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
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 examina-
tion; 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.

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 nonfederal entities receive directly from federal awarding agencies or indirectly from pass-through entities.

(d) "Federal financial assistance" means assistance that nonfederal 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.

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

(f) "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.

(g) "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.

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

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

(j) "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 account-
ing.

(k) "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 nonfederal 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
nonfederal entity; or at the option of the nonfederal entity, the
audit shall include a series of audits that cover departments,
agencies, and other organizational units that expend or other-
wise 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 nonfederal entity.

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

(a) The chief inspector has the power by himself or herself,
or by any person appointed, designated or approved by the chief
inspector to perform the service, to examine into all financial
affairs of every local governmental office or political subdivi-
sion 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
and when otherwise required by law or contract. When that act
does not apply, unless otherwise required by law or by contract
the examination shall be made at least once a year, if practica-
ble.

(b) When required for compliance with regulations for
federal funds received or expended by county boards of
education 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
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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
is 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 situation exists: Provided,
That no less than once every three year period the audit of a
county board of education shall be performed by the office of
chief inspector. 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 and in addition shall follow those standards as determined by the office of chief inspector.

(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 or if it is not otherwise required by law or contract to undergo an annual audit 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 audit must be performed at least once every three years by the chief inspector and shall be performed whenever during the course of a review the chief inspector determines that special or unusual circumstances warrant making an audit.

(i) When not required to have an audit by then existing federal regulations or by any law or contract provision 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.
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.

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

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.

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.

A local government that is not 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 governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the
Chief inspector's then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government 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 situation exists: Provided, That no less than once every three year period the audit of a local government shall be performed by the office of chief inspector. The local government shall follow the audit bid procurement procedures established by the chief inspector in obtaining such 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 may 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 nonemergency regulations submitted by the chief inspector, or by the chief inspector himself or herself: Provided, That at least once every three years, or more often if deemed necessary by the office of chief inspector, a county board of education shall undergo a performance and compliance audit by the office of chief inspector. 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 identifica-
tion 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 docu-
ments of the county board of education.
That 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 July 1, 1999.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within ______ approved this the ______ day of ______, 1999.