

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2838

BY DELEGATES WESTFALL AND QUEEN

(BY REQUEST OF THE STATE AUDITOR)

[Introduced March 02, 2021; Referred
to the Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §6-9-8 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §11-6-26, and §11-6-27 of said code; and to amend and reenact §11A-3-36
3 of said code, all relating to authorizing the ordering of restitution to the state for
4 reimbursement of costs incurred for misuse of public funds; creating the State Auditor's
5 Public Integrity and Fraud Fund for use of said funds; and providing for operating funds in
6 the public utilities and land sections to expire funds at the end of the fiscal year in a method
7 consistent with other divisions of the State Auditor's Office.

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

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISOR OF LOCAL GOVERNMENT OFFICES.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 (a) The cost of any service or act performed by the chief inspector under the provisions of
2 this article as to any county or district office, officer or institution shall be paid by the county
3 commission of the county; the cost of any service or act to any board of education shall be paid
4 by the board; the cost of any service or act to any municipal corporation shall be paid by the
5 authorities of the municipal corporation: Provided, That in municipalities in which the total revenue
6 from all taxes does not exceed the sum of \$2,000 annually, the cost including the per diem and
7 all actual costs and expenses of the services shall not exceed the sum of \$200. The cost of this
8 service shall be the actual cost and expense of the service performed, including transportation,
9 hotel, meals, materials, per diem compensation of deputies, assistants, clerical help, and the other
10 costs that are necessary to enable them to perform the services required, but the costs shall not
11 exceed the sum of \$3,000 for services rendered to a Class IV municipality: Provided, however,
12 That the chief inspector may charge up to an additional \$3,000 for costs incurred for each service
13 or act performed for a utility or park system owned by a Class IV municipality and for each
14 policemen's and firemen's pension and relief fund maintained by the municipality: Provided

15 further, That if a municipality is required to undergo a single audit by the federal agency or
16 agencies making a grant, the cost limitations of this subsection do not apply: And provided further,
17 That the chief inspector shall provide a written quote for all costs in advance for all services
18 required by this article. The chief inspector shall render to the agency liable for the cost a
19 statement of the cost as soon after the cost was incurred as practicable and the agency shall
20 allow the cost and cause it to be paid promptly in the manner that other claims and accounts are
21 allowed and paid and the total amount constitutes a debt against the local agency due the state.
22 Whenever there is in the State Treasury a sum of money due any county commission, board of
23 education or municipality from any source, upon the application of the chief inspector, the sum
24 shall be at once applied on the debt against the county commission, board of education or
25 municipality and the fact of the application of the fund shall be reported by the Auditor to the
26 county commission, board of education or municipality, which report shall be a receipt for the
27 amount named in the report. All money received by the chief inspector from this source shall be
28 paid into the State Treasury, shall be deposited to the credit of an account to be known as chief
29 inspector's fund and shall be expended only for the purpose of covering the cost of the services,
30 unless otherwise directed by the Legislature. The cost of any examination, service, or act by the
31 chief inspector made necessary, or the part thereof that was made necessary, by the willful fault
32 of any officer or employee, may be recovered by the chief inspector from that person, on motion,
33 on 10-days' notice in any court having jurisdiction.

34 (b) For the purpose of permitting payments to be made at definite periods to deputy
35 inspectors and assistants for per diem compensation and expenses, there is hereby created a
36 revolving fund for the chief inspector's office. The fund shall be accumulated and administered as
37 follows:

38 (1) There shall be appropriated from the state General Revenue Fund the sum of \$25,000
39 to be transferred to this fund to create a revolving fund which, together with other payments into
40 this fund as provided in this article, shall constitute a fund to defray the cost of this service;

41 (2) Payments received for the cost of services of the chief inspector's office and interest
42 earned on the invested balance of the chief inspector's revolving fund shall be deposited into this
43 revolving fund, which shall be known as the Chief Inspector's Fund;

44 (3) Any appropriations made to this fund may not be considered to have expired at the
45 end of any fiscal period; and

46 (4) The chief inspector may transfer an amount not to exceed \$400,000 from the Chief
47 Inspector's Fund to the special operating fund created in §32-4-1 et seq. of this code: Provided,
48 that any transfers shall be completed prior to July 1, 2003.

49 (c) Notwithstanding §61-11A-4 of this code, a court, when sentencing a defendant
50 convicted of a felony or misdemeanor based upon any audit, examination, or investigation by the
51 State Auditor, which discloses misfeasance, malfeasance, or nonfeasance in the office on the
52 part of any public officer or employee, the court may, in its discretion, order reimbursement to the
53 State Auditor for the actual costs of auditing, investigating, or prosecuting a violation.

54 (1) There is hereby established a special fund in the State Treasury known as the "State
55 Auditor's Public Integrity and Fraud Fund". The fund shall be administered by the State Auditor
56 and shall consist of moneys deposited in the fund pursuant to this subsection, any other funds
57 appropriated by the Legislature to enhance fraud detection, prevention, transparency and
58 enforcement efforts for the purposes of carrying out the duties under this article, and §12-4A-3 of
59 this code, and the interest or other earnings on the moneys in the fund.

CHAPTER 11. TAXATION.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-26. Operating fund for public utilities division in Auditor's Office.

1 The Auditor shall establish a special operating fund in the state Treasury for the public
2 utilities division in his or her office. The Auditor shall pay into the fund one and three eighths
3 percent of the gross receipts of all moneys collected as provided for in this article. Up to one

4 percent of the gross receipts shall be transferred from the operating fund to the tax loss restoration
5 fund created in ~~section twenty-seven of this article~~ §11-6-27. From the operating fund, the Auditor
6 shall reimburse the Tax Division for the actual operating expenses incurred in the performance of
7 its duties required by this article not to exceed 50 percent of the fund balance after annual
8 transfers to the tax loss restoration fund. Any moneys remaining in the special operating fund
9 after annual transfers to the tax loss restoration fund shall be used by the Tax Division and the
10 Auditor for funding the operation of their offices. ~~On July 31 in each fiscal year, if the balance in~~
11 ~~the operating fund exceeds one percent of gross revenues plus \$50,000, the excess shall be~~
12 ~~withdrawn from the special fund and deposited in the General Fund of the state~~ If, at the end of
13 any fiscal year, the balance in the special operating fund 1227 exceeds 20 percent of the gross
14 revenues from the special operating fund operations, the excess shall be transferred to the
15 General Revenue Fund.

§11-6-27. Public utilities tax loss restoration fund.

1 (a) The Auditor shall establish a special revenue fund in the state Treasury entitled the
2 "Public Utilities Tax Loss Restoration Fund". The Auditor shall pay into the fund up to one percent
3 of the gross receipts deposited in the public utilities operating fund created in section twenty-six
4 of this article and up to one percent of the gross receipts deposited in the operating fund of the
5 interstate commerce division created in ~~section seventeen, article six-g of this chapter~~ §11-6G-17
6 of this code. The proceeds of the tax loss restoration fund shall be distributed quarterly on a
7 proportional basis to counties, districts and municipalities that have lost assessed value from the
8 prior year's assessment and the method of distribution is based upon the county, district or
9 municipality's percentage loss compared to the total loss of all counties, districts and
10 municipalities that have lost assessed value from the prior year's assessment: *Provided*, That the
11 calculation to the adjustments shall exclude loss in tax revenue attributed to the school current
12 levy, as set forth in ~~section six-c, article eight, chapter eleven of this code~~ §11-8-6c of this code:
13 *Provided, however*, That the proceeds received by any county, district or municipality shall not be

14 greater than the loss of tax revenue caused by the decrease in assessed value.

15 (b) The Auditor may invest the balance of the Public Utilities Tax Loss Restoration Fund
 16 as may be prescribed by the WV State Treasurer's Investment Management Board, for the
 17 purpose of short – medium term investments. The Auditor may use the additional earnings from
 18 investments to support any WV Code Section administered by the Auditor related to local
 19 government oversight or the general operations of the office.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-36. Operating fund for land department in Auditor's office.

1 (a) The Auditor shall establish a special operating fund for the land department in his or
 2 her office. He or she shall pay into such fund all redemption fees, all publication or other charges
 3 collected by him or her if such charges were paid by or were payable to him or her the unclaimed
 4 surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to
 5 this article, and all payments made to him or her under the provisions of ~~sections sixty-four and~~
 6 ~~sixty-five of this article~~ §11A-3-64 and §11A-3-65 of this code, except such part thereof as
 7 represents state taxes and interest. All payments so excepted shall be credited by the Auditor to
 8 the general school fund or other proper state fund.

9 (b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay
 10 any balances due to deputy commissioners for services rendered, and any unpaid costs including
 11 those for publication which have accrued or will accrue under the provisions of this article, to pay
 12 fees due surveyors under the provisions of ~~section forty-three of this article~~ §11A-3-43 of this
 13 code, and to pay for the operation and maintenance of the land department in his or her office.
 14 ~~The surplus over and above the amount of \$100,000, remaining in the fund at the end of any fiscal~~

- 15 ~~year, shall be paid by the Auditor into the general school fund.~~ If, at the end of any fiscal year, the
16 balance in the special operating fund exceeds 20 percent of the gross revenues from the special
17 operating fund operations, the excess shall be transferred to the General School Fund.

NOTE: The purpose of this bill is to authorize the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds, and to create the State Auditor's Public Integrity and Fraud Fund for use of said funds. Additionally, it provides for operating funds in the public utilities and land sections to expire funds at the end of the fiscal year in a method consistent with other divisions of the State Auditor's Office.

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