

(1344)
FILED

2004 APR -5 P 4 23

OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4415

(By Delegates Warner, Beane, Boggs, Frederick,
Stalnaker, Proudfoot and Foster)



Passed March 11, 2004

In Effect Ninety Days from Passage

FILED

2004 APR -5 P 4:23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 4415

(BY DELEGATES WARNER, BEANE, BOGGS, FREDERICK,
STALNAKER, PROUDFOOT AND FOSTER)

[Passed March 11, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §6-9-7 of the code of West Virginia, 1931, as amended, relating to giving the state auditor, as the chief inspector, flexibility in determining when to conduct audits on local government offices and when to conduct a review on them.

Be it enacted by the Legislature of West Virginia:

That §6-9-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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) If a local government office is not subject to a single
100 audit requirement under federal regulations or if it is not
101 otherwise required by law or contract to undergo an annual
102 audit and its expenditures from all sources are less than three
103 hundred thousand dollars during the fiscal year the chief
104 inspector may choose to perform either a review or audit on the

105 local government office and may in his or her discretion
106 determine the frequency of such review or audit.

107 (i) The chief inspector or any authorized assistant may issue
108 subpoenas and compulsory process, direct the service thereof
109 by any sheriff, compel the attendance of witnesses and the
110 production of books and papers at any designated time and
111 place, selected in their respective county, and administer oaths.

112 (j) If any person refuses to appear before the chief inspector
113 or his or her authorized assistant when required to do so, refuses
114 to testify on any matter or refuses to produce any books or
115 papers in his or her possession or under his or her control, he or
116 she is guilty of a misdemeanor and, upon conviction thereof,
117 shall be fined not more than one hundred dollars and impris-
118 oned in the county or regional jail not more than six months.

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

124 (l) Except as otherwise provided in this section, a copy of
125 the certified report of each examination shall be filed in the
126 office of the commissioner, chief inspector with the governing
127 body of the local government and with other offices as pre-
128 scribed in uniform procedures of the chief inspector.

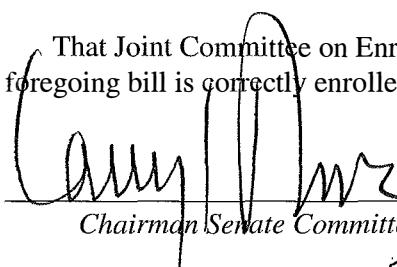
129 (m) If any examination discloses misfeasance, malfeasance
130 or nonfeasance in office on the part of any public officer or
131 employee, a certified copy of the report shall be filed by the
132 chief inspector with the proper legal authority of the agency, the
133 prosecuting attorney of the county wherein the agency is
134 located and with the attorney general for such legal action as is
135 proper. At the time the certified audit report is filed, the chief
136 inspector shall notify the proper legal authority of the agency,

137 the prosecuting attorney and the attorney general in writing of
138 his or her recommendation as to the legal action that the chief
139 inspector considers proper, whether criminal prosecution or
140 civil action to effect restitution, or both.

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

149 (o) A local government that is not a county board of
150 education may elect, by the first day of May of the fiscal year
151 to be audited, to have its annual examination performed by a
152 certified public accountant approved by the chief inspector to
153 perform the examinations. When this election is made, a copy
154 of the order of the governing body making the election shall be
155 filed with the chief inspector. An electing local government is
156 allowed to contract with any certified public accountant on the
157 chief inspector's then current list of approved certified public
158 accountants, unless the prosecuting attorney of the county in
159 which the local government is located timely submits to the
160 chief inspector a written request for the examination to be
161 performed by the chief inspector or a person appointed by the
162 chief inspector, or the chief inspector determines that a special
163 or unusual situation exists: *Provided*, That the audit of a local
164 government may be performed by the chief inspector at his or
165 her discretion. The local government shall follow the audit bid
166 procurement procedures established by the chief inspector in
167 obtaining the audit: *Provided, however*, That the chief inspector
168 may elect to conduct the audit of a local unit of government
169 with one or more members of his or her audit staff where, in the
170 opinion of the chief inspector, a special or unusual situation
171 exists.

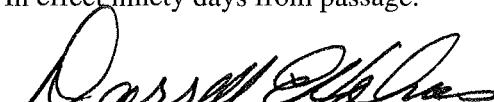
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

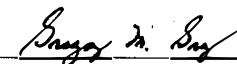

Chairman Senate Committee

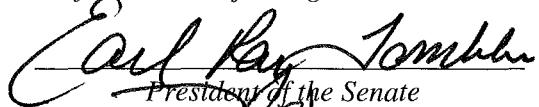

Chairman House Committee

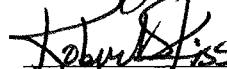
Originating in the House.

In effect ninety days from passage.

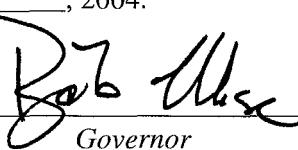

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is Approved this the 5th
day of April, 2004.


Governor

PRESENTED TO THE
GOVERNOR
DATE 3/22/04
TIME 10:15 AM