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
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.

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

(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 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 the examinations. When this election is made, a copy of the order of the county 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. The county board shall follow the audit bid procurement
procedures established by the chief inspector in obtaining the 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) If a local government office 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 the chief inspector may choose to perform either a review or audit on the
local government office and may in his or her discretion
determine the frequency of such review or audit.

(i) 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.

(j) 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 imprison-
ed in the county or regional jail not more than six months.

(k) 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 or regional jail not more than six
months.

(l) 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 pre-
scribed in uniform procedures of the chief inspector.

(m) 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.

(n) 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.

(o) 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 the 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 the audit of a local
government may be performed by the chief inspector at his or
her discretion. The local government shall follow the audit bid
procurement procedures established by the chief inspector in
obtaining the audit: Provided, however, 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.
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 __________ day of ________, 2004.

Governor