

H. B. 2225

FILED

2001 MAY 7 2 P 4: 29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2225

(By Delegates Ennis, Stemple, Williams,
Fletcher and Armstead)

Passed April 13, 2001

In Effect Ninety Days from Passage

FILED

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FOR

H. B. 2225

(BY DELEGATES ENNIS, STEMPLER, WILLIAMS,
FLETCHER AND ARMSTEAD)

[Passed April 13, 2001; in effect ninety days from passage.]

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; and to amend and reenact section thirteen, article nine-b, chapter eighteen, all relating to examinations into affairs of local public offices; audit and review procedures of county boards of education; eliminating requirement of audit by office of chief inspector every three years; and requiring chief inspector furnish list of local government offices or political subdivisions to Legislature.

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; and that section thirteen, article nine-b,

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chapter eighteen of said code be amended and reenacted, all to read as follows:

CHAPTER 6. MISCELLANEOUS PROVISIONS.

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,
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. Furthermore, the chief inspector shall furnish annually to
12 the Legislature a list of each local government office or
13 political subdivision and all boards, commissions, authorities,
14 agencies or other offices created under authority thereof and the
15 year of its most recent completed audit.

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

25 (c) A county board of education may elect, by the first day
26 of May of the fiscal year to be audited, to have its annual

27 examination performed by a certified public accountant
28 approved by the chief inspector to perform the examinations.
29 When this election is made, a copy of the order of the county
30 board making the election shall be filed with the chief inspector
31 and the state board of school finance. The county board of
32 education is allowed to contract with any certified public
33 accountant on the chief inspector's then current list of approved
34 certified public accountants, unless the state board of school
35 finance or the prosecuting attorney of the county in which the
36 board is located timely submits to the chief inspector a written
37 request for the examination to be performed by the chief
38 inspector or a person appointed by the chief inspector, or the
39 chief inspector determines that a special or unusual situation
40 exists. The county board shall follow the audit bid procurement
41 procedures established by the chief inspector in obtaining the
42 audit.

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

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

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

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

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

90 (g) On every examination, inquiry shall be made as to the
91 financial conditions and resources of the agency having
92 jurisdiction over the appropriations and levies disbursed by the
93 office and whether the requirements of the constitution and

94 statutory laws of the state and the ordinances and orders of the
95 agency have been properly complied with and also inquire into
96 the methods and accuracy of the accounts and such other
97 matters of audit and accounting as the chief inspector may
98 prescribe.

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

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

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

123 (k) If any person refuses to appear before the chief inspec-
124 tor or his or her authorized assistant when required to do so,
125 refuses to testify on any matter or refuses to produce any books

126 or papers in his or her possession or under his or her control, he
127 or she is guilty of a misdemeanor and, upon conviction thereof,
128 shall be fined not more than one hundred dollars and impris-
129 oned in the county or regional 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 conviction
132 thereof, shall be fined not more than one hundred dollars and
133 imprisoned in the county or regional jail not more than six
134 months.

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

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

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

158 necessary proceedings or participate therein and prosecute the
 159 proceedings in any court of the state to a final conclusion.

160 (p) A local government that is not a county board of
 161 education may elect, by the first day of May of the fiscal year
 162 to be audited, to have its annual examination performed by a
 163 certified public accountant approved by the chief inspector to
 164 perform the examinations. When this election is made, a copy
 165 of the order of the governing body making the election shall be
 166 filed with the chief inspector. An electing local government is
 167 allowed to contract with any certified public accountant on the
 168 chief inspector's then current list of approved certified public
 169 accountants, unless the prosecuting attorney of the county in
 170 which the local government is located timely submits to the
 171 chief inspector a written request for the examination to be
 172 performed by the chief inspector or a person appointed by the
 173 chief inspector, or the chief inspector determines that a special
 174 or unusual situation exists: *Provided*, That no less than once
 175 every three-year period the audit of a local government shall be
 176 performed by the office of chief inspector. The local govern-
 177 ment shall follow the audit bid procurement procedures
 178 established by the chief inspector in obtaining the audit:
 179 *Provided, however*, That the chief inspector may elect to
 180 conduct the audit of a local unit of government with one or
 181 more members of his or her audit staff where, in the opinion of
 182 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.

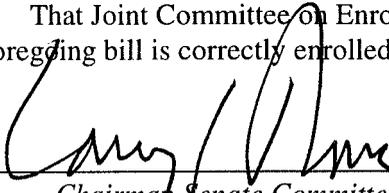
1 The board of finance may, through its duly authorized
 2 representatives, make inspections and examinations of the fiscal
 3 administration of a county school district. The inspection and
 4 examination may extend to any matter or practice subject to

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 in accordance with nonemergency
9 regulations submitted by the chief inspector, or by the chief
10 inspector himself or herself. All examinations shall be made as
11 provided in section seven, article nine, chapter six of this code.
12 The board may make selective audits to determine the accuracy
13 of statements and reports made by a county board or superinten-
14 dent.

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

20 The state board, through its duly authorized representatives,
21 shall have full access to all books, records, papers and docu-
22 ments of the county board.

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



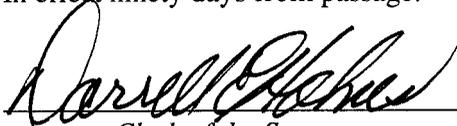
Chairman Senate Committee



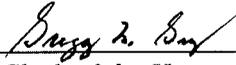
Chairman House Committee

Originating in the House.

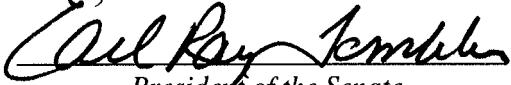
In effect ninety days from passage.



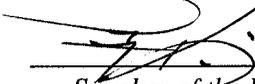
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of May 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/26/01

Time 5:16 p