If the proper legal authority or Prosecuting Attorney,
163 within nine months of receipt of the certified audit or
164 investigative report and recommendations, refuses, neglects or
165 fails to take efficient legal action by a civil suit to effect
166 restitution or by prosecuting criminal proceedings to a final
167 conclusion, in accordance with the recommendations, the Chief
168 Inspector may institute or participate in the necessary
169 proceedings ~~or participate therein~~ and prosecute the proceedings
170 in any court of the state to a final conclusion.

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

174 Accountant approved by the chief inspector to perform the
175 examinations.

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

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

183 (A) The Prosecuting Attorney of the county in which the
184 local government is located timely submits to the chief inspector
185 a written request for the examination to be performed by the
186 Chief Inspector or ~~a person appointed by the chief inspector~~ his
187 or her designee; or

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

191 (4) The local government shall follow the audit bid
192 procurement procedures established by the Chief Inspector in
193 obtaining the audit: *Provided, however*, That the Chief Inspector

194 may elect to conduct the audit of a local unit of government with
195 one or more members of his or her audit staff where, in the
196 opinion of the Chief Inspector, a special or unusual situation
197 exists.

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

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

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

1 (a) The audit working papers created by the Chief Inspector
2 division of the State Auditor's office during examinations or
3 investigations are confidential and are not public records as that

4 term is defined in section two, article one, chapter twenty-nine-b
5 of this code.

6 (b) For the purposes of this section, “audit working papers”
7 include, but are not limited to, the books and records of the
8 entity being audited, intra-agency and inter-agency
9 communications, draft reports and/or summaries, schedules,
10 notes, memoranda, and all other records relating to an
11 examination or investigation.

