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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

Com. Sub. for House Bill No. 4535

(By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]



Passed March 14, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4535

(BY MR. SPEAKER, MR. KISS, AND DELEGATE ASHLEY)

[BY REQUEST OF THE EXECUTIVE]

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; and to amend and reenact section seven of said article, all relating to the supervision of public offices; defining audit and review of public offices; and permitting offices with annual expenditures equal to or less than three hundred thousand dollars to satisfy financial examination requirements by review.

Be it enacted by the Legislature of West Virginia:

That section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article nine be further amended by adding thereto a new section, designated section one-a; and that section thirteen, article nine-b, chapter eighteen of said code be amended and reenacted, all to read as follows:

ARTICLE 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-1a. Definitions.

1 As used in this article:

2 (a) “Audit” means a systematic examination and
3 collection of sufficient, competent evidential matter
4 needed for an auditor to attest to the fairness of
5 management’s assertions in the financial statements and to
6 evaluate whether management has sufficiently and
7 effectively carried out its responsibilities and complied
8 with applicable laws and regulations. An audit shall be
9 conducted in accordance with generally accepted auditing
10 standards, standards issued by the chief inspector, and, as
11 applicable, the single audit requirement of OMB Circular
12 A-133 Audits of States, Local Governments and Non-
13 Profit Organizations as amended or revised from time to
14 time, or any successor circular.

15 (b) “Examination” includes an audit or review as
16 defined in this section.

17 (c) “Federal awards” means federal financial
18 assistance and federal cost-reimbursement contracts that
19 non-federal entities receive directly from federal awarding
20 agencies or indirectly from pass-through entities.

21 (d) “Federal financial assistance” means assistance
22 that non-federal entities receive or administer in the form
23 of grants, loans, loan guarantees, property, cooperative
24 agreements, interest subsidies, insurance, food
25 commodities, direct appropriations, or other assistance, but
26 does not include amounts received as reimbursement for
27 services rendered to individuals in accordance with
28 guidance issued by the director of the federal office of
29 management and budget.

30 (f) “Financial audit” includes financial statement
31 audits and financial related audits, as defined by
32 government auditing standards.

33 (g) “Government auditing standards” means the
34 government auditing standards issued by the comptroller
35 general of the United States, which are applicable to
36 financial audits of government organizations, programs
37 and activities.

38 (h) "Local government" means any unit of local
39 government within the state, including a county, county
40 board of education, municipality, and any other authority,
41 board, commission, district, office, public authority, public
42 corporation, or other instrumentality of a county, county
43 board of education, or municipality or any combination
44 of two or more local governments.

45 (i) "Non-federal entity" means a state, local
46 government, or nonprofit organization.

47 (j) "Office of management and budget (OMB)"
48 means the executive office of the president of the United
49 States, office of management and budget.

50 (k) "Review" means an inquiry or analytical
51 procedures that provide the auditor with a reasonable basis
52 for expressing limited assurance that there are no material
53 modifications that should be made to the financial
54 statements in order for them to be in conformity with
55 generally accepted accounting principles or, if applicable,
56 with another comprehensive basis of accounting.

57 (l) "Single audit" means a financial and compliance
58 audit as defined in the federal Single Audit Act of 1996,
59 as amended, in section 7502(d), chapter 75, title 31 of the
60 United States Code, of a non-federal entity that includes
61 the entity's financial statements and federal awards. Each
62 single audit conducted for any fiscal year shall cover the
63 operations of the entire non-federal entity; or at the option
64 of the non-federal entity, the audit shall include a series of
65 audits that cover departments, agencies, and other
66 organizational units that expend or otherwise administer
67 federal awards during the fiscal year being audited except
68 that each such audit shall encompass the financial
69 statements and schedule of expenditures of federal awards
70 for each department, agency, and organizational unit,
71 which shall be considered to be a non-federal entity.

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

1 (a) The chief inspector shall have power by himself or
2 herself, or by any person appointed or approved by him

3 or her to perform the service, to examine into all financial
4 affairs of every local governmental office or political
5 subdivision and all boards, commissions, authorities,
6 agencies or other offices created under authority thereof.
7 An examination shall be made annually, if required, to
8 comply with the Single Audit Act. When that act does not
9 apply, the examination shall be made at least once a year
10 if practicable.

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

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

39 (d) The chief inspector shall, at least annually, prepare
40 a list of certified public accountants approved by the chief
41 inspector to perform examinations of local governments.
42 Names shall be added to or deleted from that list in

43 accordance with uniform procedures of the chief
44 inspector. When each list or updated list is issued, the chief
45 inspector shall promptly file a copy of the list in the state
46 register and send a copy to the state board of education,
47 the state board of school finance and to local governments
48 who request a copy.

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

57 (f) The approved independent certified public
58 accountant making examinations under this section shall
59 comply with requirements of this section applicable to
60 examinations performed by the chief inspector, including
61 applicable requirements of the federal government and
62 uniform procedures of the chief inspector applicable to
63 examinations of county boards of education.

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

72 (2) If any examination discloses misfeasance,
73 malfeasance or nonfeasance in office on the part of any
74 public officer or employee, the certified public accountant
75 shall submit his or her recommendation to the chief
76 inspector regarding the legal action the approved certified
77 public accountant considers appropriate, including but not
78 limited to whether criminal prosecution or civil action to
79 effect restitution is appropriate, and three additional copies
80 of the certified audit report. After review of the
81 recommendations and the audit report, the chief inspector
82 shall proceed as provided in subsection (n) of this section.

83 For purposes of this section and section thirteen, article
84 nine-b, chapter eighteen of this code, a certified audit
85 report of an approved certified public accountant shall be
86 treated in the same manner as a report of the chief
87 inspector.

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

97 (h) A local government office that is subject to
98 separate examination under this section by the chief
99 inspector may elect to have a review performed to satisfy
100 the annual examination requirement if it is not subject to a
101 single audit requirement under federal regulations and its
102 expenditures from all sources are less than three hundred
103 thousand dollars during the fiscal year for which the
104 election is made: *Provided*, That an annual audit must be
105 performed at least once every five years and shall be
106 performed whenever during the course of a review the
107 chief inspector determines that special or unusual
108 circumstances warrant making a full audit.

109 (i) When not required to have an audit by then
110 existing federal regulations and the financial affairs of a
111 local government are not examined annually but are
112 examined on a biennial or other periodic basis, the chief
113 inspector or his or her designee may, in his or her
114 discretion, after making an audit of one of the fiscal years,
115 make a review of the years remaining to be examined.

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

122 (k) If any person refuses to appear before the chief
123 inspector or his or her authorized assistant when required
124 to do so, refuses to testify on any matter or refuses to
125 produce any books or papers in his or her possession or
126 under his or her control, he or she is guilty of a
127 misdemeanor, and, upon conviction thereof, shall be fined
128 not more than one hundred dollars and imprisoned in the
129 county jail not more than six months.

130 (l) A person convicted of willful false swearing in an
131 examination is guilty of a misdemeanor and, upon
132 conviction thereof, shall be fined not more than one
133 hundred dollars and imprisoned in the county jail not
134 more than six months.

135 (m) Except as otherwise provided in this section, a
136 copy of the certified report of each examination shall be
137 filed in the office of the state tax commissioner, with the
138 governing body of the local government and with other
139 offices as prescribed in uniform procedures of the chief
140 inspector.

141 (n) If any examination discloses misfeasance,
142 malfeasance or nonfeasance in office on the part of any
143 public officer or employee, a certified copy of the report
144 shall be filed by the chief inspector with the proper legal
145 authority of the agency, the prosecuting attorney of the
146 county wherein the agency is located and with the attorney
147 general for such legal action as is proper. At the time the
148 certified audit report is filed, the chief inspector shall
149 notify the proper legal authority of the agency, the
150 prosecuting attorney and the attorney general in writing of
151 his or her recommendation as to the legal action that the
152 chief inspector considers proper, whether criminal
153 prosecution or civil action to effect restitution, or both.

154 (o) If the proper legal authority or prosecuting
155 attorney, within nine months of receipt of the certified
156 audit report and recommendations, refuses, neglects or
157 fails to take efficient legal action by a civil suit to effect
158 restitution or by prosecuting criminal proceedings to a
159 final conclusion, in accordance with the recommendations,
160 the chief inspector may institute the necessary proceedings

161 or participate therein and prosecute the proceedings in
162 any court of the state to a final conclusion.

163 (p) When requested by the governing body of a local
164 government that is not a county board of education, the
165 chief inspector shall take bids on the examination of that
166 local unit of government, and, if he or she finds that a
167 reputable certified public accountant or registered public
168 accountant outside the state tax division of the department
169 of tax and revenue can conduct the examination required
170 by this section at a cost lower than if employees of the
171 chief inspector do it, and if the accountant meets all
172 criteria set forth by the chief inspector, the chief inspector
173 shall contract with the accountant for the audit: *Provided*,
174 That the chief inspector may elect to conduct the audit of
175 a local unit of government with one or more members of
176 his or her audit staff where, in the opinion of the chief
177 inspector, a special or unusual situation exists.

CHAPTER 18. EDUCATION.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-13. Inspection and audit of school finance administration.

1 The board of finance may, through its duly authorized
2 representatives, make inspections and examinations of the
3 fiscal administration of a county school district. The
4 inspection and examination may extend to any matter or
5 practice subject to regulation by the state board. Regular
6 and special examinations shall be made by a certified
7 public accountant approved pursuant to section seven,
8 article nine, chapter six of this code selected by the county
9 board of education in accordance with non-emergency
10 regulations submitted by the chief inspector, or by the
11 chief inspector himself or herself. All examinations shall
12 be made as provided in section seven, article six of this
13 code. The board may make selective audits to determine
14 the accuracy of statements and reports made by a county
15 board or superintendent.

16 The report of the examination shall be certified to the
17 county board of education, which should include the

18 identification of procedures and practices found to not be
19 in accordance with the requirements of the state board.
20 The county board shall comply with the instructions
21 forthwith.

22 The state board, through its duly authorized
23 representatives, shall have full access to all books, records,
24 papers and documents of the county board of education.

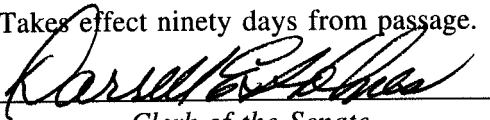
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

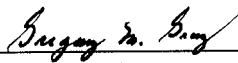

Chairman Senate Committee

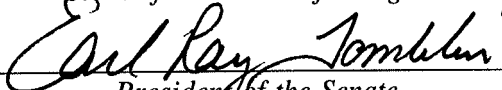

Chairman House Committee

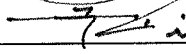
Originating in the House.

Takes effect ninety days from passage.

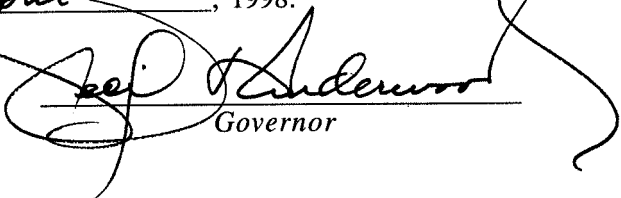

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within disapproved this the 7th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/6/98

Time 12:03 pm