

FILED

2010 MAR 31 PM 4: 52

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

—●—
ENROLLED

Senate Bill No. 573

(BY SENATORS MINARD, YOST, SNYDER, WHITE,
EDGELL, BOLEY, CHAFIN AND STOLLINGS)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 573

FILED
2010 MAR 31 PM 4:52
WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 573

(BY SENATORS MINARD, YOST, SNYDER, WHITE,
EDGELL, BOLEY, CHAFIN AND STOLLINGS)

[Passed March 13, 2010; 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 allowing audits to be published electronically with notice to the proper authorities.

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
2 herself, or by any person appointed, designated or ap-
3 proved by the chief inspector to perform the service, to
4 examine into all financial affairs of every local govern-
5 mental office or political subdivision and all boards,
6 commissions, authorities, agencies or other offices created

7 under authority thereof. An examination shall be made
8 annually, if required, to comply with the Single Audit Act
9 and when otherwise required by law or contract. When
10 that act does not apply, unless otherwise required by law
11 or by contract, the examination shall be made at least once
12 a year, if practicable. Furthermore, the chief inspector
13 shall furnish annually to the Legislature a list of each local
14 government office or political subdivision and all boards,
15 commissions, authorities, agencies or other offices created
16 under authority thereof and the year of its most recent
17 completed audit.

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

27 (c) A county board of education may elect, by May 1 of
28 the fiscal year to be audited, to have its annual examina-
29 tion performed by a certified public accountant approved
30 by the chief inspector to perform the examinations. When
31 this election is made, a copy of the order of the county
32 board making the election shall be filed with the chief
33 inspector and the State Board of School Finance. The
34 county board of education is allowed to contract with any
35 certified public accountant on the chief inspector's then
36 current list of approved certified public accountants,
37 unless the State Board of School Finance or the prosecut-
38 ing attorney of the county in which the board is located
39 timely submits to the chief inspector a written request for
40 the examination to be performed by the chief inspector or
41 a person appointed by the chief inspector, or the chief
42 inspector determines that a special or unusual situation

43 exists. The county board shall follow the audit bid
44 procurement procedures established by the chief inspector
45 in obtaining the audit.

46 (d) The chief inspector shall, at least annually, prepare
47 a list of certified public accountants approved by the chief
48 inspector to perform examinations of local governments.
49 Names shall be added to or deleted from that list in
50 accordance with uniform procedures of the chief inspector.
51 When each list or updated list is issued, the chief inspector
52 shall promptly file a copy of the list in the State Register
53 and send a copy to the State Board of Education, the State
54 Board of School Finance and to local governments who
55 request a copy.

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

66 (f) The approved independent certified public accoun-
67 tant making examinations under this section shall comply
68 with requirements of this section applicable to examina-
69 tions performed by the chief inspector, including applica-
70 ble requirements of the federal government and uniform
71 procedures of the chief inspector applicable to examina-
72 tions of county boards of education.

73 (1) Upon completion of the certified public accountant's
74 examination and audit or review report, the certified
75 public accountant shall promptly send two copies of the
76 certified report to the county board of education who shall
77 file one copy with the Federal Audit Clearing House. The

78 certified public accountant shall send one copy of the
79 certified report to the State Board of School Finance, and
80 one copy to the chief inspector.

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

97 (g) On every examination, inquiry shall be made as to the
98 financial conditions and resources of the agency having
99 jurisdiction over the appropriations and levies disbursed
100 by the office and whether the requirements of the Consti-
101 tution and statutory laws of the state and the ordinances
102 and orders of the agency have been properly complied
103 with and also inquire into the methods and accuracy of the
104 accounts and such other matters of audit and accounting
105 as the chief inspector may prescribe.

106 (h) If a local government office is not subject to a single
107 audit requirement under federal regulations or if it is not
108 otherwise required by law or contract to undergo an
109 annual audit and its expenditures from all sources are less
110 than \$300,000 during the fiscal year the chief inspector
111 may choose to perform either a review or audit on the
112 local government office and may in his or her discretion
113 determine the frequency of such review or audit.

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

120 (j) If any person refuses to appear before the chief
121 inspector or his or her authorized assistant when required
122 to do so, refuses to testify on any matter or refuses to
123 produce any books or papers in his or her possession or
124 under his or her control, he or she is guilty of a misde-
125 meanor and, upon conviction thereof, shall be fined not
126 more than \$100 and imprisoned in jail not more than six
127 months.

128 (k) A person convicted of willful false swearing in an
129 examination is guilty of a misdemeanor and, upon convic-
130 tion thereof, shall be fined not more than \$100 and
131 imprisoned in jail not more than six months.

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

138 (m) If any examination discloses misfeasance, malfea-
139 sance or nonfeasance in office on the part of any public
140 officer or employee, a certified copy of the report shall be
141 published electronically by the chief inspector with notice
142 of the publishing sent in writing to the proper legal
143 authority of the agency, the prosecuting attorney of the
144 county wherein the agency is located and with the Attor-
145 ney General for such legal action as is proper. At the time
146 the certified audit report is published, the chief inspector
147 shall notify the proper legal authority of the agency, the
148 prosecuting attorney and the Attorney General in writing

149 of his or her recommendation as to the legal action that
150 the chief inspector considers proper, whether criminal
151 prosecution or civil action to effect restitution, or both.

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

161 (o) A local government that is not a county board of
162 education may elect, by May 1 of the fiscal year to be
163 audited, to have its annual examination performed by a
164 certified public accountant approved by the chief inspec-
165 tor to perform the examinations. When this election is
166 made, a copy of the order of the governing body making
167 the election shall be filed with the chief inspector. An
168 electing local government is allowed to contract with any
169 certified public accountant on the chief inspector's then
170 current list of approved certified public accountants,
171 unless the prosecuting attorney of the county in which the
172 local government is located timely submits to the chief
173 inspector a written request for the examination to be
174 performed by the chief inspector or a person appointed by
175 the chief inspector, or the chief inspector determines that
176 a special or unusual situation exists: *Provided*, That the
177 audit of a local government may be performed by the chief
178 inspector at his or her discretion. The local government
179 shall follow the audit bid procurement procedures estab-
180 lished by the chief inspector in obtaining the audit:
181 *Provided, however*, That the chief inspector may elect to
182 conduct the audit of a local unit of government with one
183 or more members of his or her audit staff where, in the
184 opinion of the chief inspector, a special or unusual situa-
185 tion exists.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is approved* this the *3/6*
Day of *May*, 2010.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2010

Time 3:45 pm