

1 **H. B. 2492**

2  
3 (By Delegates Swartzmiller, Pethel, Martin,  
4 Cann and D. Poling)

5  
6 [Introduced January 14, 2011; 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 of the Code of West Virginia,  
11 1931, as amended, relating to supervision of local government  
12 offices; and clarifying that audit supporting documentation is  
13 confidential.

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

15 That §6-9-7 of the Code of West Virginia, 1931, as amended, be  
16 amended and reenacted to read as follows:

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

18 **§6-9-7. Examinations into affairs of local public offices;**  
19 **penalties.**

20 (a) The chief inspector has the power by himself or herself,  
21 or by any person appointed, designated or approved by the chief  
22 inspector to perform the service, to examine into all financial  
23 affairs of every local governmental office or political subdivision  
24 and all boards, commissions, authorities, agencies or other offices  
25 created under authority thereof. An examination shall be made

1 annually, if required, to comply with the Single Audit Act and when  
2 otherwise required by law or contract. When that act does not  
3 apply, unless otherwise required by law or by contract, the  
4 examination shall be made at least once a year, if practicable.  
5 Furthermore, the chief inspector shall furnish annually to the  
6 Legislature a list of each local government office or political  
7 subdivision and all boards, commissions, authorities, agencies or  
8 other offices created under authority thereof and the year of its  
9 most recent completed audit.

10 (b) When required for compliance with regulations for federal  
11 funds received or expended by county boards of education the chief  
12 inspector or his or her designee, including any certified public  
13 accountant approved by the chief inspector shall conduct and issue  
14 an audit report within the time specified in controlling federal  
15 regulations. Examinations of other local governments shall be  
16 conducted and audit or review reports issued in accordance with  
17 uniform procedures of the chief inspector.

18 (c) A county board of education may elect, by May 1 of the  
19 fiscal year to be audited, to have its annual examination performed  
20 by a certified public accountant approved by the chief inspector to  
21 perform the examinations. When this election is made, a copy of  
22 the order of the county board making the election shall be filed  
23 with the chief inspector and the State Board of School Finance.  
24 The county board of education is allowed to contract with any

1 certified public accountant on the chief inspector's then current  
2 list of approved certified public accountants, unless the State  
3 Board of School Finance or the prosecuting attorney of the county  
4 in which the board is located timely submits to the chief inspector  
5 a written request for the examination to be performed by the chief  
6 inspector or a person appointed by the chief inspector, or the  
7 chief inspector determines that a special or unusual situation  
8 exists. The county board shall follow the audit bid procurement  
9 procedures established by the chief inspector in obtaining the  
10 audit.

11 (d) The chief inspector shall, at least annually, prepare a  
12 list of certified public accountants approved by the chief  
13 inspector to perform examinations of local governments. Names  
14 shall be added to or deleted from that list in accordance with  
15 uniform procedures of the chief inspector. When each list or  
16 updated list is issued, the chief inspector shall promptly file a  
17 copy of the list in the State Register and send a copy to the State  
18 Board of Education, the State Board of School Finance and to local  
19 governments who request a copy.

20 (e) A county board of education, when procuring the services  
21 of a certified public accountant on the chief inspector's list,  
22 shall follow the procurement standards prescribed by the grants  
23 management common rule, OMB Circular A-102 "Grants and Cooperative  
24 Agreements with State and Local Governments" in effect for the

1 fiscal year being examined, or in any replacement circular or  
2 regulation of the office of management and budget and in addition  
3 shall follow those standards as determined by the office of chief  
4 inspector.

5 (f) The approved independent certified public accountant  
6 making examinations under this section shall comply with  
7 requirements of this section applicable to examinations performed  
8 by the chief inspector, including applicable requirements of the  
9 federal government and uniform procedures of the chief inspector  
10 applicable to examinations of county boards of education.

11 (1) Upon completion of the certified public accountant's  
12 examination and audit or review report, the certified public  
13 accountant shall promptly send two copies of the certified report  
14 to the county board of education who shall file one copy with the  
15 Federal Audit Clearing House. The certified public accountant  
16 shall send one copy of the certified report to the State Board of  
17 School Finance, and one copy to the chief inspector.

18 (2) If any examination discloses misfeasance, malfeasance or  
19 nonfeasance in office on the part of any public officer or  
20 employee, the certified public accountant shall submit his or her  
21 recommendation to the chief inspector regarding the legal action  
22 the approved certified public accountant considers appropriate,  
23 including, but not limited to, whether criminal prosecution or  
24 civil action to effect restitution is appropriate, and three

1 additional copies of the certified audit report. After review of  
2 the recommendations and the audit report, the chief inspector shall  
3 proceed as provided in subsection (n) of this section. For  
4 purposes of this section and section thirteen, article nine-b,  
5 chapter eighteen of this code, a certified audit report of an  
6 approved certified public accountant shall be treated in the same  
7 manner as a report of the chief inspector.

8 (g) On every examination, inquiry shall be made as to the  
9 financial conditions and resources of the agency having  
10 jurisdiction over the appropriations and levies disbursed by the  
11 office and whether the requirements of the Constitution and  
12 statutory laws of the state and the ordinances and orders of the  
13 agency have been properly complied with and also inquire into the  
14 methods and accuracy of the accounts and such other matters of  
15 audit and accounting as the chief inspector may prescribe.

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

23 (i) The chief inspector or any authorized assistant may issue  
24 subpoenas and compulsory process, direct the service thereof by any

1 sheriff, compel the attendance of witnesses and the production of  
2 books and papers at any designated time and place, selected in  
3 their respective county, and administer oaths.

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

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

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

20 (m) If any examination discloses misfeasance, malfeasance or  
21 nonfeasance in office on the part of any public officer or  
22 employee, a certified copy of the report shall be published  
23 electronically by the chief inspector with notice of the publishing  
24 sent in writing to the proper legal authority of the agency, the

1 prosecuting attorney of the county wherein the agency is located  
2 and with the Attorney General for such legal action as is proper.  
3 At the time the certified audit report is published, the chief  
4 inspector shall notify the proper legal authority of the agency,  
5 the prosecuting attorney and the Attorney General in writing of his  
6 or her recommendation as to the legal action that the chief  
7 inspector considers proper, whether criminal prosecution or civil  
8 action to effect restitution, or both.

9       (n) If the proper legal authority or prosecuting attorney,  
10 within nine months of receipt of the certified audit report and  
11 recommendations, refuses, neglects or fails to take efficient legal  
12 action by a civil suit to effect restitution or by prosecuting  
13 criminal proceedings to a final conclusion, in accordance with the  
14 recommendations, the chief inspector may institute the necessary  
15 proceedings or participate therein and prosecute the proceedings in  
16 any court of the state to a final conclusion.

17       (o) A local government that is not a county board of education  
18 may elect, by May 1 of the fiscal year to be audited, to have its  
19 annual examination performed by a certified public accountant  
20 approved by the chief inspector to perform the examinations. When  
21 this election is made, a copy of the order of the governing body  
22 making the election shall be filed with the chief inspector. An  
23 electing local government is allowed to contract with any certified  
24 public accountant on the chief inspector's then current list of

1 approved certified public accountants, unless the prosecuting  
2 attorney of the county in which the local government is located  
3 timely submits to the chief inspector a written request for the  
4 examination to be performed by the chief inspector or a person  
5 appointed by the chief inspector, or the chief inspector determines  
6 that a special or unusual situation exists: *Provided*, That the  
7 audit of a local government may be performed by the chief inspector  
8 at his or her discretion. The local government shall follow the  
9 audit bid procurement procedures established by the chief inspector  
10 in obtaining the audit: *Provided, however*, That the chief  
11 inspector may elect to conduct the audit of a local unit of  
12 government with one or more members of his or her audit staff  
13 where, in the opinion of the chief inspector, a special or unusual  
14 situation exists: *Provided further*, That the supporting audit  
15 documentation of the chief inspector and his or her audit staff is  
16 confidential, and therefore, shall not be considered public records  
17 pursuant to the provisions of chapter twenty-nine-b of this code.

NOTE: The purpose of this bill is to clarify that audit supporting documentation relating to local government is confidential.

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