

1 **Senate Bill No. 55**

2 (By Senator Minard)

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4 [Introduced January 12, 2011; referred to the Committee on

5 Government Organization; and then to the Committee on the

6 Judiciary.]

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11 A BILL to amend and reenact §6-9-7 of the Code of West Virginia,

12 1931, as amended, relating to clarifying that audit-supporting

13 documentation is 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

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

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

20 (c) A county board of education may elect, by May 1 of the
21 fiscal year to be audited, to have its annual examination performed
22 by a certified public accountant approved by the Chief Inspector to
23 perform the examinations. When this election is made, a copy of
24 the order of the county board making the election shall be filed

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

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

22 (e) A county board of education, when procuring the services
23 of a certified public accountant on the Chief Inspector's list,
24 shall follow the procurement standards prescribed by the grants

1 management common rule, OMB Circular A-102 "Grants and Cooperative
2 Agreements with State and Local Governments" in effect for the
3 fiscal year being examined, or in any replacement circular or
4 regulation of the office of management and budget and in addition
5 shall follow those standards as determined by the office of Chief
6 Inspector.

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

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

20 (2) If any examination discloses misfeasance, malfeasance or
21 nonfeasance in office on the part of any public officer or
22 employee, the certified public accountant shall submit his or her
23 recommendation to the Chief Inspector regarding the legal action
24 the approved certified public accountant considers appropriate,

1 including, but not limited to, whether criminal prosecution or
2 civil action to effect restitution is appropriate, and three
3 additional copies of the certified audit report. After review of
4 the recommendations and the audit report, the Chief Inspector shall
5 proceed as provided in subsection (n) of this section. For
6 purposes of this section and section thirteen, article nine-b,
7 chapter eighteen of this code, a certified audit report of an
8 approved certified public accountant shall be treated in the same
9 manner as a report of the Chief Inspector.

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

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

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

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

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

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

22 (m) If any examination discloses misfeasance, malfeasance or
23 nonfeasance in office on the part of any public officer or
24 employee, a certified copy of the report shall be published

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

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

19 (o) A local government that is not a county board of education
20 may elect, by May 1 of the fiscal year to be audited, to have its
21 annual examination performed by a certified public accountant
22 approved by the Chief Inspector to perform the examinations. When
23 this election is made, a copy of the order of the governing body
24 making the election shall be filed with the Chief Inspector. An

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

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

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