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HOUSE BILL NO. 1476

Offered January 11, 2023

Prefiled December 30, 2022

A BILL to amend and reenact §§ 15.2-2510 and 15.2-2511 of the Code of Virginia, relating to Auditor of Public Accounts; civil penalty for local noncompliance.

Patron—March (By Request)

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 15.2-2510 and 15.2-2511 of the Code of Virginia are amended and reenacted as follows:
§ 15.2-2510. Comparative report of local government revenues and expenditures; civil penalty.**

A. The treasurer or other chief financial officer of each locality shall file annually on or before December 15 with the Auditor of Public Accounts a detailed statement prepared according to the Auditor's specifications showing the amount of revenues, expenditures and fund balances of the locality for the preceding fiscal year, accompanied by the locality's audited financial report. The submittal to the Auditor of Public Accounts shall include a notarized statement from the chief elected official and the chief administrative officer of the locality that the locality's audited financial report has been presented to the local governing body. *If the locality fails to file the detailed statement required in this subsection on or before December 15 with the Auditor of Public Accounts, such locality shall be assessed a monetary penalty of \$1,000, which amount shall be paid into the Literary Fund. An additional \$1,000 penalty shall be imposed upon the locality for each additional 30-day period in which the locality fails to file the detailed statement as required with the Auditor of Public Accounts. In addition to the monetary penalty provided for by this subsection, if the locality fails to file the detailed statement required by this subsection with the Auditor of Public Accounts for a period of 120 days or more, the Auditor of Public Accounts shall refer the locality to the attorney for the Commonwealth for such locality to conduct an investigation to determine if the failure to file the detailed statement as required constitutes malfeasance on the part of any officer or official of such locality.*

B. If such annual statement is not filed with the Auditor of Public Accounts, he may perform such work as is necessary to comply with the provisions of this section or hire certified public accountants to do such work. In either event the expenses of such work shall be charged to and paid by the locality failing to supply the required information.

C. The Auditor of Public Accounts shall prepare and publish annually by February 15 a statement showing in detail the total and per capita revenues and expenditures of all localities for the preceding fiscal year. The statement shall contain such analytical tables, explanations and comparisons as may lead to a clear understanding of such information and make the information readily accessible to the readers.

The Auditor of Public Accounts shall mail or deliver by February 16 of each year a copy of the statement to the members of the General Assembly, to the members and clerks of the local governing bodies, and until the supply is exhausted to every citizen who may request a copy.

The provisions of this section shall apply to all counties and cities, to all towns having a population of 3,500 or over, and to all towns constituting a separate school division regardless of their population.

§ 15.2-2511. Audit of local government records, etc.; Auditor of Public Accounts; audit of shortages; civil penalty.

A. Localities shall have all their accounts and records, including all accounts and records of their constitutional officers, audited annually as of June 30 by an independent certified public accountant in accordance with the specifications furnished by the Auditor of Public Accounts. The certified public accountant shall present a detailed written report to the local governing body at a public session by the following December 31. Every locality shall contract for the performance of the annual audit not later than April 1 of each fiscal year, and such contract shall incorporate the provisions of this section relating to audit specifications and report date. The report shall be (i) submitted to the Auditor of Public Accounts, (ii) preserved by the clerk of the local governing body, and (iii) open to public inspection at all times by any qualified voter. If the audit is not completed as required by this section, the locality shall promptly post a statement on its website, if such website exists, declaring that the required audit is pending, the reasons for the delay, and the estimated date of completion. Such statement shall also be posted and made available to the public at the next scheduled meeting of the local governing body and also be sent to the Auditor of Public Accounts. The statement shall continue to be posted and updated until the audit is complete. If a locality fails to post such notice or make such notice available to the public, any aggrieved person may proceed to enforce such action by filing a petition for mandamus to

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59 the general district court, supported by an affidavit showing good cause. The court, if it finds that a
60 violation has occurred, may issue a writ of mandamus and impose a civil penalty of not less than \$500
61 nor more than \$2,000 against the locality, which amount shall be paid into the Literary Fund.

62 The accounts and records of any county or city officer listed in Article VII, Section 4 of the
63 Constitution of Virginia, hereinafter referred to as "constitutional officers," shall be subject to the
64 provisions of this section.

65 When the annual audit conducted pursuant to this subsection includes the clerk of the circuit court,
66 the audit shall satisfy the requirement of an audit pursuant to § 30-134.

67 In the event that a locality fails to obtain the annual audit prescribed by this subsection, the Auditor
68 of Public Accounts may undertake the audit or may employ the services of certified public accountants
69 and charge the full cost of such services to the locality. However, no part of the cost and expense of
70 such audit shall be paid by any locality whose governing body has its accounts audited for the fiscal
71 years in question as prescribed above and furnishes the Auditor of Public Accounts with a copy of such
72 audit.

73 *If localities or their constitutional officers fail to have their accounts and records audited annually*
74 *as of June 30 of each year as required by this subsection or if the locality fails to present a detailed*
75 *written report of such audit to the local governing body as required by the following December 31, such*
76 *locality or officer shall be subject to a monetary penalty in the amount of \$1,000, which amount shall*
77 *be paid into the Literary Fund. An additional \$1,000 penalty shall be imposed upon the locality or*
78 *officer for each additional 30-day period in which the locality or officer fails to comply with the*
79 *requirements of this section. In addition to the monetary penalty provided for in this subsection, if the*
80 *locality fails to present a detailed written report of its audit to the local governing body for a period of*
81 *120 days following the December 31 deadline, the Auditor of Public Accounts shall refer the locality to*
82 *the attorney for the Commonwealth for such locality to conduct an investigation to determine if the*
83 *failure to present such detailed audit report constitutes malfeasance on the part of any officer or official*
84 *of such locality.*

85 B. Except where otherwise authorized by statute, the Auditor of Public Accounts shall audit the
86 accounts of local governments and constitutional officers only when (i) special circumstances require an
87 audit or (ii) there is suspected fraud or inappropriate handling of funds that may affect the financial
88 interests of the Commonwealth. However, the Auditor of Public Accounts shall also audit the accounts
89 of a local government at any other time upon a majority vote of the local governing body, with all
90 expenses of the audit to be borne by the requesting locality. In all instances, such audits shall be carried
91 out with the approval of the Joint Legislative Audit and Review Commission.

92 Any shortage existing in the accounts of the locality or constitutional officer, as ascertained by the
93 audit, shall be made public within 30 days after the shortage is discovered, and a brief statement thereof
94 shall be sent by the Auditor of Public Accounts to the members and clerk of the local governing body
95 and to the circuit court for the locality and shall be filed in the clerk's office of such court.

96 C. The provisions of this section shall apply to all counties and cities, to all towns having a
97 population of 3,500 or over, and to all towns constituting a separate school division regardless of their
98 population. However, any town with a population of less than 3,500 that voluntarily has an audit
99 prepared shall also submit the results of such audit to the Auditor of Public Accounts.

100 D. Notwithstanding the provisions of this section, any town not required to submit an audit pursuant
101 to subsection C that voluntarily contracts for or performs an audit shall submit the results of such audit
102 to the Auditor of Public Accounts upon completion of the audit.