

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 479

BY SENATOR GAUNCH

[Introduced February 5, 2018; Referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend and reenact §6-9-1a, §6-9-7, §6-9-8, and §6-9-9a of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto a new section, designated
3 §6-9-9b, all relating to audits, reviews, and monitoring of local government offices; defining
4 terms; clarifying applicable audit requirements; establishing a small government
5 monitoring program; authorizing the Auditor, acting in the capacity as chief inspector, to
6 oversee and maintain the monitoring program; directing the Auditor to prescribe policies
7 and procedures for the monitoring program; authorizing cooperative agreements with
8 higher education institutions to perform and participate in the monitoring program;
9 changing the expenditure threshold for performance of annual audits; clarifying the
10 notification and publication requirements when misfeasance, malfeasance, or
11 nonfeasance is discovered as part of an audit, examination, or investigation; lowering the
12 time frame in which a legal authority has to take action upon recommendations from an
13 audit; raising the cost limits for certain municipalities for performance of services by the
14 chief inspector; removing Class III municipalities from the cost limits; adding cost limits for
15 municipalities policemen and firemen pension and relief funds; authorizing chief inspector
16 to designate certain reports as confidential; and declaring that audit work papers created
17 by the chief inspector division are confidential and not deemed public records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-1a. Definitions.

1 As used in this article:

2 (a) "Audit" means a systematic examination and collection of sufficient, competent
3 evidential matter needed for an Auditor to attest to the fairness of management's assertions in
4 the financial statements and to evaluate whether management has sufficiently and effectively
5 carried out its responsibilities and complied with applicable laws and regulations. An audit shall
6 be conducted in accordance with generally accepted auditing standards, standards issued by the

7 chief inspector, and, as applicable, the single audit requirement of ~~OMB Circular A-133 Audits of~~
8 ~~States, Local Governments and Non-Profit Organizations~~ the Uniform Guidance, Title 2 of the
9 Code of Federal Regulations, Uniform Administrative Requirements, Cost Principles, and Audit
10 Requirements for Federal Awards, as amended or revised from time to time, or any successor
11 circular or regulation of the Office of Management and Budget.

12 (b) "Examination" includes an audit, ~~or~~ review, or small government monitoring as defined
13 in this section.

14 (c) "Federal awards" means federal financial assistance and federal cost-reimbursement
15 contracts that nonfederal entities receive directly from federal awarding agencies or indirectly from
16 pass-through entities.

17 (d) "Federal financial assistance" means assistance that nonfederal entities receive or
18 administer in the form of grants, loans, loan guarantees, property, cooperative agreements,
19 interest subsidies, insurance, food commodities, direct appropriations, or other assistance, but
20 does not include amounts received as reimbursement for services rendered to individuals in
21 accordance with guidance issued by the director of the federal office of management and budget.

22 (e) "Financial audit" includes financial statement audits and financial related audits, as
23 defined by government auditing standards.

24 (f) "Government auditing standards" means the government auditing standards issued by
25 the Comptroller General of the United States, which are applicable to financial audits of
26 government organizations, programs, and activities.

27 (g) "Investigation" means an examination, inspection, or review of a local government's
28 finances to determine or ascertain whether fraudulent, illegal, or improper conduct has occurred,
29 including, but not limited to, misappropriation, waste, or misuse of moneys or assets.

30 ~~(g)~~ (h) "Local government" means any unit of local government within the state, including
31 a county, county board of education, municipality, and any other authority, board, commission,
32 district, office, public authority, public corporation, or other instrumentality of a county, county

33 board of education, or municipality or any combination of two or more local governments.

34 ~~(h)~~ (i) "Nonfederal entity" means a state, local government, or nonprofit organization.

35 ~~(j)~~ (j) "Office of Management and Budget" means the executive Office of the President of
36 the United States, Office of Management and Budget.

37 (k) "Proper legal authority" means the prosecuting attorney of the county wherein the
38 audited, examined, or investigated entity is located, the Attorney General, law enforcement, or
39 other legal authority the chief inspector deems appropriate.

40 ~~(l)~~ (l) "Review" means an inquiry or analytical procedures that provide the Auditor with a
41 reasonable basis for expressing limited assurance that there are no material modifications that
42 should be made to the financial statements in order for them to be in conformity with generally
43 accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

44 ~~(m)~~ (m) "Single audit" means a financial and compliance audit as defined in the federal
45 Single Audit Act of 1996, as amended, in section 7502(d), chapter 75, title 31 of the United States
46 Code, of a nonfederal entity that includes the entity's financial statements and federal awards.
47 Each single audit conducted for any fiscal year shall cover the operations of the entire nonfederal
48 entity; or at the option of the nonfederal entity, the audit shall include a series of audits that cover
49 departments, agencies, and other organizational units that expend or otherwise administer federal
50 awards during the fiscal year being audited except that each such audit shall encompass the
51 financial statements and schedule of expenditures of federal awards for each department,
52 agency, and organizational unit, which shall be considered to be a nonfederal entity.

53 (n) "Small government monitoring" means specialized procedures, performed on certain
54 qualifying local governments as a lower cost alternative to an audit or review.

§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, ~~or~~ 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 (e) (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 ~~(d)~~ (e) The chief inspector shall, at least annually, prepare a list of certified public
38 accountants approved by the chief inspector to perform examinations of local governments.
39 Names shall be added to or deleted from that list in accordance with uniform procedures of the
40 chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a
41 copy of the list in the State Register and send a copy to the State Board of Education, the State
42 Board of School Finance, and to local governments who request a copy.

43 ~~(e)~~ (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 ~~grants management common rule, OMB Circular A-102 "Grants and Cooperative Agreements~~
46 ~~with State and Local Governments"~~ Uniform Guidance, Title 2 of the Code of Federal Regulations,
47 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal
48 Awards, in effect for the fiscal year being examined, or in any replacement circular or regulation
49 of the Office of Management and Budget and in addition shall follow those standards as
50 determined by the office of chief inspector.

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

55 (1) Upon completion of the certified public accountant's examination and audit or review

56 report, the certified public accountant shall promptly send two copies of the certified report to the
57 county board of education who shall file one copy with the federal Audit Clearing House. The
58 certified public accountant shall send one copy of the certified report to the State Board of School
59 Finance, and one copy to the chief inspector.

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

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

75 ~~(h)~~ (i) If a local government office is not subject to a single audit requirement under federal
76 regulations or if it is not otherwise required by law or contract to undergo an annual audit and its
77 expenditures from all sources are less than ~~\$300,000~~ \$500,000 during the fiscal year the chief
78 inspector may choose to perform either a review or audit on the local government office and may
79 in his or her discretion determine the frequency of such review or audit.

80 ~~(i)~~ (j) The chief inspector or any authorized assistant may issue subpoenas and
81 compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses

82 and the production of books and papers at any designated time and place, selected in their
83 respective county, and administer oaths.

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

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

92 ~~(l)~~ (m) Except as otherwise provided in this section, a copy of the certified report of each
93 examination shall be filed in the office of the commissioner, chief inspector with the governing
94 body of the local government and with other offices as prescribed in uniform procedures of the
95 chief inspector.

96 ~~(m)~~ (n) If any audit, examination or investigation discloses misfeasance, malfeasance, or
97 nonfeasance in office on the part of any public officer or employee, a certified copy of the report
98 shall be published electronically by the chief inspector with notice of the publishing sent in writing
99 to the proper legal authority of the agency entity being audited, examined, or investigated the
100 ~~prosecuting attorney of the county wherein the agency is located and with the Attorney General,~~
101 the chief inspector deems appropriate for such legal action as is proper. At the time the certified
102 audit, examination, or investigation report is published, the chief inspector shall notify the proper
103 legal authority of the agency entity being audited, examined, or investigated the ~~prosecuting~~
104 ~~attorney and the Attorney General~~ he or she deems appropriate in writing of his or her
105 recommendation as to the legal action that the chief inspector considers proper, whether criminal
106 prosecution or civil action to effect restitution, or both.

107 ~~(n)~~ (o) If the proper legal authority or prosecuting attorney, within ~~nine months~~ 90 days of

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

113 ~~(e)~~ (p) A local government that is not a county board of education may elect, by May 1 of
114 the fiscal year to be audited, to have its annual examination performed by a certified public
115 accountant approved by the chief inspector to perform the examinations. When this election is
116 made, a copy of the order of the governing body making the election shall be filed with the chief
117 inspector. An electing local government is allowed to contract with any certified public accountant
118 on the chief inspector's then current list of approved certified public accountants, unless the
119 prosecuting attorney of the county in which the local government is located timely submits to the
120 chief inspector a written request for the examination to be performed by the chief inspector or a
121 person appointed by the chief inspector, or the chief inspector determines that a special or
122 unusual situation exists: *Provided*, That the audit of a local government may be performed by the
123 chief inspector at his or her discretion. The local government shall follow the audit bid procurement
124 procedures established by the chief inspector in obtaining the audit: *Provided, however*, That the
125 chief inspector may elect to conduct the audit of a local unit of government with one or more
126 members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual
127 situation exists.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 (a) The cost of any service or act performed by the chief inspector under the provisions of
2 this article as to any county or district office, officer or institution shall be paid by the county
3 commission of the county; the cost of any service or act to any board of education shall be paid
4 by the board; the cost of any service or act to any municipal corporation shall be paid by the
5 authorities of the municipal corporation: *Provided*, That in municipalities in which the total revenue

6 from all taxes does not exceed the sum of \$2,000 annually, the cost including the per diem and
7 all actual costs and expenses of the services shall not exceed the sum of ~~\$60~~ \$200. The cost of
8 this service shall be the actual cost and expense of the service performed, including
9 transportation, hotel, meals, materials, per diem compensation of deputies, assistants, clerical
10 help, and the other costs that are necessary to enable them to perform the services required, but
11 the costs shall not exceed the sum of ~~\$2,000~~ \$3,000 for services rendered to a ~~Class III~~ or a Class
12 IV municipality: *Provided, however,* That the chief inspector may charge up to an additional
13 ~~\$2,000~~ \$3,000 for costs incurred for each service or act performed for a utility or park system
14 owned by a ~~Class III~~ or Class IV municipality and for each policemen's and firemen's pension and
15 relief fund maintained by the municipality: *Provided further,* That if a municipality is required to
16 undergo a single audit by the federal agency or agencies making a grant, the cost limitations of
17 this subsection do not apply: *And provided further,* That the chief inspector shall provide a written
18 quote for all costs in advance for all services required by this article. The chief inspector shall
19 render to the agency liable for the cost a statement of the cost as soon after the cost was incurred
20 as practicable and the agency shall allow the cost and cause it to be paid promptly in the manner
21 that other claims and accounts are allowed and paid and the total amount constitutes a debt
22 against the local agency due the state. Whenever there is in the State Treasury a sum of money
23 due any county commission, board of education or municipality from any source, upon the
24 application of the chief inspector, the sum shall be at once applied on the debt against the county
25 commission, board of education or municipality and the fact of the application of the fund shall be
26 reported by the Auditor to the county commission, board of education or municipality, which report
27 shall be a receipt for the amount named in the report. All money received by the chief inspector
28 from this source shall be paid into the State Treasury, shall be deposited to the credit of an
29 account to be known as chief inspector's fund and shall be expended only for the purpose of
30 covering the cost of the services, unless otherwise directed by the Legislature. The cost of any
31 examination, service, or act by the chief inspector made necessary, or the part thereof that was

32 made necessary, by the willful fault of any officer or employee, may be recovered by the chief
33 inspector from that person, on motion, on 10-days' notice in any court having jurisdiction.

34 (b) For the purpose of permitting payments to be made at definite periods to deputy
35 inspectors and assistants for per diem compensation and expenses, there is hereby created a
36 revolving fund for the chief inspector's office. The fund shall be accumulated and administered as
37 follows:

38 (1) There shall be appropriated from the state General Revenue Fund the sum of \$25,000
39 to be transferred to this fund to create a revolving fund which, together with other payments into
40 this fund as provided in this article, shall constitute a fund to defray the cost of this service;

41 (2) Payments received for the cost of services of the chief inspector's office and interest
42 earned on the invested balance of the chief inspector's revolving fund shall be deposited into this
43 revolving fund, which shall be known as the Chief Inspector's Fund;

44 (3) Any appropriations made to this fund may not be considered to have expired at the
45 end of any fiscal period; and

46 (4) The chief inspector may transfer an amount not to exceed \$400,000 from the Chief
47 Inspector's Fund to the special operating fund created in §32-4-1 *et seq.* of this code: *Provided,*
48 That any transfers shall be completed prior to July 1, 2003.

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

1 All reports of examinations and audits of public offices made in accordance with the
2 provisions of §6-9-7 of this code, and the copies thereof, when filed in the office of the chief
3 inspector of public offices or in the office of the State Tax Commissioner, shall be public
4 documents and shall be available for public inspection: Provided, That if an examination or
5 investigative report discloses misfeasance, nonfeasance, or malfeasance, the chief inspector may
6 direct that a report remain confidential until such time that the proper legal authority, as described
7 in §6-9-7(n) of this code, has completed its investigation or adjudication of the matter and
8 authorizes public disclosure.

§6-9-9b. Documentation of chief inspector.

1 (a) The audit working papers created by the chief inspector division during examinations
2 or investigations shall be considered confidential, and shall not be deemed public records for
3 purposes of §29B-1-1 et seq. of this code.

4 (b) For purposes of this section, “audit working papers” includes, but is not limited to, the
5 books and records of the entity being audited, intra- and inter-agency communications, draft
6 reports, summaries, schedules, notes, memoranda, and all other records relating to an
7 examination or investigation by the chief inspector division.

NOTE: The purpose of this bill is to assist in the audit and review of local governments. The bill establishes the local government monitoring by the Auditor. The bill also clarifies the caps and fees associated with audits of local governments in this state.

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