

FILED

2004 APR -5 P 4: 23

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

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**ENROLLED**

## House Bill No. 4415

(By Delegates Wamer, Beane, Boggs, Frederick,  
Stalnaker, Proudfoot and Foster)

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Passed March 11, 2004

In Effect Ninety Days from Passage

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### H. B. 4415

(BY DELEGATES WARNER, BEANE, BOGGS, FREDERICK,  
STALNAKER, PROUDFOOT AND FOSTER)

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[Passed March 11, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §6-9-7 of the code of West Virginia, 1931, as amended, relating to giving the state auditor, as the chief inspector, flexibility in determining when to conduct audits on local government offices and when to conduct a review on them.

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

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

#### **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,
- 2 or by any person appointed, designated or approved by the chief
- 3 inspector to perform the service, to examine into all financial
- 4 affairs of every local governmental office or political subdivi-
- 5 sion and all boards, commissions, authorities, agencies or other
- 6 offices created under authority thereof. An examination shall be

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

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

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

41 procedures established by the chief inspector in obtaining the  
42 audit.

43 (d) The chief inspector shall, at least annually, prepare a list  
44 of certified public accountants approved by the chief inspector  
45 to perform examinations of local governments. Names shall be  
46 added to or deleted from that list in accordance with uniform  
47 procedures of the chief inspector. When each list or updated list  
48 is issued, the chief inspector shall promptly file a copy of the  
49 list in the state register and send a copy to the state board of  
50 education, the state board of school finance and to local  
51 governments who request a copy.

52 (e) A county board of education, when procuring the  
53 services of a certified public accountant on the chief inspector's  
54 list, shall follow the procurement standards prescribed by the  
55 grants management common rule, OMB Circular A-102  
56 "Grants and Cooperative Agreements with State and Local  
57 Governments" in effect for the fiscal year being examined, or  
58 in any replacement circular or regulation of the office of  
59 management and budget and in addition shall follow those  
60 standards as determined by the office of chief inspector.

61 (f) The approved independent certified public accountant  
62 making examinations under this section shall comply with  
63 requirements of this section applicable to examinations per-  
64 formed by the chief inspector, including applicable require-  
65 ments of the federal government and uniform procedures of the  
66 chief inspector applicable to examinations of county boards of  
67 education.

68 (1) Upon completion of the certified public accountant's  
69 examination and audit or review report, the certified public  
70 accountant shall promptly send two copies of the certified  
71 report to the county board of education who shall file one copy  
72 with the federal audit clearing house. The certified public

73 accountant shall send one copy of the certified report to the  
74 state board of school finance, and one copy to the chief inspec-  
75 tor.

76 (2) If any examination discloses misfeasance, malfeasance  
77 or nonfeasance in office on the part of any public officer or  
78 employee, the certified public accountant shall submit his or her  
79 recommendation to the chief inspector regarding the legal  
80 action the approved certified public accountant considers  
81 appropriate, including, but not limited to, whether criminal  
82 prosecution or civil action to effect restitution is appropriate,  
83 and three additional copies of the certified audit report. After  
84 review of the recommendations and the audit report, the chief  
85 inspector shall proceed as provided in subsection (n) of this  
86 section. For purposes of this section and section thirteen, article  
87 nine-b, chapter eighteen of this code, a certified audit report of  
88 an approved certified public accountant shall be treated in the  
89 same manner as a report of the chief inspector.

90 (g) On every examination, inquiry shall be made as to the  
91 financial conditions and resources of the agency having  
92 jurisdiction over the appropriations and levies disbursed by the  
93 office and whether the requirements of the constitution and  
94 statutory laws of the state and the ordinances and orders of the  
95 agency have been properly complied with and also inquire into  
96 the methods and accuracy of the accounts and such other  
97 matters of audit and accounting as the chief inspector may  
98 prescribe.

99 (h) If a local government office is not subject to a single  
100 audit requirement under federal regulations or if it is not  
101 otherwise required by law or contract to undergo an annual  
102 audit and its expenditures from all sources are less than three  
103 hundred thousand dollars during the fiscal year the chief  
104 inspector may choose to perform either a review or audit on the

105 local government office and may in his or her discretion  
106 determine the frequency of such review or audit.

107 (i) The chief inspector or any authorized assistant may issue  
108 subpoenas and compulsory process, direct the service thereof  
109 by any sheriff, compel the attendance of witnesses and the  
110 production of books and papers at any designated time and  
111 place, selected in their respective county, and administer oaths.

112 (j) If any person refuses to appear before the chief inspector  
113 or his or her authorized assistant when required to do so, refuses  
114 to testify on any matter or refuses to produce any books or  
115 papers in his or her possession or under his or her control, he or  
116 she is guilty of a misdemeanor and, upon conviction thereof,  
117 shall be fined not more than one hundred dollars and impris-  
118 oned in the county or regional jail not more than six months.

119 (k) A person convicted of willful false swearing in an  
120 examination is guilty of a misdemeanor and, upon conviction  
121 thereof, shall be fined not more than one hundred dollars and  
122 imprisoned in the county or regional jail not more than six  
123 months.

124 (l) Except as otherwise provided in this section, a copy of  
125 the certified report of each examination shall be filed in the  
126 office of the commissioner, chief inspector with the governing  
127 body of the local government and with other offices as pre-  
128 scribed in uniform procedures of the chief inspector.

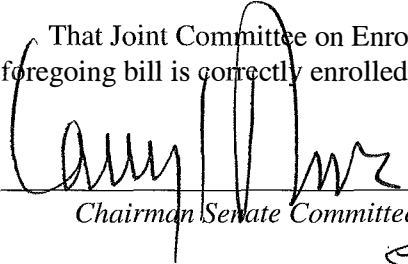
129 (m) If any examination discloses misfeasance, malfeasance  
130 or nonfeasance in office on the part of any public officer or  
131 employee, a certified copy of the report shall be filed by the  
132 chief inspector with the proper legal authority of the agency, the  
133 prosecuting attorney of the county wherein the agency is  
134 located and with the attorney general for such legal action as is  
135 proper. At the time the certified audit report is filed, the chief  
136 inspector shall notify the proper legal authority of the agency,

137 the prosecuting attorney and the attorney general in writing of  
138 his or her recommendation as to the legal action that the chief  
139 inspector considers proper, whether criminal prosecution or  
140 civil action to effect restitution, or both.

141 (n) If the proper legal authority or prosecuting attorney,  
142 within nine months of receipt of the certified audit report and  
143 recommendations, refuses, neglects or fails to take efficient  
144 legal action by a civil suit to effect restitution or by prosecuting  
145 criminal proceedings to a final conclusion, in accordance with  
146 the recommendations, the chief inspector may institute the  
147 necessary proceedings or participate therein and prosecute the  
148 proceedings in any court of the state to a final conclusion.

149 (o) A local government that is not a county board of  
150 education may elect, by the first day of May of the fiscal year  
151 to be audited, to have its annual examination performed by a  
152 certified public accountant approved by the chief inspector to  
153 perform the examinations. When this election is made, a copy  
154 of the order of the governing body making the election shall be  
155 filed with the chief inspector. An electing local government is  
156 allowed to contract with any certified public accountant on the  
157 chief inspector's then current list of approved certified public  
158 accountants, unless the prosecuting attorney of the county in  
159 which the local government is located timely submits to the  
160 chief inspector a written request for the examination to be  
161 performed by the chief inspector or a person appointed by the  
162 chief inspector, or the chief inspector determines that a special  
163 or unusual situation exists: *Provided*, That the audit of a local  
164 government may be performed by the chief inspector at his or  
165 her discretion. The local government shall follow the audit bid  
166 procurement procedures established by the chief inspector in  
167 obtaining the audit: *Provided, however*, That the chief inspector  
168 may elect to conduct the audit of a local unit of government  
169 with one or more members of his or her audit staff where, in the  
170 opinion of the chief inspector, a special or unusual situation  
171 exists.

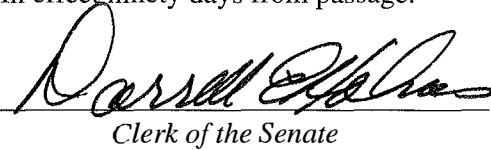
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

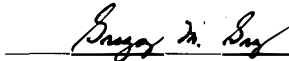
  
Chairman Senate Committee

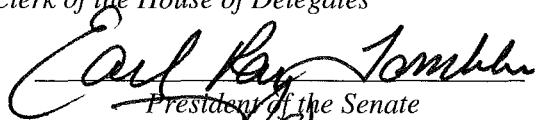
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

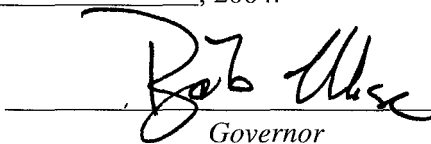
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 5th  
day of April, 2004.

  
Governor



PRESENTED TO THE

GOVERNOR

DATE

5/22/04

TIME

10:15 AM