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
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.

As used in this article:

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

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

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

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

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

(g) “Government auditing standards” means the government auditing standards issued by the comptroller general of the United States, which are applicable to financial audits of government organizations, programs and activities.
(h) “Local government” means any unit of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, county board of education, or municipality or any combination of two or more local governments.

(i) “Non-federal entity” means a state, local government, or nonprofit organization.

(j) “Office of management and budget (OMB)” means the executive office of the president of the United States, office of management and budget.

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

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

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

(a) The chief inspector shall have power by himself or herself, or by any person appointed or approved by him
or her to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act. When that act does not apply, the examination shall be made at least once a year if practicable.

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

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

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

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

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

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

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

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

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

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

(j) The chief inspector or any authorized assistant may issue subpoenas and compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths.
(k) If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned in the county jail not more than six months.

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

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

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

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

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

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

The report of the examination shall be certified to the county board of education, which should include the
identification of procedures and practices found to not be in accordance with the requirements of the state board. The county board shall comply with the instructions forthwith.

The state board, through its duly authorized representatives, shall have full access to all books, records, papers and documents of the county board of education.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

Speaker of the House of Delegates

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

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 4/10/65
Time 12:03 PM