

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 273

SENATORS CARMICHAEL (MR. PRESIDENT), TRUMP,
WOELFEL, PALUMBO, AND TARR, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 22, 2019]

1 A BILL to to amend and reenact §6-9-7 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §12-4A-1, §12-4A-2, §12-4A-3, and §12-4A-4 of said code; and
3 amend said code by adding thereto two sections, designated §12-4A-2a and §12-4A-5, all
4 relating generally to the Commission on Special Investigations and the State Auditor
5 duties; authorizing reporting of evidence of governmental waste, fraud, mismanagement,
6 malfeasance, misfeasance, or nonfeasance to the State Auditor; clarifying that such
7 reports shall relate to all public funds rather than state funds alone; directing that the
8 Commission on Special Investigations have primacy in investigating reports of possible
9 fraud, misappropriation, mismanagement, or waste of state funds by state agencies,
10 officials, and employees; clarifying applicability of freedom of information law to
11 documents which are part of an investigation; defining terms; establishing time
12 requirement for the delivery of required information or reports from the State Auditor to the
13 commission; clarifying that the State Auditor must share all reports of fraud,
14 misappropriation, mismanagement, or waste of public funds with the commission;
15 authorizing publication of reports of completed investigations and underlying
16 documentation; requiring redaction of certain information from published reports; requiring
17 the State Auditor to track investigations and issue reports; setting dates for reporting; and
18 defining terms.

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~~ or any person appointed,
2 designated, or approved by ~~the chief inspector~~ him or her to perform the service, to examine ~~into~~
3 all financial affairs of every local governmental office or political subdivision and all boards,
4 commissions, authorities, agencies, or other offices created under authority thereof. An

5 examination shall be made annually, if required, to comply with the Single Audit Act and when
6 otherwise required by law or contract. When that act does not apply, unless otherwise required
7 by law or by contract, the examination shall be made at least once a year, if practicable.
8 Furthermore, the chief inspector shall furnish annually to the Legislature a list of each local
9 government office or political subdivision and all boards, commissions, authorities, agencies, or
10 other offices created under 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~~ The chief inspector shall add or delete names from that list in accordance
40 with uniform procedures of the chief inspector. When each list or updated list is issued, the chief
41 inspector shall promptly file a copy of the list in the State Register and send a copy to the State
42 Board of Education, the State Board of School Finance, and to local governments who request a
43 copy.

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

51 (g) The approved independent certified public accountant making examinations under this
52 section shall comply with requirements of this section applicable to examinations performed by
53 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~~ which shall file one copy with the federal Audit Clearing House.
58 The certified public accountant shall send one copy of the certified report to the State Board of
59 School 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)~~ subsection (n) of this code section. For purposes of this section and §18-
67 9B-13 of this code, a certified audit report of an approved certified public accountant shall be
68 treated in the same manner as a report of the chief inspector.

69 (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
74 prescribed by the chief inspector ~~may prescribe~~.

75 (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 \$500,000 during the fiscal year the chief inspector
78 may choose to perform either a review or audit on the local government office and may ~~in his or~~
79 ~~her discretion~~ determine the frequency of such review or audit.

80 (j) The chief inspector or ~~any authorized assistant~~ his or her designee may issue
81 subpoenas and compulsory process, direct the service thereof by any sheriff, compel the
82 attendance of witnesses and the production of books and papers at any designated time and

83 place, selected in their respective county, and administer oaths.

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

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

92 (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 (n) If any audit, examination, or investigation discloses misfeasance, malfeasance, or
97 nonfeasance in office on the part of any public officer or employee, the chief inspector shall publish
98 electronically a certified copy of the report: ~~shall be published electronically by the chief inspector~~
99 ~~with notice of the publishing sent in writing to the proper legal authority of the entity being audited,~~
100 ~~examined, or investigated the chief inspector deems appropriate for such legal action as is proper.~~
101 Provided, That the chief inspector shall provide the Director of the Commission on Special
102 Investigations, or his or her designee, with a copy of the certified audit, examination, or
103 investigation report within five business days of its completion and prior to its publication. At the
104 time the certified audit, examination, or investigation report is published, the chief inspector shall
105 notify the proper legal authority of the entity being audited, examined, or investigated he or she
106 ~~deems~~ considers appropriate in writing of his or her recommendation as to the legal action that
107 the chief inspector considers proper, whether criminal prosecution or civil action to effect
108 restitution, or both.

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

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

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4A. CENTRALIZED MANAGEMENT OF COMPLAINTS.

§12-4A-1. Legislative findings.

1 (a) The Legislature finds that ~~there is no centralized state authority~~ the office of the State

2 Auditor is the appropriate executive branch entity to be responsible for receiving and referring
3 reports of possible fraud, misappropriation of, mismanagement, or waste of ~~state~~ public funds. It
4 is the intent of the Legislature to see that all ~~state~~ public funds are ~~utilized~~ used for the maximum
5 benefit of the people of the State of West Virginia. The Legislature finds that it is important to
6 provide the people of this state with both a forum and an opportunity to report suspected fraud,
7 waste, or abuse of ~~state~~ public funds, and to have those reports properly investigated.

8 (b) The Legislature finds that it is an appropriate use of state resources to assist county
9 prosecutors and law enforcement in the investigation of possible fraud, misappropriation,
10 mismanagement, or waste of public funds which often requires extensive document collection
11 and review, as well as the use of forensic accountants and other experts.

§12-4A-2. General purpose; primacy of Commission on Special Investigations in certain matters.

1 (a) The State Auditor ~~shall have authority to~~ may receive, investigate, and refer for
2 investigation reports of possible fraud, misappropriation, mismanagement, or waste of ~~state funds~~
3 ~~of the State of West Virginia~~ public funds, and to confer, assist, and cooperate with ~~and to refer~~
4 ~~such reports to the~~ Commission on Special Investigations, county prosecutors, and law-
5 enforcement agencies in furtherance of the investigations. When the State Auditor receives
6 reports, or discovers evidence, of possible fraud, misappropriation, mismanagement, or waste of
7 public funds, the State Auditor shall notify the Director of the Commission on Special
8 Investigations to ensure efficiency of operations between the commission and the State Auditor
9 and shall provide the director with copies of all reports pertaining thereto and, if requested by the
10 director, all evidence identified or acquired by the State Auditor.

11 (b) Notwithstanding any provision of this article to the contrary, the Commission on Special
12 Investigations shall have primacy in the investigation of reports of possible fraud,
13 misappropriation, mismanagement, or waste of public funds by state agencies, state public
14 officials, and state employees.

§12-4A-2a. Definitions.

1 As used in this article:

2 (1) “Anonymously” means:

3 (A) An unknown source making a report of possible fraud, misappropriation,
4 mismanagement, or waste of public funds; or

5 (B) A known source who has intentionally designated and indicated an intent to remain
6 anonymous at the time of the report, the Auditor shall not disclose the identity of the known source
7 without the consent of the known source or pursuant to an order of a court of competent
8 jurisdiction.

9 (2) “Auditor” or “State Auditor” means the State Auditor of West Virginia, or his or her
10 designee.

11 (3) “CSI” or “Commission on Special Investigations” means the legislative committee on
12 special investigations, the director of the commission, or any person appointed, designated or
13 approved by the commission to perform the service.

14 (4) “Modes of communication” means a manner of communication free of cost to the user
15 including but not limited to, a telephone hotline, electronic mail, or social media.

16 (5) “Political subdivision” means that as defined in §29-12-3c of this code.

17 (6) “Public Funds” means moneys, funds, or assets, of any character, including federal
18 moneys, belonging to or in the custody of the state, a state governmental office, a political
19 subdivision, or any spending unit thereof.

20 (7) “Staff” means persons employed or contracted by the State Auditor or CSI to perform
21 or assist in an investigation.

22 (8) “State governmental office” means a state department, office, board, commission,
23 bureau, division, institution, or institution of higher education under the direction and organization
24 of the executive branch, legislative branch, or judicial branch of state government. It includes
25 individual state agencies and programs, elected offices, as well as those programs and activities

26 that cross agency lines.

§12-4A-3. Duties generally.

1 (a) The State Auditor may employ staff, including, but not limited to, a certified fraud
2 examiner or a forensic a certified public accountant specializing in fraud and forensics to receive
3 and ~~review~~ investigate reports of suspected fraud, misappropriation, mismanagement, or waste
4 of ~~state~~ public funds which ~~shall be~~ are filed in that office. Such reports and investigations shall
5 be confidential, except that the State Auditor or his or her designee may supply information
6 necessary to effectuate the purposes of this article ~~to the appropriate governmental entities.~~

7 (b) The State Auditor shall establish modes of communication sufficient to receive reports
8 of suspected fraud, misappropriation of, mismanagement, or waste of ~~state~~ public funds. Reports
9 of suspected fraud, misappropriation, mismanagement, or waste may be filed by any citizen or
10 employee of the State of West Virginia. The Auditor shall make available an option for making a
11 report under this article anonymously.

12 (c) Nothing in this article shall be construed to limit the authority of any other governmental
13 entity to conduct an internal investigation of suspected fraud, misappropriation, mismanagement
14 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.

3 (b) Upon receipt of a report or the discovery of possible fraud, misappropriation,
4 mismanagement, or waste of public moneys, the State Auditor may examine, subject to the
5 provisions of §12-4A-2(b) of this code, the financial affairs of a state governmental office, or
6 political subdivision and all boards, commissions, authorities, agencies, or other offices created
7 under authority thereof, as considered necessary.

8 (c) The State Auditor may issue subpoenas and subpoenas duces tecum, administer
9 oaths, examine persons under oath, and compel the attendance of witnesses and the production

10 of books and papers at any designated time and place: *Provided*, That a request for production
11 directed to a state governmental office or political subdivision may be in the form of a written letter
12 from the State Auditor in lieu of a subpoena.

13 (d) The State Auditor may interview witnesses and require the production from
14 governmental offices or political subdivisions of books, records, documents, papers, computers,
15 laptops, computer hard drives, electronic records including, but not limited to, emails, electronic
16 files, electronic documents, and metadata, or any other thing. Notes of interviews and
17 investigation reports, commentary, and memoranda prepared by the staff of the State Auditor in
18 conjunction with an investigation shall be confidential and not subject to public disclosure under
19 the provisions of §29B-1-1 *et seq.* of this code; however, public records which are otherwise
20 subject to disclosure shall not be withheld merely on the basis that such records are evidence in
21 an investigation under this article.

22 (e) The State Auditor shall assist the Commission on Special Investigations in the
23 investigation of unlawful acts related to fraud, misappropriation, mismanagement, or waste of
24 public funds in the matters investigated by the commission.

25 (f) The State Auditor may share otherwise confidential documents, materials, or
26 information with the Commission on Special Investigations, county prosecutors, United States
27 Attorneys, and state and federal law-enforcement agencies, including municipal police
28 departments and county sheriff departments, appropriate governmental entities, and agencies in
29 furtherance of an investigation: *Provided*, That the recipient agrees to maintain the confidentiality
30 and privileged status of the document, material, or information.

31 (g) Within five days after the commencement of an investigation under this article, the
32 State Auditor shall alert the Director of the Commission on Special Investigations of the
33 investigation and provide a summary of the allegations underlying the investigation.

34 (h) Upon completion of an investigation in which evidence of potential criminal violations
35 is found, ~~The~~ the State Auditor shall promptly within five days, forward all complaints and findings,

36 along with a summary report if it exists, and any evidence of suspected fraud, misappropriation
37 of, mismanagement, or waste of ~~state~~ public funds to the Director of the Commission on Special
38 Investigations and, if potentially criminal in nature, to the prosecuting attorney of the county in
39 which such potential criminal violation is alleged to have taken place, and to the law-enforcement
40 agency with jurisdiction over the potential criminal violation. ~~in the area as well as to the~~
41 ~~Commission on Special Investigations.~~

42 ~~(b)~~ (i) If such reports are made about an agency that has its own investigative body, then
43 the State Auditor may refer evidence of the fraud, misappropriation, mismanagement, or waste to
44 that investigative body.

45 (i) Nothing in this article shall be construed to:

46 (1) Preempt the authority of the Commission on Special Investigations;

47 (2) Preempt the authority or relieve the duty of other law-enforcement or regulatory
48 agencies to investigate, examine, and prosecute suspected violations of law;

49 (3) Prevent or prohibit a person from disclosing voluntarily information concerning possible
50 fraud, misappropriation, mismanagement, or waste of public funds to a law-enforcement or
51 regulatory agency other than the State Auditor; or

52 (4) Limit the powers granted elsewhere by the laws of this state to the State Auditor or his
53 or her designee to investigate and examine possible violations of law.

§12-4A-5. Tracking and reporting.

1 (a) Beginning July 1, 2019, the State Auditor shall track and compile all instances of
2 possible fraud, misappropriation, mismanagement, or waste of public funds reported to or
3 discovered by the Auditor's office.

4 (b) On or before the first day of February of each year, the State Auditor shall publish a
5 report detailing the compiled instances tracked in subsection (a) of this section for the prior
6 calendar year. The report shall not identify the alleged subject of each report unless the matter is
7 of public record, but shall provide the following numerical data:

8 (1) The number of reports made to the State Auditor;

9 (2) The type of alleged misconduct;

10 (3) Whether an investigation was undertaken;

11 (4) The alleged amount of public funds involved;

12 (5) The type of governmental office or entity that is the subject of the reported misconduct;

13 and

14 (6) The disposition of the reports.

15 (c) On or before the first day of February of each year, the State Auditor shall provide an
16 annual report to the Commission on Special Investigations disclosing the nature and disposition
17 of completed investigated reports received pursuant to this article and referred to a prosecutor's
18 office or other entity.

19 (d) At the conclusion of an investigation, the State Auditor may issue and make public an
20 audit, special report, or fraud report detailing the nature of an investigation and any findings or
21 recommendations made as a part of the investigation. If the investigation is made public, the
22 Auditor shall make publicly available material and information specifically referenced in the
23 released report: *Provided*, That the Auditor shall redact from public disclosure information to
24 protect the privacy of any person: *Provided, however*, That the State Auditor shall forgo release
25 of information considered potentially detrimental to, or the subject of, a criminal prosecution.