

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 273

BY SENATORS CARMICHAEL (MR. PRESIDENT), TRUMP,

WOELFEL, PALUMBO, AND TARR

[Introduced January 11, 2019; Referred

to the Committee on the Judiciary]

1 A BILL to amend and reenact §6-9-7 of the Code of West Virginia, 1931, as amended; and to
2 amend §12-4A-1, §12-4A-2, §12-4A-3, and §12-4A-4 of said code, all relating to reporting
3 evidence of governmental waste, fraud, or mismanagement to the Commission on Special
4 Investigations; requiring the chief inspector of the State Auditor's office to provide
5 information relating to misfeasance, malfeasance, or nonfeasance of public officers or
6 employees; changing "state funds" to "public funds" and providing a definition thereof;
7 establishing time requirement for the delivery of required information or reports; and
8 clarifying that the State Auditor must provide all reports of fraud, misappropriation,
9 mismanagement, or waste of public funds to the commission.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

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

1 (a) The chief inspector has the power by himself or herself, or by any person appointed,
2 designated, or approved by the chief inspector to perform the service, to examine into all financial
3 affairs of every local governmental office or political subdivision and all boards, commissions,
4 authorities, agencies or other offices created under authority thereof. An examination shall be
5 made annually, if required, to comply with the Single Audit Act and when otherwise required by
6 law or contract. When that act does not apply, unless otherwise required by law or by contract,
7 the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector
8 shall furnish annually to the Legislature a list of each local government office or political
9 subdivision and all boards, commissions, authorities, agencies, or other offices created under
10 authority thereof and the year of its most recent completed audit.

11 (b) When required for compliance with regulations for federal funds received or expended
12 by county boards of education the chief inspector or his or her designee, including any certified
13 public accountant approved by the chief inspector shall conduct and issue an audit report within

14 the time specified in controlling federal regulations. Examinations of other local governments shall
15 be conducted and audit, review, or monitoring reports issued in accordance with uniform
16 procedures of the chief inspector.

17 (c) In cooperation with institutions of higher education located in the State of West Virginia,
18 the chief inspector may establish and maintain a small government monitoring program. The small
19 government monitoring program shall authorize local governments which are not otherwise
20 required to undergo a single audit or a financial audit to apply to the chief inspector, on an annual
21 basis, for participation in the program. The chief inspector shall prescribe and oversee monitoring
22 procedures that shall be performed by higher education students in the field of accounting.
23 Participating institutions of higher education shall enter into a cooperative agreement with the
24 chief inspector to provide the service. The chief inspector shall prescribe policies and procedures
25 for the administration of the small government monitoring program.

26 (d) A county board of education may elect, by May 1 of the fiscal year to be audited, to
27 have its annual examination performed by a certified public accountant approved by the chief
28 inspector to perform the examinations. When this election is made, a copy of the order of the
29 county board making the election shall be filed with the chief inspector and the State Board of
30 School Finance. The county board of education is allowed to contract with any certified public
31 accountant on the chief inspector's then current list of approved certified public accountants,
32 unless the State Board of School Finance or the prosecuting attorney of the county in which the
33 board is located timely submits to the chief inspector a written request for the examination to be
34 performed by the chief inspector or a person appointed by the chief inspector, or the chief
35 inspector determines that a special or unusual situation exists. The county board shall follow the
36 audit bid procurement procedures established by the chief inspector in obtaining the audit.

37 (e) The chief inspector shall, at least annually, prepare a list of certified public accountants
38 approved by the chief inspector to perform examinations of local governments. Names shall be
39 added to or deleted from that list in accordance with uniform procedures of the chief inspector.

40 When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in
41 the State Register and send a copy to the State Board of Education, the State Board of School
42 Finance, and to local governments who request a copy.

43 (f) A county board of education, when procuring the services of a certified public
44 accountant on the chief inspector's list, shall follow the procurement standards prescribed by the
45 Uniform Guidance, Title 2 of the Code of Federal Regulations, Uniform Administrative
46 Requirements, Cost Principles, and Audit Requirements for Federal Awards, in effect for the fiscal
47 year being examined, or in any replacement circular or regulation of the Office of Management
48 and Budget and in addition shall follow those standards as determined by the office of chief
49 inspector.

50 (g) The approved independent certified public accountant making examinations under this
51 section shall comply with requirements of this section applicable to examinations performed by
52 the chief inspector, including applicable requirements of the federal government and uniform
53 procedures of the chief inspector applicable to examinations of county boards of education.

54 (1) Upon completion of the certified public accountant's examination and audit or review
55 report, the certified public accountant shall promptly send two copies of the certified report to the
56 county board of education who shall file one copy with the federal Audit Clearing House. The
57 certified public accountant shall send one copy of the certified report to the State Board of School
58 Finance, and one copy to the chief inspector.

59 (2) If any examination discloses misfeasance, malfeasance, or nonfeasance in office on
60 the part of any public officer or employee, the certified public accountant shall submit his or her
61 recommendation to the chief inspector regarding the legal action the approved certified public
62 accountant considers appropriate, including, but not limited to, whether criminal prosecution or
63 civil action to effect restitution is appropriate, and three additional copies of the certified audit
64 report. After review of the recommendations and the audit report, the chief inspector shall proceed
65 as provided in §6-9-7(n) of this code. For purposes of this section and §18-9B-13 of this code, a

66 certified audit report of an approved certified public accountant shall be treated in the same
67 manner as a report of the chief inspector.

68 (h) On every examination, inquiry shall be made as to the financial conditions and
69 resources of the agency having jurisdiction over the appropriations and levies disbursed by the
70 office and whether the requirements of the Constitution and statutory laws of the state and the
71 ordinances and orders of the agency have been properly complied with and also inquire into the
72 methods and accuracy of the accounts and such other matters of audit and accounting as the
73 chief inspector may prescribe.

74 (i) If a local government office is not subject to a single audit requirement under federal
75 regulations or if it is not otherwise required by law or contract to undergo an annual audit and its
76 expenditures from all sources are less than \$500,000 during the fiscal year the chief inspector
77 may choose to perform either a review or audit on the local government office and may in his or
78 her discretion determine the frequency of such review or audit.

79 (j) The chief inspector or any authorized assistant may issue subpoenas and compulsory
80 process, direct the service thereof by any sheriff, compel the attendance of witnesses and the
81 production of books and papers at any designated time and place, selected in their respective
82 county, and administer oaths.

83 (k) If any person refuses to appear before the chief inspector or his or her authorized
84 assistant when required to do so, refuses to testify on any matter or refuses to produce any books
85 or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor
86 and, upon conviction thereof, shall be fined not more than \$100 and confined for not more than
87 six months.

88 (l) A person convicted of willful false swearing in an examination is guilty of a misdemeanor
89 and, upon conviction thereof, shall be fined not more than \$100 and confined in jail not more than
90 six months.

91 (m) Except as otherwise provided in this section, a copy of the certified report of each

92 examination shall be filed in the office of the commissioner, chief inspector with the governing
93 body of the local government and with other offices as prescribed in uniform procedures of the
94 chief inspector.

95 (n) If any audit, examination or investigation discloses misfeasance, malfeasance, or
96 nonfeasance in office on the part of any public officer or employee, a certified copy of the report
97 shall be published electronically by the chief inspector with notice of the publishing sent in writing
98 to the proper legal authority of the entity being audited, examined, or investigated the chief
99 inspector deems appropriate for such legal action as is proper. At the time the certified audit,
100 examination, or investigation report is published, the chief inspector shall immediately notify the
101 Commission on Special Investigations and, in no more than five days, provide the commission
102 with a copy of the certified audit, examination, or investigation report. At the time the certified
103 audit, examination, or investigation report is published, the chief inspector shall notify the proper
104 legal authority of the entity being audited, examined, or investigated he or she deems appropriate
105 in writing of his or her recommendation as to the legal action that the chief inspector considers
106 proper, whether criminal prosecution or civil action to effect restitution, or both.

107 (o) If the proper legal authority or prosecuting attorney, within 90 days of receipt of the
108 certified audit report and recommendations, refuses, neglects, or fails to take efficient legal action
109 by a civil suit to effect restitution or by prosecuting criminal proceedings, in accordance with the
110 recommendations, the chief inspector may institute the necessary proceedings or participate
111 therein and prosecute the proceedings in any court of the state to a final conclusion.

112 (p) A local government that is not a county board of education may elect, by May 1 of the
113 fiscal year to be audited, to have its annual examination performed by a certified public accountant
114 approved by the chief inspector to perform the examinations. When this election is made, a copy
115 of the order of the governing body making the election shall be filed with the chief inspector. An
116 electing local government is allowed to contract with any certified public accountant on the chief
117 inspector's then current list of approved certified public accountants, unless the prosecuting

118 attorney of the county in which the local government is located timely submits to the chief
 119 inspector a written request for the examination to be performed by the chief inspector or a person
 120 appointed by the chief inspector, or the chief inspector determines that a special or unusual
 121 situation exists: *Provided*, That the audit of a local government may be performed by the chief
 122 inspector at his or her discretion. The local government shall follow the audit bid procurement
 123 procedures established by the chief inspector in obtaining the audit: *Provided, however*, That the
 124 chief inspector may elect to conduct the audit of a local unit of government with one or more
 125 members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual
 126 situation exists.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4A. CENTRALIZED MANAGEMENT OF COMPLAINTS.

§12-4A-1. Legislative findings.

1 The Legislature finds that there is no centralized state authority responsible for receiving
 2 and referring reports of possible fraud, misappropriation of, mismanagement or waste of ~~state~~
 3 public funds. It is the intent of the Legislature to see that all ~~state~~ public funds are utilized for the
 4 maximum benefit of the people of the State of West Virginia. The Legislature finds that it is
 5 important to provide the people of this state with both a forum and an opportunity to report
 6 suspected fraud, waste or abuse of ~~state~~ public funds, and to have those reports properly
 7 investigated.

§12-4A-2. General purpose.

1 The State Auditor shall have authority to receive reports of possible fraud,
 2 misappropriation, mismanagement, or waste of ~~state funds of the State of West Virginia~~ public
 3 funds and ~~to~~ shall refer ~~such~~ all received reports within five days to the Commission on Special
 4 Investigations and, where appropriate, to county prosecutors and law-enforcement agencies.

5 For the purposes of this article, the term "public funds" means moneys, funds or assets.

6 of any character, including federal moneys, belonging to or in the custody of the state, a state
7 governmental office, a political subdivision, or any spending unit thereof.

§12-4A-3. Duties generally.

1 (a) The State Auditor may employ a forensic accountant to receive and review reports of
2 suspected fraud, misappropriation, mismanagement or waste of ~~state~~ public funds which shall be
3 filed in that office. Such reports shall be confidential, except that the State Auditor or his or her
4 designee may supply information necessary to effectuate this article to the appropriate
5 governmental entities.

6 (b) The State Auditor shall establish modes of communication sufficient to receive reports
7 of suspected fraud, misappropriation of, mismanagement or waste of ~~state~~ public funds. Reports
8 of suspected fraud, misappropriation, mismanagement or waste may be filed by any citizen or
9 employee of the State of West Virginia.

10 (c) Nothing in this article shall be construed to limit the authority of any other governmental
11 entity to conduct an internal investigation of suspected fraud, misappropriation, mismanagement
12 or waste.

§12-4A-4. Enforcement.

1 (a) The authority to enforce the provisions of this article shall be vested in the State
2 Auditor. The State Auditor shall, ~~promptly~~ in no more than five days, forward any evidence of
3 suspected fraud, misappropriation ~~of~~, mismanagement, or waste of ~~state~~ public funds to the
4 Commission on Special Investigations and, if potentially criminal in nature, to the prosecuting
5 attorney of the county in which such is alleged to have taken place, to the law-enforcement agency
6 with jurisdiction in the area as well as to the Commission on Special Investigations. If, upon the
7 effective date of the amendments to this section, the State Auditor is in possession of reports of
8 possible fraud, misappropriation, mismanagement, or waste of public funds or evidence thereof
9 that has not been provided to the Commission on Special Investigations, the State Auditor shall
10 immediately forward those reports and that evidence to the commission.

- 11 (b) If such reports are made about an agency that has its own investigative body, then the
12 State Auditor may refer evidence of the fraud, misappropriation, mismanagement or waste to that
13 investigative body.

NOTE: The purpose of this bill is to clarify that evidence and reports of fraud, waste, mismanagement, or other misconduct relating to government money at any level of government must be provided to the Commission on Special Investigations within a prompt period. This bill has been recommended for introduction and passage by the Commission on Special Investigations.

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