

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2849**

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

6
7 (Originating in the House Committee on the Judiciary)

8 [March 29, 2013]

9
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 the
13 Chief Inspector of Public Offices; authorizing the Chief
14 Inspector to investigate the financial affairs of local
15 governmental offices, political subdivisions, boards,
16 commissions, authorities, agencies and other public entities;
17 clarifying that the Chief Inspector may report to proper legal
18 authority or initiate civil and criminal actions if an
19 investigation discloses misfeasance, malfeasance or
20 nonfeasance; providing for confidentiality of reports until
21 the completion of investigation or adjudication; and providing
22 that working papers of the Chief Inspector Division are
23 confidential.

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

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

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

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

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

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

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

21 (4) ~~Furthermore,~~ The Chief Inspector shall furnish annually to
22 the Legislature a list of each local government office or political
23 subdivision and all boards, commissions, authorities, agencies or
24 other offices created under their authority ~~thereof~~ and the year of

1 its most recent completed audit.

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

6 (b) When required for compliance with regulations for federal
7 funds received or expended by County Boards of Education, the Chief
8 Inspector or his or her designee ~~including any certified public~~
9 ~~accountant approved by the chief inspector~~ shall conduct and issue
10 an audit report within the time specified in controlling federal
11 regulations. ~~Examinations of other local governments shall be~~
12 ~~conducted and audit or review reports in accordance with uniform~~
13 ~~procedures of the chief inspector.~~

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

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

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

24 (A) The State Board of School Finance or the Prosecuting

1 Attorney of the county in which the board is located timely submits
2 to the Chief Inspector a written request for the examination to be
3 performed by the Chief Inspector or ~~a person appointed by the chief~~
4 ~~inspector,~~ his or her designee; or

5 (B) The Chief Inspector determines that a special or unusual
6 situation exists.

7 (4) The county board shall follow the audit bid procurement
8 procedures established by the chief inspector in obtaining the
9 audit.

10 (d) The Chief Inspector shall, at least annually, ~~prepare~~
11 approve and publish a list of Certified Public Accountants ~~approved~~
12 ~~by the chief inspector to~~ who may perform examinations of local
13 governments, ~~Names shall be added to or deleted from that list and~~
14 add or delete names in accordance with his or her uniform
15 procedures. ~~of the chief inspector.~~ When each list or updated list
16 is issued, the Chief Inspector shall promptly ~~file~~ post a copy of
17 the list ~~in the State Register and send a copy to the State Board~~
18 ~~of Education, the State Board of School Finance and to local~~
19 ~~governments who request a copy~~ on the State Auditor's website.

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~~ any other standards ~~as determined~~ established by
4 the office of Chief 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 one copy ~~two copies of the certified~~
14 ~~report~~ to the County Board of Education, ~~who shall file one copy~~
15 ~~with~~ the Federal Audit Clearing House, ~~The certified public~~
16 ~~accountant shall send one copy of the certified report to the State~~
17 Board of School Finance, and ~~one copy to~~ the Chief Inspector.

18 (2) (A) If any examination discloses misfeasance, malfeasance
19 or 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~~ he or she considers
23 appropriate, including, but not limited to, whether criminal
24 prosecution or civil action to effect restitution is appropriate.

1 ~~and three additional copies of the certified audit report.~~

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

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

9 (g) On every examination, ~~inquiry shall be made as to the~~
10 ~~financial conditions and resources of the agency having~~
11 ~~jurisdiction over the appropriations and levies disbursed by the~~
12 ~~office and whether the requirements of the Constitution and~~
13 ~~statutory laws of the state and the ordinances and orders of the~~
14 ~~agency have been properly complied with and also inquire into the~~
15 ~~methods and accuracy of the accounts and such other matters of~~
16 ~~audit and accounting as the Chief Inspector may prescribe.~~ the
17 Chief Inspector, or his or her designee, shall adhere to generally
18 accepted auditing standards issued by the American Institute of
19 Certified Public Accountants; Government Auditing Standards issued
20 by the Comptroller General of the United States and, if applicable,
21 federal guidelines and circulars governing federal financial
22 assistance.

23 (h) If a local government office is not subject to a single
24 audit requirement under federal regulations, or if it is not

1 otherwise required by law or contract to undergo an annual audit,
2 and its expenditures from all sources are less than \$300,000 during
3 the fiscal year, the Chief Inspector may choose to perform either
4 a review or audit on the local government office and may in his or
5 her discretion determine the frequency of ~~such~~ the review or audit.

6 (I) The Chief Inspector or any authorized assistant may issue
7 subpoenas and compulsory process, direct the service ~~thereof~~ by any
8 sheriff, compel the attendance of witnesses and the production of
9 books and papers at any designated time and place, ~~selected~~ in
10 their respective ~~county~~ counties, and administer oaths.

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

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

22 (l) Except as otherwise provided in this section, a copy of
23 the certified report of each examination shall be filed in the
24 office of ~~the commissioner, chief inspector~~ with the governing body

1 of the local government and with other offices as prescribed in
2 uniform procedures of the Chief Inspector.

3 (m) (1) If any examination or investigation discloses
4 misfeasance, malfeasance or nonfeasance in office on the part of
5 any public officer or employee, a certified copy of the report
6 shall be published electronically by the Chief Inspector with
7 notice of the publishing sent in writing to the proper legal
8 authority of the agency, the Prosecuting Attorney of the county
9 wherein the agency is located and with the Attorney General for
10 such legal action as is proper.

11 (2) At the time the certified audit report is published, the
12 Chief Inspector shall notify the proper legal authority of the
13 agency, the Prosecuting Attorney and the Attorney General in
14 writing of his or her recommendation as to the legal action that
15 the chief inspector considers proper, whether criminal prosecution
16 or civil action to effect restitution, or both.

17 (n) If the proper legal authority or Prosecuting Attorney,
18 within nine months of receipt of the certified audit or
19 investigative report and recommendations, refuses, neglects or
20 fails to take efficient legal action by a civil suit to effect
21 restitution or by prosecuting criminal proceedings to a final
22 conclusion, in accordance with the recommendations, the Chief
23 Inspector may institute or participate in the necessary proceedings
24 ~~or participate therein~~ and prosecute the proceedings in any court

1 of the state to a final conclusion.

2 (o) (1) A local government that is not a County Board of
3 Education may elect, by May 1 of the fiscal year to be audited, to
4 have its annual examination performed by a Certified Public
5 Accountant approved by the chief inspector to perform the
6 examinations.

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

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

13 (A) The Prosecuting Attorney of the county in which the local
14 government is located timely submits to the chief inspector a
15 written request for the examination to be performed by the Chief
16 Inspector or ~~a person appointed by the chief inspector~~ his or her
17 designee; or

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

21 (4) The local government shall follow the audit bid
22 procurement procedures established by the Chief Inspector in
23 obtaining the audit: *Provided, however*, That the Chief Inspector
24 may elect to conduct the audit of a local unit of government with

1 one or more members of his or her audit staff where, in the opinion
2 of the Chief Inspector, a special or unusual situation exists.

3 **§6-9-9a. Public inspection of reports of examinations.**

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

15 **§6-9-9b. Confidentiality of audit working papers of chief**
16 **inspector.**

17 (a) The audit working papers created by the Chief Inspector
18 division of the State Auditor's office during examinations or
19 investigations are confidential and are not public records as that
20 term is defined in section two, article one, chapter twenty-nine-b
21 of this code.

22 (b) For the purposes of this section, "audit working papers"
23 include, but are not limited to, the books and records of the
24 entity being audited, intra-agency and inter-agency communications,

- 1 draft reports and/or summaries, schedules, notes, memoranda, and
- 2 all other records relating to an examination or investigation.