



January 27, 2020

HOUSE BILL No. 1108

DIGEST OF HB 1108 (Updated January 23, 2020 5:10 pm - DI 134)

Citations Affected: IC 5-11.

Synopsis: State board of accounts. Makes various changes to statutes concerning the state board of accounts (board). Adds a definition of a "responsible officer of an audited entity". Allows the audit committee to determine the amount of the bond for the state examiner, deputy examiners, and field examiners based on applicable risk considerations. Repeals a statute that addresses duties required by law on April 5, 1909. Provides that, for purposes of the risk based examination criteria, the board may perform examinations of certain audited entities more frequently than once every four years if required by a ratings agency that rates debt maintained by such an audited entity. Provides that the board may issue confidential management letters based on professional auditing standards to certain audited entities. Provides that the state examiner, deputy examiner, or field examiner may issue subpoenas to enforce the filing of certain reports. Establishes a procedure governing the examination of certain bodies corporate and politic. Provides that the procedure applies only to a body corporate and politic whose
(Continued next page)

Effective: July 1, 2020.

Lehman, Porter

January 8, 2020, read first time and referred to Committee on Ways and Means.
January 27, 2020, amended, reported — Do Pass.

HB 1108—LS 6767/DI 129



Digest Continued

enabling statute does not provide for an audit, examination, or other engagement by the state board of accounts or an independent public accounting firm concerning financial or compliance related matters of the body corporate and politic. Makes changes to statutes establishing the forfeiture of office for the failure to file certain reports, interference with an examiner, and the failure to adopt or use the system of accounting and reporting adopted by the board. Provides that, as an alternative to an order to forfeit office, a court may impose a civil penalty that does not exceed \$500 for each day that the public officer or responsible officer continues to violate an obligation with respect to an audit, examination, or other engagement by the board. Specifies that the individual is personally liable for a civil penalty imposed on the individual for such a violation. Provides that the board may collect the expenses from the audited entity that the board incurs in carrying out the audit, examination, or other engagement.



January 27, 2020

Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1108

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-11-1-2, AS AMENDED BY P.L.176-2009,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 2. The state board of accounts shall formulate,
4 prescribe, and install a system of accounting and reporting in
5 conformity with this chapter **for use by an audited entity**, which must
6 comply with the following:
7 (1) Be uniform for every public office and every public account
8 of the same class and contain written standards that an entity that
9 is subject to audit must observe.
10 (2) Exhibit true accounts and detailed statements of funds
11 collected, received, obligated, and expended for or on account of
12 the public for any and every purpose whatever, and by all public
13 officers, employees, or other individuals.
14 (3) Show the receipt, use, and disposition of all public property
15 and the income, if any, derived from the property.
16 (4) Show all sources of public income and the amounts due and
17 received from each source.

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1 (5) Show all receipts, vouchers, contracts, obligations, and other
 2 documents kept, or that may be required to be kept, to prove the
 3 validity of every transaction.
 4 The state board of accounts shall formulate or approve all statements
 5 and reports necessary for the internal administration of the office to
 6 which the statements and reports pertain. The state board of accounts
 7 shall approve all reports that are published or that are required to be
 8 filed in the office of state examiner. The state board of accounts shall
 9 from time to time make and enforce changes in the system and forms
 10 of accounting and reporting as necessary to conform to law.
 11 SECTION 2. IC 5-11-1-4, AS AMENDED BY P.L.244-2017,
 12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2020]: Sec. 4. (a) The state examiner shall require from every
 14 ~~municipality and every state or local governmental unit, entity, or~~
 15 ~~instrumentality~~ **audited entity** financial reports covering the full period
 16 of each fiscal year. These reports shall be prepared, verified, and filed
 17 with the state examiner not later than sixty (60) days after the close of
 18 each fiscal year. The reports must be in the form and content prescribed
 19 by the state examiner and filed electronically in the manner prescribed
 20 under IC 5-14-3.8-7.
 21 (b) The department of local government finance may not approve
 22 the budget of a political subdivision or a supplemental appropriation
 23 for a political subdivision until the political subdivision files an annual
 24 report under subsection (a) for the preceding calendar year.
 25 (c) As used in this subsection, "bonds" means any bonds, notes, or
 26 other evidences of indebtedness, whether payable from property taxes,
 27 other taxes, revenues, fees, or any other source. However, the term does
 28 not include notes, warrants, or other evidences of indebtedness that
 29 have a maturity of not more than five (5) years and that are made in
 30 anticipation of and to be paid from revenues of the political
 31 subdivision. Notwithstanding any other law, a county or municipality
 32 may not issue any bonds unless the county or municipality has filed an
 33 annual financial report with the state examiner for the preceding fiscal
 34 year. The requirements under this subsection for the issuance of bonds
 35 by a county or municipality are in addition to any other requirements
 36 imposed under any other law. This subsection applies to the issuance
 37 of bonds authorized under any statute, regardless of whether that
 38 statute specifically references this subsection or the requirements under
 39 this subsection.
 40 SECTION 3. IC 5-11-1-9, AS AMENDED BY P.L.209-2019,
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2020]: Sec. 9. (a) The state examiner, personally or through



1 the deputy examiners, field examiners, or private examiners, shall
 2 examine all accounts and all financial affairs of every ~~public office and~~
 3 ~~officer, state office, state institution, and entity.~~ **audited entity.**
 4 However, an examination of an entity under this subsection shall be
 5 limited to matters relevant to the use of the public money received by
 6 the entity.

7 (b) An examination of an entity that is organized as a not-for-profit
 8 corporation deriving:

9 (1) less than fifty percent (50%); or

10 (2) subject to subsection (i), at least fifty percent (50%) but less
 11 than seven hundred fifty thousand dollars (\$750,000);
 12 of its disbursements during the period subject to an examination from
 13 appropriations, public funds, taxes, and other sources of public expense
 14 shall be limited to matters relevant to the use of the public money
 15 received by the entity.

16 (c) The examination of an entity described in subsection (b) may be
 17 waived by the state examiner if the state examiner determines that:

18 (1) in consideration of the applicable risk based examination
 19 criteria described in and approved under section 25 of this
 20 chapter; and

21 (2) based on submitted information;

22 there are no compelling reasons to conclude that disbursements of
 23 public money during the period subject to examination were
 24 inconsistent with the purposes for which the money was received.
 25 However, the state examiner may revoke a waiver granted under this
 26 subsection if the state examiner determines that revocation of the
 27 waiver is necessary in accordance with the risk based examination
 28 criteria set forth in section 25 of this chapter. The state examiner shall
 29 communicate the determination to grant or revoke a waiver under this
 30 subsection to the entity in writing.

31 (d) Notwithstanding any other law, the:

32 (1) Indiana economic development corporation created by
 33 IC 5-28-3 and the corporation's funds, accounts, and financial
 34 affairs shall be examined by the state board of accounts unless the
 35 examination is waived under subsection (j); and

36 (2) department of financial institutions established by
 37 IC 28-11-1-1 and the department's funds, accounts, and financial
 38 affairs shall be examined by the state board of accounts.

39 (e) On every examination under this section, inquiry shall be made
 40 as to the following:

41 (1) The financial condition and resources of each ~~municipality;~~
 42 ~~office, institution, or entity.~~ **audited entity.**



- 1 (2) Whether the laws of the state and the uniform compliance
 2 guidelines of the state board of accounts established under section
 3 24 of this chapter have been complied with.
- 4 (3) The methods and accuracy of the accounts and reports of the
 5 person examined.
- 6 The examinations may be made without notice.
- 7 (f) If during an examination of a state office **or a body corporate**
 8 **and politic** under this chapter the examiner encounters an inefficiency
 9 in the operation of the state office **or the body corporate and politic**,
 10 the examiner may comment on the inefficiency in the examiner's report.
- 11 (g) The state examiner, deputy examiners, any field examiner, or
 12 any private examiner, when engaged in making any examination or
 13 when engaged in any official duty devolved upon them by the state
 14 examiner, is entitled to do the following:
- 15 (1) Enter into any state, county, city, township, or other public
 16 office in this state, or any entity, agency, or instrumentality, and
 17 examine any books, papers, documents, or electronically stored
 18 information for the purpose of making an examination.
- 19 (2) Have access, in the presence of the custodian or the
 20 custodian's deputy, to the cash drawers and cash in the custody of
 21 the officer.
- 22 (3) During business hours, examine the public accounts in any
 23 depository that has public funds in its custody pursuant to the
 24 laws of this state.
- 25 (h) The state examiner, deputy examiner, or any field examiner,
 26 when engaged in making any examination authorized by law, may issue
 27 subpoenas for witnesses to appear before the examiner in person or to
 28 produce books, papers, or other records (including records stored in
 29 electronic data processing systems) for inspection and examination.
 30 **The state examiner, deputy examiner, or any field examiner may**
 31 **issue a subpoena to enforce the filing of the annual financial report,**
 32 **personnel report, or entity report established by this article.** The
 33 state examiner, deputy examiner, and any field examiner may
 34 administer oaths and examine witnesses under oath orally or by
 35 interrogatories concerning the matters under investigation and
 36 examination. Under the authority of the state examiner, the oral
 37 examinations may be transcribed with the reasonable expense paid by
 38 the examined person in the same manner as the compensation of the
 39 field examiner is paid. The subpoenas shall be served by any person
 40 authorized to serve civil process from any court in this state. If a
 41 witness **or officer** duly subpoenaed refuses to attend, refuses to
 42 produce information required in the subpoena, or attends and refuses



1 to be sworn or affirmed, or to testify when called upon to do so, the
2 examiner may apply to the circuit court having jurisdiction of the
3 witness **or officer** for the enforcement of attendance and answers to
4 questions as provided by the law governing the taking of depositions
5 **or to enforce the filing of any report referred to in this subsection.**

6 (i) The definitions in IC 20-24-1 apply throughout this subsection.
7 Appropriations, public funds, taxes, and other sources of public money
8 received by a nonprofit corporation as a charter school or organizer of
9 a charter school for the purposes of a charter school may not be
10 counted for the purpose of applying subsection (b)(2). Unless the
11 nonprofit corporation receives other public money that would qualify
12 the nonprofit corporation for a full examination of all accounts and
13 financial affairs of the entity under subsection (b)(2), an examination
14 of a charter school or organizer of a charter school must be limited to
15 matters relevant to the use of the public money received for the charter
16 school. This subsection does not prohibit the state examiner, personally
17 or through the deputy examiners, field examiners, or private examiners,
18 from examining the accounts in which appropriations, public funds,
19 taxes, or other sources of public money are applied that are received by
20 a nonprofit corporation as a charter school or organizer of a charter
21 school relating to the operation of the charter school.

22 (j) The state examiner may waive the examination of the Indiana
23 economic development corporation and a nonprofit subsidiary
24 corporation established under IC 5-28-5-13 if:

25 (1) an independent certified public accounting firm conducts an
26 examination under IC 5-28-3-2(c) of:

27 (A) the Indiana economic development corporation and the
28 Indiana economic development corporation's funds, accounts,
29 and financial affairs; and

30 (B) the nonprofit subsidiary corporation;

31 for the year;

32 (2) the Indiana economic development corporation submits the
33 examination report to the state board of accounts; and

34 (3) the state board of accounts reviews the examination report and
35 determines that the examination and examination report comply
36 with the uniform compliance guidelines, directives, and standards
37 established by the state board of accounts.

38 (k) Notwithstanding the waiver of an examination of the Indiana
39 economic development corporation and its nonprofit subsidiary
40 corporation by the state examiner, the state board of accounts may
41 examine the Indiana economic development corporation and its
42 nonprofit subsidiary corporation at any time.



1 SECTION 4. IC 5-11-1-9.3 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2020]: **Sec. 9.3. (a) This section applies only to a body corporate
 4 and politic whose enabling statute does not provide for an annual
 5 audit, examination, or other engagement by:**

6 (1) the state board of accounts; or

7 (2) an independent public accounting firm;
 8 concerning financial or compliance related matters of the body
 9 corporate and politic.

10 (b) This section does not affect a body corporate and politic
 11 whose enabling statute provides for an annual audit, examination,
 12 or other engagement by the state board of accounts or an
 13 independent public accounting firm.

14 (c) As used in this section, "enabling statute" refers to a statute,
 15 including a statute enacted after June 30, 2020, that establishes a
 16 body corporate and politic.

17 (d) The state board of accounts may conduct an examination of
 18 a body corporate and politic described in this section. The state
 19 board of accounts shall permit a body corporate and politic to
 20 request in writing to the state examiner that an examination under
 21 this section be performed by an independent public accounting
 22 firm in accordance with sections 7 and 24 of this chapter. The state
 23 examiner may approve a request under this section based on the
 24 applicable risk based examination criteria described in and
 25 approved under section 25 of this chapter.

26 (e) An examination of a body corporate and politic conducted
 27 under this section by the state board of accounts or an independent
 28 public accounting firm shall be filed with:

29 (1) the state board of accounts in the manner provided by this
 30 article; and

31 (2) the auditor of state.

32 SECTION 5. IC 5-11-1-10 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 10. (a) A public officer
 34 or responsible officer of an audited entity who:**

35 (1) fails to make, verify, and file with the state examiner any
 36 report required by this chapter;

37 (2) fails to follow the directions of the state examiner in keeping
 38 the accounts of the officer's office;

39 (3) refuses the state examiner, deputy examiner, field examiner,
 40 or private examiner access to the books, accounts, papers,
 41 documents, cash drawer, or cash of the officer's office; or

42 (4) interferes with an examiner in the discharge of the examiner's



1 official duties;
 2 commits a Class B infraction. ~~and forfeits office.~~ **The court may also**
 3 **order the officer described in this subsection to forfeit the officer's**
 4 **office.**

5 (b) **As an alternative to an order to forfeit office under**
 6 **subsection (a), a court in which an action described in subsection**
 7 **(a) is filed may impose a civil penalty that does not exceed five**
 8 **hundred dollars (\$500) for each day that the public officer or**
 9 **responsible officer continues to violate an obligation described in**
 10 **subsection (a). The individual is personally liable for a civil penalty**
 11 **imposed on the individual under this section.**

12 (c) **The state board of accounts may collect the expenses**
 13 **incurred in carrying out the audit, examination, or engagement**
 14 **from the audited entity of the officer described in this section.**

15 SECTION 6. IC 5-11-1-15 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 15. (a) The state
 17 examiner, deputy examiners, and field examiners shall each give bond
 18 for the faithful performance of the examiner's duties as follows:

19 (1) ~~The state examiner in the sum of five thousand dollars~~
 20 ~~(\$5,000); to be approved by the governor.~~

21 (2) ~~Each deputy examiner in the sum of three thousand dollars~~
 22 ~~(\$3,000); to be approved by the governor.~~

23 (3) ~~Each field examiner in the sum of one thousand dollars~~
 24 ~~(\$1,000); to be approved by the state examiner. in an amount~~
 25 **determined by the audit committee and based on applicable**
 26 **risk considerations.** However, field examiners may be covered
 27 by a blanket bond or crime insurance policy endorsed to include
 28 faithful performance under IC 5-4-1-15.1 subject to approval of
 29 the **audit committee and** state examiner.

30 (b) The commissioner of insurance shall prescribe the form of the
 31 bonds or crime policies required by this section.

32 SECTION 7. IC 5-11-1-16, AS AMENDED BY P.L.257-2019,
 33 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2020]: Sec. 16. (a) As used in this article, "municipality"
 35 means any county, township, city, town, school corporation, special
 36 taxing district, or other political subdivision of Indiana.

37 (b) As used in this article, "state" means any board, commission,
 38 department, division, bureau, committee, agency, governmental
 39 subdivision, military body, authority, or other instrumentality of the
 40 state, but does not include a municipality.

41 (c) As used in this article, "public office" means the office of any
 42 and every individual who for or on behalf of the state or any



1 municipality or any public hospital holds, receives, disburses, or keeps
 2 the accounts of the receipts and disbursements of any public funds.

3 (d) As used in this article, "public officer" means any individual
 4 who holds, receives, disburses, or is required by law to keep any
 5 account of public funds or other funds for which the individual is
 6 accountable by virtue of the individual's public office.

7 (e) As used in this article, "entity" means any provider of goods,
 8 services, or other benefits that is:

9 (1) maintained in whole or in part at public expense; or

10 (2) supported in whole or in part by appropriations or public funds
 11 or by taxation.

12 The term does not include the state or a municipality (as defined in this
 13 section).

14 (f) As used in this article, a "public hospital" means either of the
 15 following:

16 (1) An institution licensed under IC 16-21 and which is owned by
 17 the state or an agency of the state or one which is a municipal
 18 corporation. A hospital is a municipal corporation if its governing
 19 board members are appointed by elected officials of a
 20 municipality.

21 (2) A state institution (as defined in IC 12-7-2-184).

22 (g) As used in this article, "audit committee" refers to the audit and
 23 financial reporting subcommittee of the legislative council established
 24 by IC 2-5-1.1-6.3.

25 (h) As used in this article, "audited entity" has the meaning set forth
 26 in IC 2-5-1.1-6.3.

27 (i) As used in this article, "development authority" has the meaning
 28 set forth in the following:

29 (1) IC 36-7.5-1-8.

30 (2) IC 36-7.6-1-8.

31 **(j) As used in this article, "responsible officer of an audited**
 32 **entity" refers to the chief executive officer or another individual**
 33 **who has executive decision making authority for the audited entity**
 34 **with respect to a compliance obligation prescribed by or**
 35 **established under this article or another law.**

36 SECTION 8. IC 5-11-1-18, AS AMENDED BY P.L.181-2015,
 37 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2020]: Sec. 18. All examinations under this chapter may be
 39 made without notice to the **audited entities** or officers whose accounts
 40 are to be examined, and without notice to any clerk, deputy, employee,
 41 or other person employed in or connected with the office or the
 42 business of such an **audited entity** or officer. A person who recklessly



1 communicates knowledge of any proposed examination of any public
2 account:

3 (1) that the board has determined to make without notice under
4 this section; and

5 (2) to the officer in charge of the account or to any other
6 unauthorized person;

7 commits a Class B misdemeanor.

8 SECTION 9. IC 5-11-1-21 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 21. **(a)** All public
10 officers **and responsible officers of audited entities** shall adopt and
11 use the books, forms, records, and systems of accounting and reporting
12 adopted by the state board of accounts, when directed so to do by the
13 board, and all forms, books, and records shall be purchased by those
14 officers in the manner provided by law. An officer **described in this**
15 **subsection** who refuses to provide such books, forms, or records, fails
16 to use them, or fails to keep the accounts of ~~his~~ **the officer's** office as
17 directed by the board commits a Class C infraction. ~~and forfeits his~~
18 ~~office.~~ **The court may also order the officer to forfeit the officer's**
19 **office.**

20 **(b) As an alternative to an order to forfeit office under**
21 **subsection (a), a court in which an action described in subsection**
22 **(a) is filed may impose a civil penalty that does not exceed five**
23 **hundred dollars (\$500) for each day that the public officer or**
24 **responsible officer continues to violate an obligation described in**
25 **subsection (a). The individual is personally liable for a civil penalty**
26 **imposed on the individual under this section.**

27 **(c) The state board of accounts may collect the expenses**
28 **incurred in carrying out the audit, examination, or engagement**
29 **from the audited entity of the officer described in this section.**

30 SECTION 10. IC 5-11-1-22 IS REPEALED [EFFECTIVE JULY 1,
31 2020]. Sec. 22: The provisions of this chapter shall not be construed to
32 relieve any officer of any duties required by law of him on April 5,
33 1909; with relation to the auditing of public accounts or the
34 disbursement of public funds; but the provisions of this chapter shall
35 be construed to be supplemental to all provisions of law existing on
36 April 5, 1909; safeguarding the care and disbursement of public funds;
37 and provided further, that the provisions of this chapter shall not be
38 construed to limit or curtail the power of the governor of the state under
39 laws existing on April 5, 1909; to make examination or investigation
40 of any public office or to require reports therefrom.

41 SECTION 11. IC 5-11-1-25, AS AMENDED BY P.L.257-2019,
42 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2020]: Sec. 25. (a) This section and section 24.4 of this
 2 chapter do not limit the application of any law that requires a
 3 municipality, a public hospital, another public office or public officer,
 4 an entity, or another person or organization to be audited or otherwise
 5 examined on an annual or other basis by:

- 6 (1) a certified public accountant; or
 7 (2) a person other than the state examiner or the state board of
 8 accounts.

9 (b) Subject to section 9 of this chapter and subsections (c) and (d),
 10 the state board of accounts shall conduct examinations of audited
 11 entities at the times determined by the state board of accounts, but not
 12 less than once every four (4) years, using risk based examination
 13 criteria that are established by the state board of accounts and approved
 14 by the audit committee. The risk based examination criteria must
 15 include the following risk factors:

16 (1) An audited entity has a newly elected or appointed fiscal
 17 officer.

18 (2) An audited entity:

19 (A) has not timely filed; or

20 (B) has filed a materially incorrect or incomplete;

21 annual financial report required by section 4 of this chapter.

22 **(3) A ratings agency that rates debt maintained by an audited**
 23 **entity has determined an examination of the audited entity is**
 24 **required more frequently than once every four (4) years.**

25 ~~(3)~~ (4) Any other factor determined by the state examiner and
 26 approved by the audit committee.

27 (c) Examinations must be conducted annually for the following:

28 (1) The state.

29 (2) An audited entity (other than a school corporation) that
 30 requires an annual audit:

31 (A) because of the receipt of federal financial assistance in an
 32 amount that subjects the audited entity to an annual federal
 33 audit;

34 (B) due to continuing disclosure requirements; or

35 (C) as a condition of a public bond issuance.

36 (3) A development authority.

37 An audited entity shall, under the guidelines established by the state
 38 board of accounts, provide notice to the state examiner not later than
 39 sixty (60) days after the close of the audited entity's fiscal year that the
 40 audited entity is required to have an annual audit under subdivision (2).

41 (d) As permitted under this section since September 1, 1986 (the
 42 effective date of P.L.3-1986, SECTION 16), examinations of school



1 corporations shall be conducted biennially.

2 SECTION 12. IC 5-11-5-1, AS AMENDED BY P.L.209-2019,
3 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2020]: Sec. 1. (a) Whenever an examination is made under
5 this article, a report of the examination shall be made. The report must
6 include a list of findings and shall be signed and verified by the
7 examiner making the examination. A finding that is critical of an
8 examined entity must be based upon one (1) of the following:

9 (1) Failure of the entity to observe a uniform compliance
10 guideline established under IC 5-11-1-24(a).

11 (2) Failure of the entity to comply with a specific law.

12 A report that includes a finding that is critical of an examined entity
13 must designate the uniform compliance guideline or the specific law
14 upon which the finding is based. **The state board of accounts may**
15 **also issue confidential management letters, based on professional**
16 **auditing standards, to an audited entity (as defined in section 1.5(a)**
17 **of this chapter) in a situation involving noncompliance that does**
18 **not result in the establishment of a corrective action plan but that**
19 **must be brought to the attention of the audited entity's governing**
20 **body.** The reports shall immediately be filed with the state examiner,
21 and, after inspection of the report, the state examiner shall immediately
22 file one (1) copy with the officer or person examined, one (1) copy with
23 the auditing department of the municipality examined and reported
24 upon (if the subject of the report is a municipality), and one (1) copy in
25 an electronic format under IC 5-14-6 with the legislative services
26 agency, as staff to the audit committee and the general assembly. Upon
27 filing, the report becomes a part of the public records of the office of
28 the state examiner, of the office or the person examined, of the auditing
29 department of the municipality examined and reported upon, and of the
30 legislative services agency, as staff to the audit committee and the
31 general assembly. A report is open to public inspection at all
32 reasonable times after it is filed. If an examination discloses
33 malfeasance, misfeasance, or nonfeasance in office or of any officer or
34 employee, a copy of the report, signed and verified, shall be placed by
35 the state examiner with the attorney general and the inspector general.
36 The attorney general shall diligently institute and prosecute civil
37 proceedings against the delinquent officer **or employee**, or upon the
38 officer's **or employee's** official bond, or both, and against any other
39 proper person that will secure to the state or to the proper municipality
40 the recovery of any funds misappropriated, diverted, or unaccounted
41 for.

42 (b) Before an examination report is signed, verified, and filed as



1 required by subsection (a), the officer or the chief executive officer of
2 the state office, municipality, or entity examined must have an
3 opportunity to review the report and to file with the state examiner a
4 written response to that report. If a written response is filed, it becomes
5 a part of the examination report that is signed, verified, and filed as
6 required by subsection (a). As part of the review of the examination
7 report, the state examiner shall hold a gathering of the officer or chief
8 executive officer of the state office, municipality, or entity examined,
9 any employees or agents of the state office, municipality, or entity
10 examined who are requested to attend by the officer or chief executive
11 officer of the state office, municipality, or entity examined, and the
12 members of the legislative and fiscal bodies of the municipality or
13 entity examined. Such a gathering is referred to as an "exit conference"
14 for purposes of this subsection. The following apply to an exit
15 conference:

16 (1) All information discussed and materials presented or delivered
17 by any person during an exit conference are confidential and may
18 not be discussed or shared publicly until the earliest of the
19 occurrences set forth in subsection (g). However, the information
20 discussed and materials presented or delivered during an exit
21 conference may be shared with an officer, employee, consultant,
22 adviser, or attorney of the officer or chief executive officer of the
23 state office, municipality, or entity examined who was not present
24 at the exit conference. An individual with whom information and
25 materials are shared must maintain the confidentiality of the
26 information and materials as provided in this subdivision until the
27 earliest of the occurrences set forth in subsection (g).

28 (2) An individual attending an exit conference may not
29 electronically record the exit conference.

30 (3) If a majority of a governing body (as defined in
31 IC 5-14-1.5-2(b)) is present during an exit conference, the
32 governing body shall be considered in an executive session under
33 IC 5-14-1.5. However, the governing body has no obligation to
34 give notice as prescribed by IC 5-14-1.5-5 when it participates in
35 the exit conference.

36 (4) If the state examiner determines after the exit conference that
37 additional actions must be undertaken by a deputy examiner, field
38 examiner, or private examiner with respect to information
39 discussed or materials presented at the exit conference, the state
40 examiner may call for an additional exit conference to be held.

41 (5) Not more than thirty (30) days after the initial exit conference
42 is held under this subsection, the legislative body of the



1 municipality or entity examined and reported upon may adopt a
 2 resolution, approved by at least a two-thirds (2/3) vote of the
 3 legislative body, requesting that an additional exit conference be
 4 held. The legislative body shall notify the state board of accounts
 5 if the legislative body adopts a resolution under this subdivision.
 6 If a legislative body adopts a resolution under this subdivision, the
 7 state board of accounts shall conduct an additional exit
 8 conference not more than sixty (60) days after the state board of
 9 accounts receives notice of the adoption of the resolution. The
 10 municipality or entity examined must pay the travel and staff
 11 costs incurred by the state board of accounts in conducting an
 12 additional exit conference under this subdivision.

13 (6) Except as provided in subdivision (7), a final report under
 14 subsection (a) may not be issued earlier than forty-five (45) days
 15 after the initial exit conference is held under this subsection.

16 (7) If:

17 (A) the state examiner does not call for an additional exit
 18 conference to be held as described in subdivision (4); and

19 (B) the:

20 (i) legislative body of the municipality or entity examined
 21 and reported upon provides written notice to the state
 22 examiner that the legislative body waives an additional exit
 23 conference described in subdivision (5); or

24 (ii) state examiner determines that a final report under
 25 subsection (a) must be issued as soon as possible;

26 the final report may be issued earlier than forty-five (45) days
 27 after the initial exit conference is held under this subsection.

28 (c) Except as provided by subsections (b), (d), and (e), it is unlawful
 29 for any person, before an examination report is made public as
 30 provided by this section, to make any disclosure of the result of any
 31 examination of any public account, except:

32 (1) to the state examiner;

33 (2) if directed to give publicity to the examination report by the
 34 state examiner or by any court;

35 (3) to another deputy examiner, field examiner, or private
 36 examiner engaged in conducting the examination; or

37 (4) if directed by the state examiner, to the chair of the audit
 38 committee or the members of the audit committee acting in
 39 executive session, or both.

40 If an examination report shows or discloses the commission of a crime
 41 by any person, it is the duty of the state examiner to transmit and
 42 present the examination report to the prosecuting attorney of the county



1 in which the crime was committed. The state examiner shall furnish to
 2 the prosecuting attorney all evidence at the state examiner's command
 3 necessary in the investigation and prosecution of the crime.

4 (d) If, during an examination under this article, a deputy examiner,
 5 field examiner, or private examiner acting as an agent of the state
 6 examiner determines that the following conditions are satisfied, the
 7 examiner shall report the determination to the state examiner:

8 (1) A substantial amount of public funds has been
 9 misappropriated or diverted.

10 (2) The deputy examiner, field examiner, or private examiner
 11 acting as an agent of the state examiner has a reasonable belief
 12 that the malfeasance or misfeasance that resulted in the
 13 misappropriation or diversion of the public funds was committed
 14 by the officer or an employee of the office **or entity**.

15 (e) After receiving a preliminary report under subsection (d), the
 16 state examiner may provide a copy of the report to the attorney general.
 17 The attorney general may institute and prosecute civil proceedings
 18 against the delinquent officer or employee, or upon the officer's or
 19 employee's official bond, or both, and against any other proper person
 20 that will secure to the state or to the proper municipality the recovery
 21 of any funds misappropriated, diverted, or unaccounted for.

22 (f) In an action under subsection (e), the attorney general may attach
 23 the defendant's property under IC 34-25-2.

24 (g) Except as permitted in this section, the information and materials
 25 that are part of an exit conference under subsection (b) and the results
 26 of an examination, including a preliminary report under subsection (d),
 27 are confidential until the occurrence of the earliest of the following:

28 (1) The final report is made public under subsection (a).

29 (2) The results of the examination are publicized under subsection
 30 (c)(2).

31 (3) The attorney general institutes an action under subsection (e)
 32 on the basis of the preliminary report.

33 (h) Except as permitted in this section, an individual, a public
 34 agency (as defined in IC 5-14-3-2), a public employee, a public official,
 35 or an employee or officer of a contractor or subcontractor of a public
 36 agency that knowingly or intentionally discloses information in
 37 violation of subsection (b) or (g), regardless of whether the information
 38 is received orally or by any other means, is subject to the following:

39 (1) A public agency (as defined in IC 5-14-3-2), a public
 40 employee, a public official, or an employee or officer of a
 41 contractor or subcontractor of a public agency commits a Class A
 42 infraction under IC 5-14-3-10.



- 1 (2) If the disclosure is by a person who is not described in
 2 subdivision (1), the person commits a Class A infraction.
- 3 (i) Unless in accordance with a judicial order or as otherwise
 4 provided in this section, the state board of accounts or its employees,
 5 former employees, counsel, or agents, or any other person may not
 6 divulge the examination workpapers and investigation records of a
 7 deputy examiner, a field examiner, or a private examiner acting as an
 8 agent of the state examiner, except to:
- 9 (1) employees and members of the state board of accounts;
 - 10 (2) the audit committee;
 - 11 (3) law enforcement officers, the attorney general, a prosecuting
 12 attorney, or any other legal representative of the state in any
 13 action with respect to the misappropriation or diversion of public
 14 funds;
 - 15 (4) an authorized representative of the United States;
 - 16 (5) a successor examiner or auditor, in accordance with applicable
 17 professional auditing standards; or
 - 18 (6) another individual for any other factor that constitutes good
 19 cause as set forth in criteria established by the state examiner and
 20 approved by the audit committee.
- 21 (j) An individual described in subsection (i)(3) or (i)(4) who
 22 receives examination workpapers and investigation records described
 23 in subsection (i) may divulge the workpapers and records in any action
 24 with respect to the misappropriation or diversion of public funds.
- 25 SECTION 13. IC 5-11-5-1.5, AS ADDED BY P.L.176-2017,
 26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2020]: Sec. 1.5. (a) As used in this section, "audited entity"
 28 includes only the following:
- 29 (1) A state agency (as defined in IC 4-13-1-1).
 - 30 (2) A public hospital.
 - 31 (3) A municipality.
 - 32 (4) A body corporate and politic.
 - 33 (5) A state educational institution.
 - 34 (6) An entity to the extent that the entity is required to be
 35 examined under IC 5-11-1-9 or another law.
- 36 (b) If an examination report contains a finding that an audited entity
 37 failed to observe a uniform compliance guideline established under
 38 IC 5-11-1-24(a) or to comply with a specific law, the audited entity
 39 shall take action to address the audit finding.
- 40 (c) If a subsequent examination report of the audited entity contains
 41 a finding that is the same as or substantially similar to the finding
 42 contained in the previous examination report described in subsection



1 (b), the public officer of the audited entity shall file a corrective action
 2 plan as a written response to the report under section 1(b) of this
 3 chapter.

4 (d) The state board of accounts shall create guidelines for use by an
 5 audited entity to establish a corrective action plan described in
 6 subsection (c). The guidelines must include a requirement that the issue
 7 that is the subject of a finding described in subsection (c) must be
 8 corrected not later than six (6) months after the date on which the
 9 corrective action plan is filed.

10 (e) After the successful completion of a corrective action plan by an
 11 audited entity that was required to file a corrective action plan under
 12 subsection (c), the audited entity shall notify the state board of
 13 accounts. The state board of accounts shall review each corrective
 14 action plan. If a corrective action plan is not implemented or the issue
 15 that is the subject of the finding is not corrected within six (6) months,
 16 the state board of accounts shall prepare a memorandum summarizing:

- 17 (1) the examination report finding;
- 18 (2) the corrective action plan;
- 19 (3) the manner by which the examination report finding was or
 20 was not addressed; and
- 21 (4) a recommended course of action.

22 (f) The state board of accounts shall present to the audit committee
 23 established by IC 2-5-1.1-6.3 a memorandum described in subsection
 24 (e). If the audit committee determines that further action should be
 25 taken, the audit committee may do any of the following:

- 26 (1) Request a written statement from the public officer of the
 27 audited entity.
- 28 (2) Request the personal attendance of the public officer of the
 29 audited entity at the next audit committee meeting.
- 30 (3) Request that the public officer of the audited entity take
 31 corrective action.
- 32 (4) Notify the:
 - 33 (A) office of management and budget (in the case of an
 34 audited entity that is a state agency, a body corporate and
 35 politic, or a state educational institution); or
 - 36 (B) officer or chief executive officer, legislative body, and
 37 fiscal body of the audited entity and the department of local
 38 government finance (in the case of any other audited entity);
 39 that the audited entity refused to correct the audited entity's failure
 40 to observe a uniform compliance guideline established under
 41 IC 5-11-1-24(a), or refused to comply with a specific law, with
 42 notice of the recommendation described in subsection (e)(4)



1 published on the general assembly's Internet web site.

2 (5) Refer the facts drawn from the examination and the actions
3 taken under this section for investigation and prosecution of a
4 violation of IC 5-11-1-10 or IC 5-11-1-21 to the:

5 (A) inspector general, in the case of an audited entity that is a
6 state agency, a body corporate and politic, or a state
7 educational institution; or

8 (B) prosecuting attorney of the county in which a violation of
9 IC 5-11-1-10 or IC 5-11-1-21 may have been committed, in the
10 case of any other audited entity;

11 with notice of the referral published on the general assembly's
12 Internet web site. Notice of a referral described in clause (B) must
13 be sent to the officer or chief executive officer, legislative body,
14 and fiscal body of the audited entity.

15 (6) Recommend that legislation be introduced in the general
16 assembly to amend any statute under which the audited entity is
17 found to be noncompliant.

18 (7) Recommend that the state board of accounts examine the
19 audited entity within the calendar year following the year in
20 which the audited entity was required to file a corrective action
21 plan under subsection (c).

22 **(g) When implementing this section, the state board of accounts**
23 **may issue confidential management letters, based on professional**
24 **auditing standards, to an audited entity in a situation involving**
25 **noncompliance that does not result in the establishment of a**
26 **corrective action plan but that must be brought to the attention of**
27 **the audited entity's governing body.**

28 SECTION 14. IC 5-11-13-1, AS AMENDED BY P.L.137-2012,
29 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2020]: Sec. 1. (a) Every state, county, city, town, township, or
31 school official, elective or appointive, who is the head of or in charge
32 of any office, department, board, or commission of the state or of any
33 county, city, town, or township; and every state, county, city, town, or
34 township employee or agent who is the head of, or in charge of, or the
35 executive officer of any department, bureau, board, or commission of
36 the state, county, city, town, or township; and every executive officer
37 by whatever title designated, who is in charge of any state educational
38 institution or of any other state, county, or city institution; As used in
39 this section, "audited entity" includes only the following:

40 (1) The state.

41 (2) A municipality.

42 (3) A state educational institution.



1 **(b) Each audited entity** shall during the month of January of each
2 year prepare, make, and sign a certified report, correctly and
3 completely showing the names and business addresses of ~~each and all~~
4 **the** officers, employees, and agents **in their respective offices,**
5 ~~departments; boards; commissions; and institutions; and of the audited~~
6 **entity. The report shall indicate** the respective duties and
7 compensation of each ~~and~~ **officer, employee, and agent of the**
8 **audited entity. The audited entity** shall ~~forthwith~~ file ~~said the~~ report
9 in the office of the state examiner of the state board of accounts. The
10 report must also indicate whether the political subdivision offers a
11 health plan, a pension, and other benefits to full-time and part-time
12 employees. However, no more than one (1) report covering the same
13 officers, employees, and agents need be made from the state or any
14 county, city, town, township, or school unit in any one year. The
15 certification must be filed electronically in the manner prescribed
16 under IC 5-14-3.8-7.

17 ~~(b)~~ **(c)** The department of local government finance may not
18 approve the budget of a county, city, town, or township or a
19 supplemental appropriation for a county, city, town, or township until
20 the county, city, town, or township files an annual report under
21 subsection ~~(a)~~ **(b)** for the preceding calendar year.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1108, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, delete lines 1 through 8, begin a new paragraph and insert:

"SECTION 1. IC 5-11-1-9.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 9.3. (a) This section applies only to a body corporate and politic whose enabling statute does not provide for an annual audit, examination, or other engagement by:**

(1) the state board of accounts; or

(2) an independent public accounting firm;

concerning financial or compliance related matters of the body corporate and politic.

(b) This section does not affect a body corporate and politic whose enabling statute provides for an annual audit, examination, or other engagement by the state board of accounts or an independent public accounting firm.

(c) As used in this section, "enabling statute" refers to a statute, including a statute enacted after June 30, 2020, that establishes a body corporate and politic.

(d) The state board of accounts may conduct an examination of a body corporate and politic described in this section. The state board of accounts shall permit a body corporate and politic to request in writing to the state examiner that an examination under this section be performed by an independent public accounting firm in accordance with sections 7 and 24 of this chapter. The state examiner may approve a request under this section based on the applicable risk based examination criteria described in and approved under section 25 of this chapter.

(e) An examination of a body corporate and politic conducted under this section by the state board of accounts or an independent public accounting firm shall be filed with:

(1) the state board of accounts in the manner provided by this article; and

(2) the auditor of state."

Page 17, delete line 19.

Page 17, line 20, delete "(4)" and insert "(3)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

HB 1108—LS 6767/DI 129



(Reference is to HB 1108 as introduced.)

BROWN T

Committee Vote: yeas 20, nays 0.

