

HB 2481

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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

## COMMITTEE SUBSTITUTE FOR House Bill No. 2481

(By Delegates Ennis, Davis, Stemple,  
Martin, Willis, Fletcher and Armstead)



Passed March 12, 1999

In Effect July 1, 1999

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SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE  
FOR

**H. B. 2481**

(BY DELEGATES ENNIS, DAVIS, STEMPLER,  
MARTIN, WILLIS, FLETCHER AND ARMSTEAD)

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AN ACT to amend and reenact section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact section thirteen, article nine-b, chapter eighteen of said code, all relating to defining audit and review procedures as it pertains to supervision of public offices; annual examinations and compliance with the Single Audit Act; audits and reviews of local government agencies; allowing county boards of education to have its annual examination performed by a certified public accountant approved by the chief inspector; requiring the chief inspector to prepare a list of certified public accountants; requiring certified public accountants making examinations to follow procurement standards; requiring certified public accountants making examinations to comply with applicable requirements that include distribution of the audit or review report and recommendation to the chief inspector when the examination discloses

misfeasance, malfeasance or nonfeasance; permitting offices with annual expenditures equal to or less than three hundred thousand dollars to satisfy financial examination requirements by review; requiring county board of education and other local offices to be audited at least one year out of every three years by the office of chief inspector; financial affairs of a local government that are not examined annually; filing of the certified report of each examination; bids taken by the chief inspector for local government that are not a county board of education; and examinations by a certified public accountant selected by the county board of education.

*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 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 to read as follows:

**CHAPTER 6. GENERAL PROVISIONS  
RESPECTING OFFICERS.**

**ARTICLE 9. SUPERVISION OF LOCAL PUBLIC OFFICES.**

**§6-9-1a. Definitions.**

1       As used in this article:

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

14 (b) "Examination" includes an audit or review as defined in  
15 this section.

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

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

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

31 (f) "Government auditing standards" means the government  
32 auditing standards issued by the comptroller general of the  
33 United States, which are applicable to financial audits of  
34 government organizations, programs and activities.

35 (g) "Local government" means any unit of local govern-  
36 ment within the state, including a county, county board of  
37 education, municipality, and any other authority, board,  
38 commission, district, office, public authority, public corpora-  
39 tion, or other instrumentality of a county, county board of  
40 education, or municipality or any combination of two or more  
41 local governments.

42 (h) "Nonfederal entity" means a state, local government, or  
43 nonprofit organization.

44 (i) "Office of management and budget (OMB)" means the  
45 executive office of the president of the United States, office of  
46 management and budget.

47 (j) "Review" means an inquiry or analytical procedures that  
48 provide the auditor with a reasonable basis for expressing

49 limited assurance that there are no material modifications that  
50 should be made to the financial statements in order for them to  
51 be in conformity with generally accepted accounting principles  
52 or, if applicable, with another comprehensive basis of account-  
53 ing.

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

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

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.

12 (b) When required for compliance with regulations for  
13 federal funds received or expended by county boards of  
14 education the chief inspector or his or her designee, including  
15 any certified public accountant approved by the chief inspector  
16 shall conduct and issue an audit report within the time specified

17 in controlling federal regulations. Examinations of other local  
18 governments shall be conducted and audit or review reports  
19 issued in accordance with uniform procedures of the chief  
20 inspector.

21 (c) A county board of education may elect, by the first day  
22 of May of the fiscal year to be audited, to have its annual  
23 examination performed by a certified public accountant  
24 approved by the chief inspector to perform such examinations.  
25 When this election is made, a copy of the order of the board  
26 making the election shall be filed with the chief inspector and  
27 the state board of school finance. The county board of education  
28 is allowed to contract with any certified public accountant on  
29 the chief inspector's then current list of approved certified  
30 public accountants, unless the state board of school finance or  
31 the prosecuting attorney of the county in which the board is  
32 located timely submits to the chief inspector a written request  
33 for the examination to be performed by the chief inspector or a  
34 person appointed by the chief inspector, or the chief inspector  
35 determines that a special or unusual situation exists: *Provided,*  
36 That no less than once every three year period the audit of a  
37 county board of education shall be performed by the office of  
38 chief inspector. The school board shall follow the audit bid  
39 procurement procedures established by the chief inspector in  
40 obtaining such audit.

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

50 (e) A county board of education, when procuring the  
51 services of a certified public accountant on the chief inspector's  
52 list, shall follow the procurement standards prescribed by the  
53 grants management common rule, OMB Circular A-102

54 “Grants and Cooperative Agreements with State and Local  
55 Governments” in effect for the fiscal year being examined, or  
56 in any replacement circular or regulation of the office of  
57 management and budget and in addition shall follow those  
58 standards as determined by the office of chief inspector.

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

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

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

88 (g) On every examination, inquiry shall be made as to the  
89 financial conditions and resources of the agency having  
90 jurisdiction over the appropriations and levies disbursed by the

91 office and whether the requirements of the constitution and  
92 statutory laws of the state and the ordinances and orders of the  
93 agency have been properly complied with and also inquire into  
94 the methods and accuracy of the accounts and such other  
95 matters of audit and accounting as the chief inspector may  
96 prescribe.

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

109 (i) When not required to have an audit by then existing  
110 federal regulations or by any law or contract provision and the  
111 financial affairs of a local government are not examined  
112 annually but are examined on a biennial or other periodic basis,  
113 the chief 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 issue  
117 subpoenas and compulsory process, direct the service thereof  
118 by any sheriff, compel the attendance of witnesses and the  
119 production of books and papers at any designated time and  
120 place, selected in their respective county, and administer oaths.

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

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

132 (m) Except as otherwise provided in this section, a copy of  
133 the certified report of each examination shall be filed in the  
134 office of the commissioner, chief inspector with the governing  
135 body of the local government and with other offices as pre-  
136 scribed in uniform procedures of the chief inspector.

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

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

157 (p) A local government that is not a county board of  
158 education, may elect, by the first day of May of the fiscal year  
159 to be audited, to have its annual examination performed by a  
160 certified public accountant approved by the chief inspector to  
161 perform such examinations. When this election is made, a copy  
162 of the order of the governing body making the election shall be  
163 filed with the chief inspector. An electing local government is  
164 allowed to contract with any certified public accountant on the

165 chief inspector's then current list of approved certified public  
 166 accountants, unless the prosecuting attorney of the county in  
 167 which the local government is located timely submits to the  
 168 chief inspector a written request for the examination to be  
 169 performed by the chief inspector or a person appointed by the  
 170 chief inspector, or the chief inspector determines that a special  
 171 or unusual situation exists: *Provided*, That no less than once  
 172 every three year period the audit of a local government shall be  
 173 performed by the office of chief inspector. The local govern-  
 174 ment shall follow the audit bid procurement procedures  
 175 established by the chief inspector in obtaining such audit:  
 176 *Provided*, That the chief inspector may elect to conduct the  
 177 audit of a local unit of government with one or more members  
 178 of his or her audit staff where, in the opinion of the chief  
 179 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 fiscal  
 3 administration of a county school district. The inspection and  
 4 examination may extend to any matter or practice subject to  
 5 regulation by the state board. Regular and special examinations  
 6 may be made by a certified public accountant approved  
 7 pursuant to section seven, article nine, chapter six of this code  
 8 selected by the county board of education in accordance with  
 9 nonemergency regulations submitted by the chief inspector, or  
 10 by the chief inspector himself or herself: *Provided*, That at least  
 11 once every three years, or more often if deemed necessary by  
 12 the office of chief inspector, a county board of education shall  
 13 undergo a performance and compliance audit by the office of  
 14 chief inspector. All examinations shall be made as provided in  
 15 section seven, article six of this code. The board may make  
 16 selective audits to determine the accuracy of statements and  
 17 reports made by a county board or superintendent.

18 The report of the examination shall be certified to the  
 19 county board of education, which should include the identifica-

Enr. Com. Sub. for H. B. 2481] 10

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

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

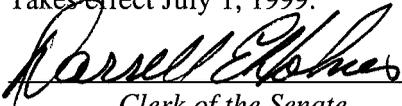
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

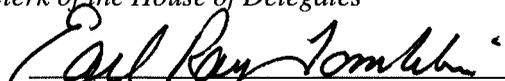
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1999.

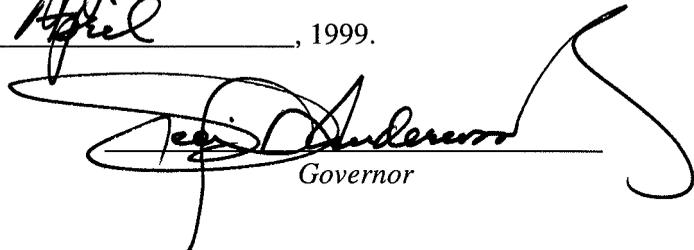
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within approved this the 8th  
day of April, 1999.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 3:30 pm